Report Supporting the Draft Aquaculture (Standard Lease and Licence Conditions) Policy 2021

October 2021

Fisheries and Aquaculture Division

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Information current as of 19 October 2021

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INTRODUCTION

South Australia's total value of seafood production (landed) in 2019/20 was $461.8 million, of which aquaculture contributed almost half ($229m) with wild-catch fisheries, making up the balance ($232.8m) (BDO EconSearch, 2021). South Australia produced 14.3% of Australia's total aquaculture production value in 2019/20 (ABARES, 2021). On an international scale, 46% of seafood production was from aquaculture in 2018, which is predicted to exceed wild-catch fisheries production in 2025 for the first time. Future expectation is that that by 2030, aquaculture will produce 53% of global seafood production (FAO, 2018).

The aquaculture industry in South Australia originated with the establishment of the commercial Oyster aquaculture industry in the 1980's. South Australia is now home to the most diverse range of aquaculture sectors in Australia. In aggregate, Tuna is the largest single sector in the State's aquaculture industry, accounting for 59.8% of the State's value of aquaculture production in 2019/20. The other main sectors are Marine Finfish (17.3%), Oysters (10.9%), and Abalone (5.2%) (BDO EconSearch, 2021).

South Australia's aquaculture industry created an estimated 1,084 Full Time Equivalent (FTE) jobs (724 on-farm and 360 in downstream activities) through direct employment and 1,423 flow-on jobs, giving total employment of 2,506 FTE in 2019/20. Approximately 70% of these jobs were generated in regional South Australia (BDO EconSearch, 2021).

The *Aquaculture Act 2001* (the Act), provides a strong regulatory framework for aquaculture in South Australia, and is instrumental for supporting continued industry growth and development. The subordinate regulatory framework (i.e. aquaculture policies and regulations) must be periodically reviewed and amended to ensure it keeps pace with industry development and emerging "best practice" production techniques and to tailor regulation to the unique challenges and emerging opportunities presented by the various industry sectors.

The regulatory framework for aquaculture was updated through the Aquaculture Regulation Review (2014-2015), with many of the recommended outcomes of the review being incorporated into the *Aquaculture Regulations 2016*. The changes aimed to streamline and reduce red tape wherever possible, support contemporary farming practices and strengthen environmental and biosecurity outcomes. The Aquaculture Regulation Review also proposed the development of a statutory policy on standard lease and licence conditions.

Currently in South Australia, the Act is administered within the jurisdiction of the Minister for Primary Industries and Regional Development.

Section 11 of the Act allows the Minister responsible for the administration of the Act to make aquaculture policies for any purpose directed towards furthering the objectives of the Act. Further, aquaculture policies may specify the standard lease and licence conditions that would apply to all leases and licences issued pursuant to the Act irrespective of when the lease or licence was issued.

The Draft Aquaculture (Standard Lease and Licence Conditions) Policy 2021 (Draft Policy) aims to modernise existing lease and licence conditions using contemporary terminology, remove duplication caused by the implementation of the *Aquaculture Regulations 2016* and other recently reviewed State Government regulatory frameworks, and consistently apply lease and licence conditions across each industry sector.

Individual aquaculture operators' compliance with lease and licence conditions is vitally important to the ongoing management of the aquaculture industry in South Australia. Lease and licence conditions are applied to mitigate a range of administrative and operational risks from an aquaculture activity, such as access to a public resource, marking off requirements, damage from unauthorised access to the site,

interactions with protected animals and broader environmental and biosecurity risks. The Draft Policy aims to create fairness and transparency for the aquaculture industry and all interested stakeholders.

This Report summarises the standardised lease and licence conditions proposed within the Draft Policy, their origin and future intent, including if a condition has been simply modernised, amended or is a proposed new condition.

AQUACULTURE POLICY SUPPORTING REPORT

This Report supports the Draft Policy, and has been prepared in accordance with section 12 of the Act, and contains:

- An explanation of the purpose and effect of the Draft Policy;
- A summary of any background and issues relevant to the Draft Policy and of the analysis and reasoning applied in formulating the Draft Policy; and
- An assessment of the consistency of the Draft Policy with the any relevant state planning policy or regional plan, and the Planning and Design Code, under the *Planning, Development and Infrastructure Act 2016*; any relevant environment protection policy under the *Environment Protection Act 1993*; and any other relevant instruments prescribed by regulation (APPENDIX C).

Pursuant to the Act, the Draft Policy and Report has been referred to prescribed bodies and relevant public authorities, and made publicly available for a period of two months for comment. Following this period of consultation, the content of the submissions received has been considered, and consequential amendments to the Draft Policy and Report have been made (see section Amendments Following Public Consultation Process). All stakeholders who made a submission through the period of statutory consultation will receive a response outlining how their feedback has been incorporated into the Policy and Report.

As prescribed by the Act, the concurrence of the Minister responsible for specially protected areas has been obtained for the Draft Policy to apply within these areas. In addition, following approval of the Draft Policy by the Minister, the Policy will be referred to the Environment, Resources and Development Committee (ERDC) of Parliament. The ERDC may approve the Policy, seek amendments to the Policy or object to the Policy.

As a result of consultation and gazettal of the Policy it is proposed that the standardised conditions contained within the Policy will replace historical versions previously outlined on individual lease and licence documents irrespective of when a lease/licence was issued. This is unless the Policy otherwise provides for certain conditions specified in the lease or licence document itself to override the Policy.

PIRSA Fisheries and Aquaculture (PIRSA) intends to re-issue all lease and licence documents following gazettal of the Policy with only conditions specific to the activity being undertaken on a lease or licence or those conditions that are required in a lease schedule to implement the Policy remaining. A transition period for the reissuing of lease and licence documents may be required to ensure all conditions remaining on the lease or licence document remain relevant and current for the activity being undertaken on the lease or licence site and use modern terminology in accordance with the standardised conditions within the Policy. It is expected the transition period will be completed in 2022.

Although not intended, the implementation of the Policy may require in some instances, changes to existing farming practices, particularly when meeting biomass limit related licence conditions. This may require a licensee to change or modify farming structures or practices to achieve compliance with all standardised licence conditions implemented through the Policy. PIRSA is committed to developing and implementing the Policy in a way that ensures a smooth transition for all members of the aquaculture industry.

AMENDMENTS FOLLOWING PUBLIC CONSULTATION PROCESS

The Draft Policy and Report were released for public consultation from 23 September 2019 until 29 November 2019. Two public briefings were held as part of the consultation process to assist the content of any submissions, one in Adelaide on 21 October 2019 and one in Port Lincoln on 24 October 2019. Through the public consultation process, PIRSA received valuable feedback from stakeholders with the majority in support of the Draft Policy. Many of the comments and suggestions made by stakeholders have been incorporated through amendments to the Draft Policy and Report.

The following is a list of amendments that were made to the Draft Policy and Report as a result of feedback received during the public consultation process:

- In relation to the ability of the Minister to amend clauses 10-GST, 16-Notice to Minister, 26-Navigational marks, 30-Wild caught southern bluefin tuna-access to southern bluefin tuna, 33-Notice to Minister, 40-Maximum biomass-mussel, 41-Oyster farming-farming systems, 42-Maximum biomass-oyster, and 44-Signage via Gazette notice, this wording has been removed from the individual clauses themselves, placed into its own unique clause (see clause 5 below), and elaborated further. This has been done to improve transparency surrounding the specific changes to clauses the Minister can make via Gazette notice.

5—Certain amendments may be made by Gazette notice

(1) Pursuant to section 14(1)(c) of the Act, this policy may be amended by the Minister by notice in the Gazette so as to make any of the following changes:

(a) a change in clause 10 to the government entity administering each aquaculture lease on behalf of the Minister, being entitled to be treated as the maker of any taxable supply and the recipient of any taxable supply pursuant to each aquaculture lease, and its ABN;

(b) a change in clause 16 or 33 to—

(i) amend or substitute a specified postal or email address, facsimile number or telephone number; or

(ii) otherwise amend, substitute, add or remove a manner in which notice may be given or a record, document or information may be sent to the Minister;

(c) a change in clause 26 to—

(i) the manner in which intertidal navigational marks or subtidal navigational marks must be installed under clause 26(3), (4) or (5); or

(ii) the definition of, and requirements for, a combined lease shape, intertidal navigational mark, St Andrew's Cross or subtidal navigational mark in clause 26(8);

(d) a change in clause 30 to the minimum amount of southern bluefin tuna (*Thunnus maccoyii*) specified in clause 30(2);

(e) a change in clause 40 to—

(i) the maximum total length of backbone permitted on a licensed site under clause 40(3)(a); or

(ii) the maximum length of longline that is permitted to be submerged for each metre of backbone under clause 40(3)(b);

(f) a change in clause 41 to restrictions and requirements applying in respect of oyster farming systems;

(g) a change in clause 42 to—

(i) the maximum permitted length per hectare of contained longline and stocked contained longline specified in respect of an aquaculture zone or any other area under clause 42(3); or

(ii) the maximum permitted length of railing per hectare under clause 42(4); or

(iii) the maximum permitted length of parallel longline between which culture units are hung perpendicular per hectare under clause 42(5);

(h) a change in clause 44 to—

(i) the distances specified under clause 44(2); or

(ii) the requirements for a post under clause 44(3);

(i) any other changes as a consequence of a change referred to in a preceding paragraph.

(2) An amendment is to be in the form of a textual amendment and, as such, a provision may be deleted from, substituted in or inserted into the policy and material may be deleted from, substituted in or inserted into a provision of the policy.

- In relation to the Minister's ability to amend clauses 38-Maximum biomass-finfish (other than wild caught southern bluefin tuna) and 39-Maximum biomass-wild caught southern bluefin tuna via Gazette notice, this provision has been removed. There is still the provision for individual marine-based finfish and wild caught southern bluefin tuna licences to have alternative maximum biomass limit conditions stipulated in the licence to provide flexibility for unique circumstances.
- Clause 15-Notification to Minister of damage, degradation and risks arising due to aquaculture activity, has been expanded to include aquaculture activities occurring not only in the leased area but also in connection with the leased area. Subclause 2 has also been added to strengthen the definition of damage, degradation or a material risk occurring due to an aquaculture activity to provide so if it is a contributing factor in such an occurrence. For consistency, this additional subclause has also been added to the reciprocal corresponding licence condition in clause 36-Notification to Minister of damage, degradation and risks arising due to aquaculture activity.
- In relation to clause 21-No nuisance, this wording has been strengthened to more clearly define the actions of nuisance in relation to the leased area.
- In relation to clause 24-Guarantee or approved scheme, the scenario in subclause (2)(a)(iii) regarding the Minister's ability to access a Bank Guarantee has been modified to be consistent with the scenarios in subclauses (1)(b) and (c).
- In relation to clause 26-Navigational marks, the definition of an ***intertidal navigational mark*** in subclause (8) has been modified to require the corresponding licence number for the leased area or part of the leased area in the case of multiple corresponding licences for one lease, to be marked on a St Andrews Cross (SAC) instead of the lease number. The definition of ***subtidal navigational mark*** has also been modified to require only the corresponding licence number for the leased area or part of the leased area in the case of multiple corresponding licences for one lease, to be marked on a SAC instead of all corresponding licence numbers on each SAC.

- Clause 32-Interpreation has been expanded to include a definition of a culture unit, which consists of structures used to contain aquatic organisms, and provides examples of those structures.
- In relation to clause 31-Survival of conditions, clauses 15-Notification to Minister of damage, degradation and risks arising due to aquaculture activity, and 18-Exclustion of liability, have been added to survive the expiry, cancellation or surrender of the lease or a change in the leased area (other than a subdivision or amalgamation of the leased area). Further, a deadline for the expiry of this clause has been added, which is until such time as the Minister is satisfied that the leased area has been appropriately rehabilitated as per clause 28(2).
- In relation to clause 37-Degradation or damage to seabed, marine or coastal environment, an additional subclause has been added to improve transparency surrounding the specifics of the Ministers direction to adaptively manage any further or potential degradation or damage.
- In relation to clause 41-Oyster farming-farming systems, this is a new clause which contains the previous existing licence conditions from clause 42-Oyster farming-securing baskets (now subclauses 41(7) and (8) in the amended Draft Policy) and from subclause 41(6) (now subclauses 41(3) in the amended Draft Policy) in the public consultation version of the Draft Policy. Further, new subclauses 41(3)(c) have been added to allow perpendicular hanging of culture units between two parallel longlines, but only under certain scenarios, and new subclauses 41(4), (5), and (6) have been added to minimise risks to the seabed when undertaking this farming method.
- In relation to clause 42-Maximum biomass-oyster, as clause 41-Oyster farming-farming systems now permits perpendicular hanging of culture units between two parallel longlines under certain scenarios, the new subclause 42(5) has been added to prescribe a maximum amount of this farming method able to be used per hectare on a licensed site to minimise risks in relation to overstocking and the seabed. In addition, the existing subclause (now 42(6)) limiting the maximum amount of farming methods able to be used in combination at the same time has been amended to now include perpendicular hanging of culture units between two parallel longlines under certain scenarios, to further minimise risks in relation to overstocking and the seabed.

All stakeholders who made a submission through the period of statutory consultation will receive a response outlining how their feedback has been incorporated into the Policy and Report.

AQUACULTURE LEGISLATIVE FRAMEWORK IN SOUTH AUSTRALIA

1.1 Aquaculture Act 2001

South Australia strives to be at the forefront of aquaculture development and planning. The *Aquaculture Act 2001* is currently the only dedicated aquaculture legislation of its kind in Australia and one of the rare examples of this in the world. PIRSA is the State Government agency responsible for the regulation and management of the State's aquaculture industry. PIRSA's primary role as an economic development agency is to assist aquaculture and other primary industries to grow, innovate and maximise their economic growth potential in an ecologically sustainable manner.

The objects of the Act are:

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

The Act establishes the broad framework for the regulation of aquaculture in South Australia by:

- defining aquaculture as the farming of aquatic organisms for the purposes of trade, business or research;
- authorising aquaculture by setting the parameters within which it can occur;
- enshrining the principle of ecologically sustainable development (ESD);
- providing for planning for the future of the aquaculture industry through the development of aquaculture zone policies; and
- maintaining requirements for aquaculture leases and licences.

The Act provides that no one may conduct aquaculture in South Australia unless authorised to do so by an aquaculture licence.

1.2 Aquaculture Regulations 2016

The *Aquaculture Regulations 2016* (the Regulations) further establish an environmental assessment, monitoring and management framework for all sectors of aquaculture complementary to prescribed lease and licence conditions. Management obligations are those requirements an aquaculture operator must undertake according to the Act, other relevant legislation and lease and licence conditions. Penalties for a failure to comply with the requirements include expiation fines and suspension or cancellation of the lease and/or licence.

The Regulations were recently reviewed in 2016, with amendments aimed to strengthen biosecurity outcomes for the aquaculture sector, streamline the development of aquaculture strategies, implement revised environmental monitoring programs (EMP) and reduce red tape.

1.3 Aquaculture Zone Policies

In addition to the proposed Draft Policy, aquaculture zone policies can also be developed to further the objectives of the Act. Aquaculture zone policies set out considerations for aquaculture development that are specific to the environmental, socio-economic, geographical and oceanographic characteristics of a zone area. Aquaculture zones prescribe the maximum hectares that can be developed and the class of species permitted for the purposes of aquaculture. Dependent on the species considered, a maximum biomass (tonnage) can also be prescribed. The prescribed criteria are determined by the physical and

biological characteristics of the zone and the biological requirements and typical farming infrastructure of the species being considered for the zone. An aquaculture zone recognises a general area in which aquaculture has been deemed suitable, noting that any specific application to undertake aquaculture within a zone is still assessed on its merits and for the specific location.

Aquaculture zone policies prescribe classes of aquaculture that relate to the feeding requirements of aquatic organisms (i.e. whether the organisms are supplementary fed (e.g. wild caught southern bluefin tuna and other finfish species)) or non-supplementary fed (e.g. algae and filter feeding organisms such as oysters, mussels, scallops etc.)). Grouping the classes of aquaculture to align with feed inputs focuses each aquaculture zone policy on the risk posed to the environment, in particular the amount of nutrients that are released into or removed from the environment. Using this system of classification also provides greater flexibility to adaptively manage aquaculture activity through the conditions placed on individual licences and ensure aquaculture activity granted within a zone is in alignment with the prescribed zone limits.

The prescribed classes of permitted aquaculture utilised in aquaculture zone policies currently include:

- the farming of aquatic animals (other than specified animals) in a manner that involves regular feeding;
- the farming of molluscs;
- the farming of bivalve molluscs;
- the farming of algae; and
- the farming of aquatic animals for research, tourism or educational purposes.

There are currently twelve aquaculture zone policies prescribed in South Australia (Figure 1), which represent management areas where aquaculture is excluded or permitted. Prior to the introduction of the Act, aquaculture in State waters was managed pursuant to Aquaculture Management Plans (Primary Industries South Australia, 1996) prepared under the *Fisheries Act 1982 (*superseded by the *Fisheries Management Act 2007)*. With the commencement of the Act, these Management Plans were used as guiding documents, but did not carry the statutory status of aquaculture zone policies under the Act.

Current aquaculture zone policies occupy approximately 425 024 hectares or 7% of State waters. Ten of the zone policies are located off the coast of the Eyre Peninsula, one off the western side of the Yorke Peninsula and one in the State's south east region. More than half (52%) of the area allocated to aquaculture zone policies in South Australia is comprised of aquaculture exclusion zones where no aquaculture activity is permitted. Exclusion zones generally include sensitive habitats or areas that have been identified as important for other users of the marine environment (e.g. commercial and recreational fishers). The remaining 48% is set aside to allow aquaculture production to occur and are known as aquaculture zones. In general, between 5-10% of an aquaculture zone is allocated for aquaculture at any one time. This equates to approximately 0.2% of State waters currently available for aquaculture, of which 0.06% was occupied as aquaculture leases in 2019/20.

The Draft Policy will complement the prescribed criteria outlined within existing aquaculture zone policies to ensure the level of activity conducted within an aquaculture zone is in accordance with the overarching biomass and area (hectare) limits for leasable water set within the zone.

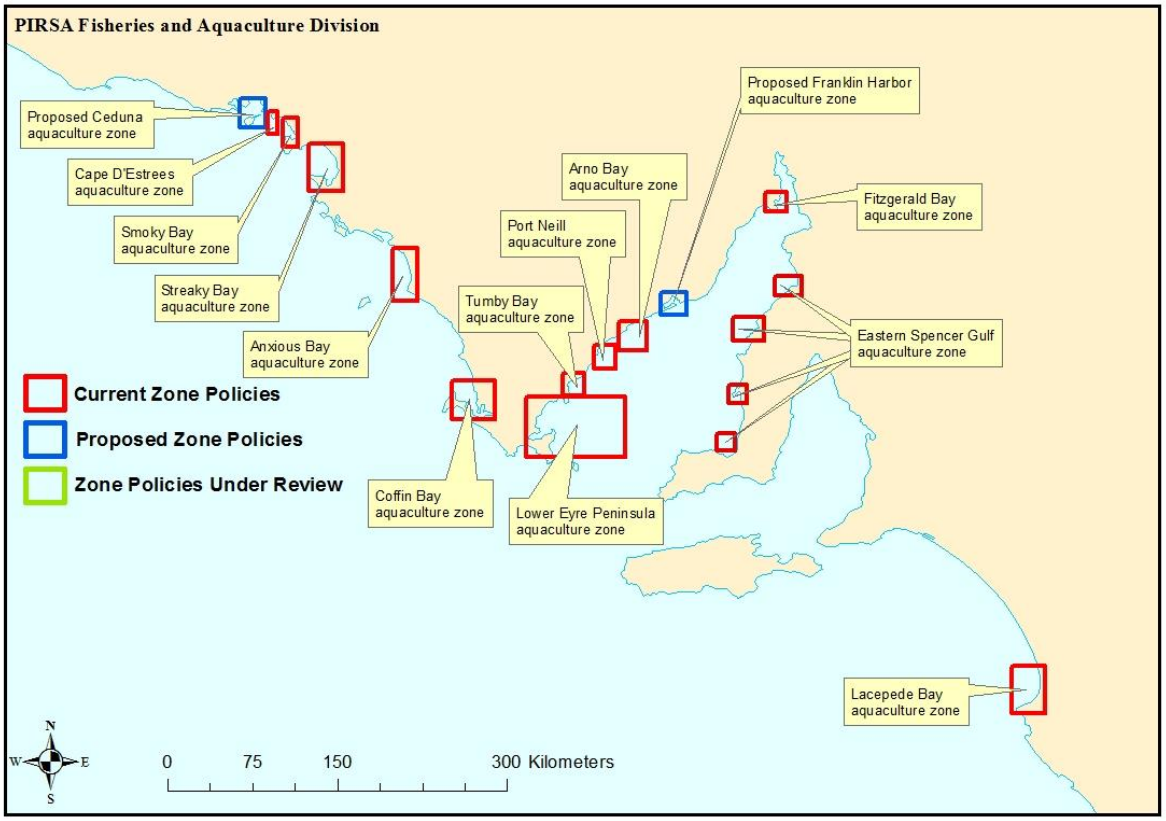

Figure 1. Approximate location of current and proposed aquaculture zone policies in South Australia. Note this figure is not representative of actual size of aquaculture zone policies

1.4 Aquaculture Lease and Licence Framework

1.4.1 Aquaculture Leases

For aquaculture located in State waters (marine or fresh), the Act provides for an integrated licensing and tenure allocation system for granting rights to occupy this shared State resource. Under the Act, a licence may not be granted for aquaculture in State waters unless the area is subject to a lease granted by the Minister (with the concurrence of the Minister responsible for the administration of the *Harbors and Navigation Act 1993*). The granting of an aquaculture lease therefore provides the lessee with rights for use of State waters and the underlying seafloor prescribed within the lease area for commercial aquaculture purposes.

State waters are defined within the Act as:

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

Although in certain circumstances inland waters such as those occupying river and lake beds would require a lease to conduct aquaculture activities, only marine-based leases have been issued to date in South Australia. As a result, the Draft Policy and Report focuses on existing marine-based aquaculture leases that are in place today and that will be affected by the Draft Policy. On application of a lease located in inland waters of the State in the future, applicability of those lease conditions standardised in the Policy will be determined at that time during the assessment process and alternative conditions required will be specified on the individual lease.

The Act allows for four types of lease, namely pilot, production, research and emergency leases. The lease conditions prescribed on each of these leases is consistent with requirements of these lease types as outlined in the Act and where applicable to do so, these have been standardised within the Draft Policy:

- Pilot Leases – are located outside of a prescribed aquaculture zone, can only be granted for one year terms up to a maximum aggregate of five years and may be converted to a production lease subject to performance criteria after three years. These lease types are not transferable.
- Production Leases – are granted within an aquaculture zone or from a conversion of a Pilot Lease outside of an aquaculture zone, have a maximum term of up to 30 years, are renewable for successive terms and have strict performance criteria to ensure the lease area is developed in accordance with the lease and licence application and as per industry expected standards. These leases are transferable.
- Emergency Leases – can be granted rapidly in response to an emergency event that is likely to impact the aquaculture stock or the environment and have a maximum term of up to six months. These lease types are not transferable.
- Research Leases – can be granted inside or outside of an aquaculture zone to conduct trials in new technologies, new species or any other aquaculture related activity for a maximum term of up to five years. The activity must be linked to a research project with the lease tenure and lease term limited to the scope of the research project. These lease types are not transferable and there is no option for renewal.

Although there are four lease types, leases are allocated as a registration reference titled LA00XXX regardless of the lease type for administration purposes. Leases granted when the Act was first implemented may also include AL00XXX and remain in place due to the lease registration process used at that time. Examples of existing lease documents can be found on the aquaculture public register (https://www.pir.sa.gov.au/aquaculture/aquaculture_public_register).

Each type of lease is also prescribed as a certain class of activity, with existing Production and Pilot lease types including:

- abalone;
- algae;
- finfish;
- intertidal (oysters);
- intertidal (other);
- miscellaneous – (note these are for aquaculture tourism or for holding empty aquaculture farming structures or stock on a temporary basis);
- subtidal (mussels);
- subtidal; and
- tuna.

Aquaculture lease conditions outlined on a schedule to the lease, relate to who the lessee is, the coordinates of the lease site, the lease size in hectares, the permitted class of aquaculture, the lease term and expiry, the lease fee for the first 12 months, specified marking off requirements, public liability insurance amount and any special conditions. The remaining conditions of aquaculture leases are administrative in nature, and have been standardised in the Draft Policy where relevant (see Attachment 1).

1.4.2 Aquaculture Licences

The Act provides that no one may conduct aquaculture in South Australia unless authorised to do so by an aquaculture licence. Aquaculture licences authorise the nature of the activity conducted (e.g. species to be farmed, farming method, amount of stock permitted). There are two types of aquaculture licences, marine-based and land-based aquaculture licences.

Marine-based Aquaculture Licences – (Corresponding Licences)

For aquaculture located in State waters, in addition to the requirement of an aquaculture lease, the Act also requires a corresponding aquaculture licence (i.e. marine-based aquaculture licence) be granted by the Minister (with the consent of the Environment Protection Authority (EPA)). A marine-based aquaculture licence is in respect of all or part of the area of the lease, authorising the same class of activity as specified by the lease.

As with lease types, marine-based aquaculture licences are allocated as a registration titled AQ00XXX regardless of the licence type for administrative purposes. Licences granted when the Act was first implemented may also include FB00XXX, FS00XXX, and FF00XXX, and remain in place due to the licence registration process used at that time. Examples of existing licence documents can be found on the aquaculture public register (https://www.pir.sa.gov.au/aquaculture/aquaculture_public_register).

Marine-based aquaculture licence conditions outlined on a licence certificate relate to who the licensee is, the coordinates of the site, the licence size in hectares, the licensed species permitted to be farmed on the site, the type of infrastructure or farming structures permitted to be used on the site, and the term expiry. Specific licence conditions unique to the activity being undertaken, such as additional environmental monitoring requirements, may also be outlined on marine-based aquaculture licences. The remaining conditions of marine-based aquaculture licences have been standardised in the Draft Policy where relevant (see Attachment 2).

Note that in regard to the licence condition outlined on a licence certificate permitting tuna species to be farmed on a tuna or finfish class of licence, there are two field types for tuna species currently applied. These are "southern bluefin tuna (*Thunnus maccoyii*)" for on-grown wild caught tuna or wild caught tuna broodstock obtained through Commonwealth statutory fishing rights, and southern bluefin tuna (propagated) (*Thunnus maccoyii*) for tuna spawned in captivity and then on-grown. To improve transparency of these tuna species field types, as part of the implementation process for the Draft Policy, it is proposed that the following three field types are created to separate on-grown wild caught tuna and wild caught tuna broodstock:

- Southern bluefin tuna (wild caught) (*Thunnus maccoyii*)
- Southern bluefin tuna (wild caught broodstock) (*Thunnus maccoyii*)
- Southern bluefin tuna (propagated) (*Thunnus maccoyii*)

All tuna and relevant finfish licences will be reclassified using these tuna species field types, based on what was originally assessed and approved for the associated licence application.

In relation to licence conditions regulating the maximum biomass (i.e. amount of stock) permitted on a licensed site, at this point, PIRSA is seeking to standardise these in the Draft Policy for Oyster, Mussel, Tuna and Finfish marine-based aquaculture licences. PIRSA is not proposing to include standard licence conditions regulating maximum biomass for the marine-based Abalone, Algae or Land-based sectors or for marine-based miscellaneous licences. This is because the Abalone and Algae sectors represent a developing industry whereby many different and evolving types of farming structures are used. Land-based licences are categorised according to the level of work required to manage the risks associated with the activity (see section Land-based Aquaculture Licences – (Non-corresponding)), rather than a biomass limit, due to being conducted on land and not in State waters. Additionally,

miscellaneous licences are for multiple purposes (e.g. tourism, holding sites for empty farming structures and temporary holding of stock) and as such do not have common maximum biomass licence conditions. As a result, it is necessary for PIRSA to assess each application for these types of licences individually on their merits, taking into account the specific farming structures/methods proposed and environmental considerations relevant to each site, and from this tailor specific licence conditions regulating the maximum biomass permitted for individual licences.

It should also be noted that maximum biomass licence conditions are not restricted to a maximum metric in tonnage per licensed hectare and may be an equivalent biomass based on restrictions on the length or amount of farming structures permitted on a licensed site.

Land-based Aquaculture Licences – (Non-corresponding)

In regard to land-based aquaculture, only an aquaculture licence (i.e. land-based aquaculture licence) is required to be granted by the Minister (with the approval of the EPA) as this typically takes place on private or leased premises. Pursuant to the Act, land-based aquaculture licences are categorised by the Minister based on the level of work required to manage the risks associated with the activity. The categories are as follows:

- Category A - Small scale operators, which do not discharge wastewater off site, and require minimal aquatic animal health legislation requirements and environmental monitoring (typically yabbies and marron).
- Category B - Small scale operators, which may potentially discharge some wastewater off-site, or farm a species with applicable aquatic animal health legislation (typically native finfish/ small scale farms).
- Category C - Intensive and/or large-scale operators with wastewater discharge off-site and/or farm a species with applicable aquatic animal health legislation (typically large scale freshwater finfish farms/ oyster hatcheries).
- Category D - Intensive and/or large-scale operators with wastewater discharge off-site into the marine environment and/or farm a species with applicable aquatic animal health legislation (typically coastal based abalone farms).

As with marine-based aquaculture licences, land-based aquaculture licences are allocated as a registration titled AQ00XXX regardless of the licence category for administration purposes. Licences granted when the Act was first implemented may also include FT00XXX and remain in place due to the licence registration process used at that time.

Land-based aquaculture licence conditions outlined on a licence certificate relate to who the licensee is, the location of the land-based site which is usually described via land-parcel identifier, the licensed species permitted to be farmed on the site, the type of infrastructure or farming structures permitted to be used on the site, and the term expiry. Specific licence conditions relevant to the activity being undertaken, such as additional environmental monitoring requirements, may also be outlined on land-based aquaculture licences. The remaining conditions of land-based aquaculture licences have been standardised in the Draft Policy where relevant (see Attachment 2).

1.4.3 Lease Assessment

Where an aquaculture zone policy establishes areas in which aquaculture is deemed appropriate to occur, applications for leases within an aquaculture zone must be allocated through a process approved by the Aquaculture Tenure Allocation Board (ATAB). A public call is made inviting applicants to submit their proposal on the required lease application form. These applications are assessed by the ATAB who then make a recommendation to the Minister on which applications should proceed. Successful applicants will be invited to submit an application for a corresponding licence, which will be subject to

the licence assessment process described in section 1.4.4 Licence Assessment. The competitive allocation process ensures a fair and efficient means of allocating the State's marine aquaculture resources. The allocation process is used to determine which applicant will use the public resource at an optimum level in terms of the quality and quantity of output relative to the capacity of the environment. Note that applications for leases outside an aquaculture zone (i.e. pilot leases) are not subject to a competitive allocation process and can be submitted at any time, accompanied by a corresponding licence application which will also be assessed according to the assessment process described in section 1.4.4 Licence Assessment.

1.4.4 Licence Assessment

In South Australia, the assessment of individual aquaculture licence applications follows a strict set of guidelines. A semi-quantitative risk assessment, based on a national best practice Ecological Sustainable Development (ESD) risk assessment framework (Fletcher *et al.* 2004) is applied to determine the sustainability and outcome of each individual application. The integrity of the assessment process rests on understanding both the nature of the environment in which the intended aquaculture operation occurs and the manner in which it interacts with or changes the environment that surrounds it.

As part of the assessment process, approximately 40 possible risk events that are viewed to be directly relevant to potential aquaculture influences, are considered and applied to both site and regional levels. Risk events are assessed for both the construction phase and ongoing farming activities. Some of the risks that are assessed include (but are not limited to) impacts to habitats, erosion, sedimentation, access by public, escape, disease management, chemical use, water flow, water quality, nutrient discharge or removal, interaction with migratory species and impacts to sensitive habitats.

PIRSA also applies general guidelines to minimise environmental harm, for example aquaculture activities are not to be placed over sensitive habitats (e.g. seagrass or reefs) unless the appropriate mitigating strategies are in place to minimise the potential for environmental harm. Aquaculture activity is excluded in buffer zones surrounding areas of conservation and heritage significance such as seal colonies, aquatic reserves, shipwrecks and national parks unless the appropriate approval from relevant authorities is secured.

All applications for aquaculture licences are reviewed for environmental issues and referred to the EPA for approval to ensure the proposal meets the objectives of the *Environment Protection Act 1993* and associated Environment Protection Policies (EPPs). Environmental issues of interest to the EPA include protection of water quality, management of noise and air quality, solid waste management and disposal, storage, use and disposal of hazardous substances and ecological impacts from pollution.

1.5 Environmental Monitoring and Management

Environmental risks are managed both at the licence assessment stage (as previously described above) and through ongoing/periodic EMP requirements for licences provided for within the Regulations or specific individual licence conditions. Annual EMP requirements are stipulated in the Regulations for each sector, however if required additional periodic EMP requirements unique to a specific licence can be implemented through the licence assessment process or once a licence is granted via licence conditions or a notice from the Minister pursuant to the Regulations. EMP's monitor a variety of physical and biological factors considered relevant to measuring the environmental effects of an aquaculture activity. This provides the information necessary for ongoing management of the regulatory aspects associated with a given licence, to ensure impacts remain manageable.

During the development of the Draft Policy, only a small number of licences have been identified to contain additional periodic EMP related licence conditions. Therefore, it is not the current intention of the Draft Policy to standardise conditions relating to these types of EMPs, however this may be considered if reviewed in the future and relevant to do so.

1.5.1 Marine-Based EMP

The annual marine-based EMP is adjusted depending on the sector or licensed activity, however may include monitoring of parameters such as:

- benthic assessment (colour videotape of the sea floor and written record – if applicable and or assessment of infauna);
- amount and type of supplemental feed (if applicable to the species farmed);
- biomass maintained on the site;
- aquaculture waste (securing, treating, recovering);
- use of chemicals (amount, frequency and purpose);
- farming structures (marking, mooring, maintaining, locating, and recovering);
- interactions with seabirds and large marine vertebrates; and
- regional information such as hydrodynamic modelling and or water quality.

1.5.2 Land-Based EMP

The annual land-based EMP is adjusted depending on the licence category or licensed activity, however may include monitoring of parameters such as:

- amount and type of supplemental feed (if applicable to the species farmed);
- disposal of aquaculture waste;
- use of chemicals (amount, frequency and purpose);
- disease events;
- loss or escape of stock; and
- water usage and wastewater discharge.

PROPOSED STANDARD LEASE CONDITIONS

1.6 Interpretation

The intent of this condition is to provide clarification on how each lease condition outlined in the Draft Policy shall be interpreted. For example, it determines that any amendments over time of legislative requirements, require that the current version be used, that headings used to describe each lease condition are merely that and have no bearing on how the condition may be applied or enforced and that if any part of a condition is considered unenforceable, then this part does not need to be considered in order to prove a breach in a court setting. The condition also reinforces that any listed lessee is jointly responsible for ensuring activities conducted within the lease area comply with all lease conditions and may be held accountable in the event there is a breach of conditions. The condition also further defines terms used throughout the Draft Policy to ensure each condition is interpreted appropriately.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has been reviewed to bring it in line with modern legislative requirements.

Condition Text:

6—Interpretation

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

Act means the *Aquaculture Act 2001*;

annual lease fee means the annual lease fee payable under clause 9;

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

GST means the tax payable under the GST law;

GST law means—

(a) *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth; and

(b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods and services;

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

Minister means the Minister responsible for the administration of the Act;

person includes a body corporate;

Regulations means the *Aquaculture Regulations 2016*;

term of the lease means the term of the lease under clause 7.

(2) Unless the contrary intention appears, terms used in the lease that are defined in the Act, the Regulations or an aquaculture policy have the respective meanings assigned to those terms by the Act, the Regulations or other policy (as the case requires).

(3) Every word in the singular number will be construed as including the plural number, every word in the plural number will be construed as including the singular number and every word implying a particular gender will be construed as including every other gender.

(4) Where 2 or more persons are included in the designation ***the lessee***, the obligations on the part of the lessee contained in the lease will bind such persons and any 2 or greater number of them jointly and each of them severally and the expression ***the lessee*** will include all or any 1 or more of such persons.

(5) References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.

(6) Headings are for convenience of reference only and do not affect the construction or interpretation of the lease.

(7) Each word, phrase, sentence, paragraph and clause of the lease is severable and where a court determines that a part of the lease is unenforceable, invalid or void the court may sever that part of the lease and such severance will not affect any other part of the lease.

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

1.7 Term of Lease

The intent of this condition is to specify the period for which the lease is issued for and the date at which the lease expires. The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition.

Condition Text:

7—Term of lease

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

1.8 Renewal of Lease

Pursuant to the Act, the term of a corresponding licence is co-extensive with the term of the lease, and the licence is renewed for a further term on each renewal of the lease (without any requirement for an application).

The intent of this condition is to stipulate the timeframe requirements for submission of a lease renewal application by a lease holder, the decision making options the Minister may undertake in relation to the renewal application, and the matters which the Minister may take into consideration when making that decision. Specifically, if a lease holder chooses to apply to renew their lease, they must do so within a set period prior to the expiry of the lease to allow PIRSA reasonable time to conduct the lease renewal assessment process. A lease cannot be renewed following the expiry of the lease, and the former lease holder would need to reapply for a brand new lease and marine-based licence in order to conduct aquaculture on the former site.

In regard to the Ministers decision making options, the Minister may renew a lease for a specified period (either decreasing, maintaining or increasing the current lease term) and include any terms and conditions the Minister considers appropriate or determine to decline the application to renew the lease. In making such a decision, the Minister will have regard to (without limitation) the level of compliance by the lessee and any corresponding licence holder with a condition of the lease and any corresponding licence respectively, the provisions under the Act, Regulations and for corresponding licence holders, a notice issued under section 33 of the *Livestock Act 1997* regulating movement of aquaculture stock. These obligations will be further defined on the lease application form approved by the Minister, but

includes the payment of fees, correct navigational marking, not exceeding maximum biomass limits, meeting performance requirements, maintaining public liability insurance and bank guarantee or contribution to approved rehabilitation funds, and timely submission of annual EMP reports and production returns. Where a lessee has not complied with lease performance requirements at the time of renewal, and the Minister has made a decision to renew a lease, the Minister may by notice in writing direct the lessee to take certain action in a specified time for the purposes of assisting the lessee to ensure such compliance (i.e. a performance improvement plan) and to maximise the benefits to the community from the State's aquaculture resources (an object of the Act). This is further described in the section 1.12 Performance Requirement.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the period specified for which a lessee can apply to PIRSA to renew a lease has been varied. This is the removal of the earliest timeframe to apply, and increasing the latest timeframe to apply from one month to 90 days prior to the expiry of the lease to allow PIRSA reasonable time to conduct the lease renewal assessment process prior to expiry. Further, the matters to which the Minister may take into consideration when making a decision regarding a renewal application have been elaborated to improve transparency for the aquaculture industry and other stakeholders in the renewal application decision making process. The terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

8—Renewal of lease

(1) An application to renew the lease must be received by the Minister at least 90 days before the expiry of the term of the lease.

(2) The Minister may, on application to renew the lease—

  (a) renew the lease subject to the terms and conditions the Minister considers appropriate (which may vary from the terms and conditions of the original lease); or

  (b) decline to renew the lease.

(3) Without limiting the matters to which the Minister may have regard in deciding whether or not to renew the lease and the conditions that may apply in respect of a renewed lease, the Minister may have regard to any of the following—

  (a) whether the lessee is in breach of, or has previously breached, a condition of the lease;

  (b) the extent to which the lessee has complied with the obligations, conditions and standards of compliance imposed on a lessee under the Act, the Regulations and an aquaculture policy applying in respect of the lease;

  (c) whether a corresponding licence holder is in breach of, or has previously breached, a condition of a corresponding licence;

  (d) the extent to which a corresponding licence holder has complied with the obligations, conditions and standards of compliance imposed on a licensee under the Act, the Regulations and an aquaculture policy applying in respect of the licence;

  (e) whether a corresponding licence holder has contravened a notice issued under section 33 of the *Livestock Act 1997*.

1.9 Lease Fee

The intent of this condition is to prescribe the annual fee requirements for holding a lease. The initial annual lease fee is stipulated on the lease schedule, however every year after the annual fee is sent to a lessee through an invoice and notice from the Minister or their delegate. Furthermore, the lease condition provides the timeframe for payment of the lease fee, and the option for making payment by instalments. If the lessee is in arears with a lease fee at any time, the Minister may require the lessee by written notice to make good the default, and has the ability to take further action including recouping any financial loss incurred (see section 1.11 Default Costs and Interest) or cancel the lease (see section 1.13 Cancellation of Lease). Agreed payment plans are an additional option that may be approved by the Minister or their delegate in the event a lessee is struggling with the payment of lease fees.

This condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

9—Lease fee

(1) The annual lease fee, as specified in a schedule to the lease, is payable in respect of each financial year, or part of a financial year, in which the lease applies.

(2) The Minister may vary the annual lease fee by written notice to the lessee.

(3) If the lease is granted part of the way through a financial year, the fee for that financial year will be calculated on a pro-rata basis from when the lease is granted.

(4) The lessee must pay the annual lease fee and the GST payment (see clause 10) within the time specified by the Minister by written notice to the lessee (which must be not less than 10 business days after receipt of the notice).

(5) The Minister may enter into an arrangement with the lessee for payment of the annual lease fee (other than the annual lease fee applying in the first year of the lease) by instalments.

(6) If the lessee fails to pay the annual lease fee or an instalment of the annual lease fee by the date specified by the Minister, the Minister may, by written notice, require the lessee to make good the default.

1.10 GST

The intent of this condition is to ensure the lessee is aware that the lease fee outlined on the lease schedule is GST exclusive and that 10% addition of GST will be included in the invoice in addition to the lease fee. There is the provision in clause 5 for this condition to be varied via Gazette notice should changes in GST Law require.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

10—GST

(1) The annual lease fee payable under the lease is exclusive of GST.

(2) The lease is a taxable supply under GST Law.

(3) The Department of Primary Industries and Regions, ABN No. 53 763 159 658, is the government entity administering each aquaculture lease on behalf of the Minister and is registered pursuant to the GST Law.

(4) The Department of Primary Industries and Regions is entitled to be treated as the maker of any taxable supply and the recipient of any taxable supply pursuant to each aquaculture lease instead of the Minister for the purposes only of the GST Law.

(5) The lessee must, together with any payment of the annual lease fee, pay an additional amount in respect of GST (the ***GST payment***) which is 10% of the annual lease fee, subject only to any change in the rate of GST under GST Law.

1.11 Default Costs and Interest

The intent of this condition is to provide the Minister the opportunity to recoup any financial loss incurred from a lease holder being in breach of the lease, including but not limited to, the lease holder being in arrears of annual lease fee payments as required in section 1.9 Lease Fee (i.e. costs associated with recovering the outstanding lease fee and lost interest) or not rehabilitating the leased area as required in section 1.28 Rehabilitation of leased area (i.e. costs associated with the Minister undertaking the rehabilitation).

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements and an additional breach of lease scenario (i.e. rehabilitation) has been included to improve transparency for lease holders and other stakeholders in relation to the use of this condition.

Condition Text:

11—Default costs and interest

(1) The Minister may, by written notice to the lessee, require the lessee to pay to the Minister the reasonable costs incurred by the Minister in respect of a breach of the lease by the lessee including (without limitation) costs incurred by the Minister—

(a) in taking action under clause 9(6) in respect of a failure to pay the annual lease fee or an instalment of the annual lease fee by the date specified by the Minister; and

(b) in remedying a failure to rehabilitate the leased area under clause 28.

(2) If an amount required to be paid under the lease, including an amount required to be paid under subclause (1), remains unpaid for any period of time, the Minister may, by written notice, require the lessee to pay to the Minister an amount of interest on the unpaid amount calculated at the official cash rate on a daily basis from the end of the last day for payment until the day it is paid.

(3) In this clause—

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

1.12 Performance Requirement

Pursuant to section 25(c) of the Act, an aquaculture lease may, by condition, specify performance criteria to be met in relation to the lease. This has been implemented in current aquaculture leases through a "Development Requirement" lease condition which specifies that the lessee must ensure that the leased area is developed in accordance with performance criteria, as well as being used for the class of aquaculture, stipulated as a condition in the lease schedule. While the "Development Requirement" lease condition is an existing condition on current leases, depending on when the aquaculture lease was granted, not all leases have performance criteria specified as a condition in the lease schedule.

Performance criteria, is generally a percentage of the maximum biomass or amount of farming structures permitted on a lease as prescribed by any corresponding licence conditions, and ensures a lease site is reasonably developed so that benefits to the community from the State's aquaculture resources are maximized (an object of the Act). The level of development that the lease holder is expected to achieve depends on a number of considerations including the specific sector to which the lease holder belongs, the length of operation of the lease and the demand for access to lease area in the zone or region. For miscellaneous class leases (i.e. tourism, holding sites for empty farming structures and temporary holding of stock), as there are no maximum biomass or amount of farming structure limits on corresponding licences, performance criteria is stipulated as a general purpose for use of the lease (i.e. lease is only for tourism purposes, holding of empty farming structures, or temporary holding of stock).

Should a lessee be in breach of their performance criteria at any time (i.e. lease site is under-utilised or under-developed) the Minister may by notice in writing, pursuant to section 48A of the Act direct the lessee to take the required action (i.e. develop the site) in a specified time for the purposes of assisting the lessee to ensure such compliance (i.e. a performance improvement plan) or pursuant to section 25B of the Act and lease conditions, cancel the lease (see section 1.13 Cancellation of Lease). Performance criteria is also taken into consideration by the Minister when assessing a lease renewal application (see section 1.8 Renewal of Lease), or an application for the conversion of a pilot lease type to a production lease type.

For consistency across industry, and to maximise the benefits to the community from the State's aquaculture resources, the condition "Performance Requirement" (formally "Development Requirement") has been standardised in the Draft Policy for all leases regardless of the prescribed lease type or class. This also requires that all leases have a performance criteria condition stipulated in a schedule to the lease and tailored to the specific aquaculture operation, as well as the class of aquaculture condition. Should the "Performance Requirement" condition be adopted, individual lease certificates will be updated to include appropriate performance criteria conditions during implementation of the Policy.

Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however clause 12(2) has been introduced to clarify and provide for additional management arrangement options should a lessee be in breach of the condition (i.e. performance criteria), to assist them to meet their obligations, improve their aquaculture production, and maximise benefits to the State. This is, if a lessee is in breach of performance criteria, in addition to directing the lessee to undertake a performance improvement plan as described above, the Minister also has the option of varying the conditions of the lease as the Minister considers appropriate in the circumstances by reducing the term of the lease and reducing the area of the lease. Further, there may be circumstances where performance criteria levels of development are not appropriate (e.g. lease sites in areas of low productivity) and the proposed Draft Policy would maintain the Ministers discretionary ability under section 52 of the Act to implement unique maximum biomass conditions on individual corresponding licences (i.e. reduce the maximum biomass permitted), with the consent of the licensee, to ensure

performance criteria can be achieved. The terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

12—Performance requirement

(1) The lessee must ensure that the leased area is—

(a) used in accordance with the performance criteria specified in a schedule to the lease; and

(b) used for the class of aquaculture, and to the extent, specified in a schedule to the lease.

(2) If the Minister considers on reasonable grounds that the lessee is at any time not complying with subclause (1), the Minister may—

(a) by notice in writing direct the lessee to take certain action in a specified time for the purposes of ensuring such compliance; and

(b) vary the lease as the Minister considers appropriate in the circumstances of the case including, without limitation—

(i) by reducing the term of the lease; and

(ii) by reducing the size of the leased area.

1.13 Cancellation of Lease

The intent of this condition is to outline the circumstances that the Minister may cancel an aquaculture lease, in addition to the circumstances prescribed under section 25B of the Act. This includes if the lessee becomes insolvent, if there are any breaches of any lease or corresponding licence conditions, the Act or Regulations by a lessee or any corresponding licensee that warrants a lease to be cancelled, if the lessee is convicted of an offence, if any corresponding licence is cancelled for any reason, or a notice issued under section 33 of the *Livestock Act 1997* regulating movement of aquaculture stock is contravened by any corresponding licence holder.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements and an additional breach of licence scenario (i.e. *Livestock Act 1997*) has been included to improve transparency for lease holders and other stakeholders in relation to the use of this condition. The definition of insolvency administration has also been defined within the condition itself, rather than in the interpretation section of the Draft Policy.

Condition Text:

13—Cancellation of lease by Minister

(1) The Minister may cancel the lease by written notice to the lessee, to take effect immediately or at a date to be nominated by the Minister, in the following circumstances:

(a) if the lessee enters into any form of insolvency administration;

(b) if the lessee is in breach of a condition of the lease and continues to be in breach for such period as specified by the Minister from the date a notice is served on the lessee by the Minister requiring the lessee to remedy such breach;

(c) if the lessee (being a natural person) or a director of the lessee (being a corporation) is convicted of any indictable offence;

(d) if there is a breach of any provision of the Act or Regulations by the lessee or a corresponding licence holder;

(e) if there is a breach of a corresponding licence by a corresponding licence holder;

(f) if a corresponding licence is cancelled or otherwise terminated;

(g) if a corresponding licence holder has contravened a notice issued under section 33 of the *Livestock Act 1997*.

(2) For the purposes of this clause, a lessee ***enters into a form of insolvency administration*** if any of the following circumstances apply to the lessee:

(a) in the case of a lessee that is a body corporate—

(i) an administrator is appointed to the lessee or action is taken to make such an appointment; or

(ii) the lessee resolves to be wound up; or

(iii) an application is made to a court for an order, or an order is made by a court, that the lessee be wound up (whether on the grounds of insolvency or otherwise); or

(iv) the lessee ceases to carry on business; or

(v) a receiver or a receiver and manager of property of the lessee is appointed (whether by a court or otherwise); or

(vi) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the lessee; or

(vii) a liquidator or provisional liquidator is appointed in respect of the lessee (whether by court order or otherwise); or

(viii) the lessee enters into a compromise or arrangement with its creditors or a class of them; or

(ix) the lessee is, or states that it is, unable to pay its debts as and when they fall due;

(b) in the case of a lessee that is a natural person—

(i) the lessee has committed an act of bankruptcy as contemplated by the *Bankruptcy Act 1966* of the Commonwealth; or

(ii) the lessee is unable to pay their debts as and when they fall due; or

(iii) a court has made a sequestration order against the lessee's estate; or

(iv) a creditors' petition has been presented against the lessee; or

(v) the lessee has presented to the Official Receiver a declaration of intention to present a debtor's petition; or

(vi) the lessee becomes bankrupt; or

(vii) a meeting of the creditors of the lessee is convened; or

(viii) the lessee lodges with their trustee a proposal to the lessee's creditors for a composition in satisfaction of the lessee's debts or a scheme of arrangement of the lessee's affairs.

1.14 Access to Leased Area

The intent of this condition is to allow PIRSA employees (e.g. Fisheries Officers) to enter and inspect a lease area at any time to monitor a lessee's or any corresponding licensee's compliance with lease or any corresponding licence conditions respectively, the Act, and the Regulations or to remedy a breach of these obligations. For example this may be to determine if the lease area is marked off as required by the lease navigational marking conditions (see section 1.26 Navigational Marking) or if development on the site meets the lease performance requirement conditions (see section 1.12 Performance Requirement). Access also extends to employees of the Department of Infrastructure and Transport (DIT) to determine or remedy breaches under the *Harbors and Navigation Act 1993*. Inspection can occur at any time and without notice to the lessee or any corresponding licensee. However, in conducting an inspection of the site, employees will endeavour to not interfere with the activities occurring on lease, as long as these are occurring in a lawful and permitted manner.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

14—Access to leased area

(1) The Minister or an officer, employee or agent of the Minister may, without giving any notice, enter and remain on the leased area (including any marked-off area) for the purposes of—

(a) inspecting the leased area; and

(b) monitoring compliance with, and enforcing, the Act, the Regulations and the lease by the lessee; and

(c) monitoring compliance with, and enforcing, the Act, the Regulations and a corresponding licence by a corresponding licence holder; and

(d) remedying a breach of the Act, the Regulations, the lease or a corresponding licence (although the Minister will be under no obligation to remedy any such breach).

(2) The Minister and the Minister responsible for the administration of the *Harbors and Navigation Act 1993* and the officers, employees and agents of each of those Ministers may, without giving any notice, enter upon and remain on the leased area (including any marked-off area) for the purpose of inspecting all adjacent and subjacent land, all wharves, docks, jetties and other structures, and navigational aids as those terms are referred to in section 15 of the *Harbors and Navigation Act 1993*.

(3) In exercising any of their rights under and pursuant to this clause the Minister, the Minister responsible for the administration of the *Harbors and Navigation Act 1993* is committed and the officers, employees and agents of each of those Ministers must use reasonable endeavours not to interfere with the lawful and permitted conduct of the lessee's or a corresponding licensee's use of the leased area.

(4) The powers of an authorised person under section 46 of the Act do not apply in respect of a person exercising a right under this clause in relation to a marked-off area.

1.15 Notification to Minister of damage, degradation and risks arising due to aquaculture activity

The intent of this condition is to ensure a lease holder notifies PIRSA if they become aware of anything that may be causing damage or degradation to the seafloor of the aquaculture lease or outside of the lease area, or the adjacent coastal environment as a result of aquaculture activity associated with the lease, and if there is anything that may pose a risk to navigational safety (i.e. lost farming structures). Reporting of these circumstances to PIRSA may result in further management arrangements being undertaken, including directing any corresponding licence holder to cease the aquaculture activity under the proposed licence condition in section 1.36 Degradation or damage to the seabed, marine or coastal environments or to recover the lost farming structure pursuant to section 58 of the Act if they had failed to do so under regulation 12 of the Regulations. A similar condition has been proposed for corresponding licence holders in section 1.35 Notification to Minister of damage, degradation and risks arising due to aquaculture activity. This condition replaces the existing "Contamination and Contaminating Substances" condition on current leases, which was identified to be duplication of the *Environment Protection Act 1993* requirements, apart from the requirement to notify PIRSA.

The condition has been standardised as this condition is relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

15—Notification to Minister of damage, degradation and risks arising due to aquaculture activity

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

(a) damage or degradation to the seabed or the marine or coastal environment;

(b) a material risk to navigational safety.

(2) For the purposes of this clause, damage, degradation or a material risk is taken to occur due to an aquaculture activity if the activity is a contributing factor in the occurrence of the damage, degradation or material risk (as the case requires).

1.16 Notice to Minister

The intent of this condition is to ensure a lease holder is aware of the appropriate mechanisms to notify the Minister and PIRSA if they are required to do so under relevant legislative obligations (i.e. under lease condition in section 1.15 Notification to Minister of damage, degradation and risks arising due to aquaculture activity) and for general matters. There is the provision in clause 5 for this condition to be varied via Gazette notice should changes in contact details require.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

16—Notice to Minister

(1) If the lessee is required to give notice in writing or provide or produce any other documents, records or information to the Minister, such notice, record, document or information may be sent—

(a) by post to PIRSA Fisheries and Aquaculture, GPO Box 1625, Adelaide SA 5001; or

(b) by email to PIRSA.Aquaculture@sa.gov.au; or

(c) by facsimile transmission to (08) 8207 5331; or

(d) to such other postal or email address or facsimile number as notified by the Minister to the lessee in writing.

(2) If the lessee is required to notify the Minister of a matter by telephone—

(a) in the case of a notification under clause 15—the lessee must notify the Minister by calling 1800 065 522 or such other number as notified by the Minister to the lessee in writing; or

(b) in any other case—the lessee must notify the Minister by telephone call to (08) 8207 5333, or such other number as notified by the Minister to the lessee in writing.

(3) Notice given or sent to, or served on, 1 of the natural persons or bodies corporate comprising the lessee will be taken to be notice to all persons comprising the lessee.

1.17 Disclaimer

The intent of this condition is to ensure that the Minister cannot be held responsible for the suitability or adequacy of the lease area in relation to aquaculture. Each area is selected by a lessee during the lease assessment process and therefore it is up to the lease holder to select an area that they consider will be suitable for the proposed activity on grant of the lease and into the foreseeable future. The Minister takes no responsibility for the lessee's selection of the lease area.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

17—Disclaimer

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

1.18 Exclusion of Liability

The intent of this condition is to ensure that the Minster and PIRSA employees are not responsible or liable for any loss or injury suffered by the lessee, including to property of the lessee, unless the loss was contributed through an unlawful or negligent act by the Minister or PIRSA employees.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in

no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

18—Exclusion of liability

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

1.19 Dealing with Lease

The intent of this condition is to ensure that a lease holder is aware that a lessee can only sublease to another party, if the lessee obtains approval from the Minister beforehand and the lease is a production lease. The Minister may also impose conditions as part of the approval process to the extent necessary.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

19—Dealing with lease

(1) Subject to subclause (2), the lessee is not permitted to grant a sublease under the lease.

(2) A sublease may be granted in respect of a production lease with the prior written consent of the Minister and such consent may be subject to conditions as determined by the Minister.

1.20 Waiver

The intent of this condition is to ensure that if the Minister waives a lessee's breach of their obligations under a lease, then this does not excuse them from a subsequent breach of the same or any other obligations a lessee has in holding the lease. The condition further ensures that if the Minister approves a lessee's request to surrender a lease, then this does not excuse any breach of their obligations under that lease.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

20—Waiver

(1) If the Minister waives a breach of any covenant, obligation or provision in the lease, that waiver does not operate as a waiver of another breach of the same, or of any other, obligation or provision in the lease.

(2) The consent by the Minister to the surrender of the lease does not constitute a waiver of a breach of any obligation or provision in the lease.

1.21 No Nuisance

The intent of this condition is to ensure that a lessee does not allow any associated aquaculture activity in or about the leased area to cause a nuisance or annoyance to any other users of surrounding State waters or adjacent land. This would include any activity conducted by any lease employee, or any corresponding licensee or employee. For example this may include excessive and unnecessary noise emissions originating from activities being conducted on the lease area, or the storage or emanation of odour causing substances on the lease site or the release of aquaculture related waste in the environment or on adjacent land.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

21—No nuisance

> The lessee must not do or permit to be done (including by a failure to take action) anything on or in respect of the leased area which may cause, or be likely to cause, a nuisance or annoyance to or in any way interfere with the quiet enjoyment and comfort of any users of land or waters near or around the leased area.

1.22 Consents and Approvals

The intent of this condition is to ensure the lessee must obtain and keep current any other consents or approvals legally required in order to use the leased area under any other legislation, including but not limited to development plan consent, and concurrence from the Minister for Environment if located within 1000m of a national park. Further to this the lessee is required to cover all associated costs to maintain this. The Minister may also request a copy of the authority from the lessee at any time.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

22—Consents and approvals

(1) If the lessee's use of the leased area is permissible only with the consent or approval of any authority under or in pursuance of any law enactment or order of Court, the lessee must obtain such consent or approval at its own expense and the lessee must at no time during the term of the lease do or permit or fail to do or suffer to be done any act, matter or thing whereby such consent or approval may lapse or be revoked.

(2) During the term of the lease, the lessee must keep current all consents and approvals required under the *Development Act 1993*, the *Planning, Development and Infrastructure Act 2016* and any other law applicable to the leased area, the class of aquaculture authorised under the lease and the lessee's use of the leased area.

(3) The lessee must, on request of the Minister, provide the Minister with specified documents relating to a consent or approval referred to in this clause.

1.23 Indemnity

The intent of this condition is to ensure that the Minister or their agents are indemnified under a range of scenarios associated with the lease, including but not limited to any death or injury to a person, loss of or damage to property or the lease area. This condition is linked to public liability insurance lease condition requirements described in section 1.25 Public Liability Insurance.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

23—Indemnity

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

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

(i) the use or occupation of the leased area by the lessee or a corresponding licence holder or any employee, agent, contractor or invitee of the lessee or a corresponding licence holder or any person under the control of the lessee or a corresponding licence holder;

(ii) any occurrence on the leased area;

(iii) any act, omission, neglect or default of the lessee or a corresponding licence holder, or any employee, agent, contractor or invitee of the lessee or a corresponding licence holder or any person under the control of the lessee or a corresponding licence holder;

(iv) any breach of obligations under the lease; and

(b) all loss or damage to the leased area, and any property on it caused by the lessee or a corresponding licence holder or by any employee, agent, contractor, or invitee of the lessee or a corresponding licence holder or other person having business with the lessee or a corresponding licence holder and in particular but without limiting in any way the generality of the foregoing by reason of the use, misuse, waste or abuse of the leased area; and

(c) all fees, costs, liabilities and expenses incurred by the Minister in the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Minister pursuant to the lease, except to the extent caused or contributed to by any wilful or negligent act or omission of the Minister or any employee agent or contractor of the Minister; and

(d) all actions, claims, demands, proceedings, judgements, orders, costs, damages, expenses and losses arising from any failure to comply with the laws in force in South Australia.

1.24 Guarantee or Approved Scheme

The intent of this condition is to ensure that if a lessee is in breach of any of their obligations under the lease, including but not limited to payment of annual lease fees (see section 1.19 Lease Fee) or rehabilitation of their lease area (see section 1.28 Rehabilitation of leased area), and the lessee fails to comply with a direction issued by the Minister pursuant to section 48A of the Act to take the required action, then an appropriate bank guarantee or approved funding mechanism is in place for the Minister to draw upon to remedy the breach.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has caused the lease condition to be strengthened to ensure that if a lessee chooses to provide a bank guarantee for a newly granted lease, it will now be for an amount specified in a schedule to the lease. This amount must be sufficient for the purposes of remedying any breach of the lessee's obligations under the lease, and in particular rehabilitation obligations (i.e. can cover rehabilitation costs). For a new lessee to demonstrate sufficiency, this may require an independent quote for rehabilitation of the lease area based on their proposed development of the site, which may be a staged approach. For existing lessee's who have already provided a bank guarantee (typically in the current standard amount of $10 000), or contributed to an approved funding mechanism, this amount and funding mechanism will still be honoured by the Minister if the Draft Policy is implemented. However, a clause has been added to provide the ability for the Minister to request at any time that the lessee must demonstrate an existing bank guarantee or approved funding mechanism is sufficient for its required lease condition purpose (e.g. can cover costs and be accessed easily). Should an existing bank guarantee or approved funding mechanism be deemed by the Minister as insufficient, then an existing clause in the current lease condition has been maintained to provide that the Minister may vary the bank guarantee amount (in which case the lessee must provide a new bank guarantee) or in the case of an insufficient funding mechanism require that the lessee either vary the funding mechanism to the Ministers satisfaction for approval or make contributions to a different scheme established or approved by the Minister for the aquaculture industry or provide a bank guarantee. The terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

24—Guarantee or approved scheme

(1) The lessee must within 5 business days of receipt of the lease but with effect from the date of commencement of the term of the lease at the lessee's option either—

(a) provide a guarantee from its bankers in the amount specified in a schedule to the lease, or if no amount is specified, in the amount of $10 000; or

(b) contribute to a scheme established or approved by the Minister for the aquaculture industry to and in favour of and for the benefit of the Minister by way of security for the due and punctual performance by the lessee of its obligations under the terms and conditions of the lease and, in particular, the obligation to rehabilitate the leased area under clause 28; or

(c) take any other action approved by the Minister for the purpose of ensuring the security of the due and punctual performance by the lessee of its obligations under the terms and conditions of the lease and, in particular, the obligation to rehabilitate the leased area under clause 28.

(2) If the lessee provides a bank guarantee the following provisions apply:

(a) the lessee must arrange for the provision from an authorised deposit taking institution within the meaning of the *Banking Act 1959* of the Commonwealth of an irrevocable and continuing bank guarantee for an amount stipulated from time to time by the Minister (the ***Bank Guarantee***) which must—

(i) contain terms and conditions reasonably satisfactory to the Minister; and

(ii) be maintained continuously until the Minister agrees to release it under this clause; and

(iii) entitle the Minister to call on the Bank Guarantee at any time if the lessee fails fully and punctually to perform any of its obligations under the terms and conditions of the lease, in particular, the obligations of the lessee to rehabilitate the leased area under clause 28;

(b) if the Minister makes a call on the Bank Guarantee and appropriates any funds, then within 5 days of that call the lessee must provide the Minister with a fresh Bank Guarantee for an amount equal to the amount so called and paid by the bank to the Minister and on the same terms and conditions as specified in this clause;

(c) the lessee will not be entitled to request or obtain a release or a re-delivery of the Bank Guarantee until 1 month after the expiration of the term of the lease;

(d) notwithstanding any other provisions of this clause the Minister may refuse to release or deliver up to the lessee the Bank Guarantee if the Minister reasonably considers that there may be unremedied breaches or contingent obligations under the lease yet to mature and to be performed by the lessee at the time of the request to the Minister to release or re-deliver the Bank Guarantee.

(3) If the lessee does not provide a Bank Guarantee or take any other action approved by the Minister under subclause (1)(c), the lessee must make such contributions to the scheme established or approved by the Minister for the aquaculture industry as required by the Minister or the administrator of such scheme, and if required make such contributions on an annual or other basis and in such amounts as required by the Minister or the administrator of such scheme.

(4) The provisions of this clause do not in any way limit, restrict or prejudice the rights of the Minister to exercise such additional rights, remedies and powers as the Minister may consider appropriate as a result of the lessee's default.

(5) Notwithstanding any other provision of this clause, if the lessee transfers or assigns its estate and interest in the lease, then on and as and from the date that the transferee or assignee complies with subclause (1), the Minister must fully free, release and discharge the lessee from any and all obligations under and pursuant to this clause and must release and redeliver to the lessee any bank guarantee.

(6) If the lessee has already provided a guarantee, contributed to a scheme or taken other action approved by the Minister in accordance with obligations under previous arrangements to the extent required under the lease, then the lessee is excused from the initial requirement to provide a guarantee or contribution, but not from subsequent obligations under this clause.

(7) The lessee must, on request by the Minister, demonstrate to the Minister's satisfaction that the amount of the Bank Guarantee, scheme or other security under subclause (1) is sufficient for the purposes of this clause, in particular the rehabilitation of the leased area under clause 28.

(8) The Minister may vary the amount of the Bank Guarantee required under the lease during the term of the lease in accordance with the following:

(a) the Minister must give the lessee written notice of intention to adjust the Bank Guarantee required (a ***notice of intent***);

(b) the notice of intent may specify the amount of adjustment proposed;

(c) the Minister must give the lessee written notice of the adjusted bank guarantee requirement (an ***adjustment notice***), specifying the date from which the adjusted bank guarantee requirement is effective (the ***effective date***);

(d) the effective date must be no earlier than the date of the notice of intent.

(9) The lessee must comply with any variation as required by the Minister in accordance with this clause.

(10) Where there is a bank guarantee in place under the lease (the ***earlier bank guarantee***) and the Minister receives another bank guarantee required by the Minister in accordance with this clause, the Minister must discharge the earlier bank guarantee.

1.25 Public Liability Insurance

The intent of this condition is to ensure that the lessee maintains public liability insurance for the aquaculture activities being conducted on the lease site, to indemnify the lessee and the Minister against any loss of any kind. The options for insurance are either through a new policy relating to the lease site and that includes the Minister as a joint interest or alternatively through an existing policy (including another lease site policy) as long as it also notes the leased area and includes the Minister as a joint interest. The amount of public liability insurance is specified in a schedule to the lease and is typically $10 million.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

25—Public liability insurance

(1) During the term of the lease and as contemplated under clause 31 the lessee must either—

(a) maintain public liability insurance in the joint names of the lessee and the Minister for their respective rights and interests; or

(b) note the leased area and the Minister's rights and interests in the leased area and under the lease on public liability insurance effected by the lessee in respect of other land or premises within the Commonwealth of Australia.

(2) The lessee must ensure that the insurance referred to in subclause (1)—

(a) is with an insurer satisfactory to the Minister; and

(b) is for not less than the amount specified in a schedule to the lease for any 1 event or such other amount as the Minister may reasonably require; and

(c) requires that the insurer notify the Minister of any proposed variations to or enforcement of the terms of the insurance; and

(d) has sufficient scope of coverage to indemnify the lessee and the Minister against any loss of any kind including loss arising out of or in connection with—

(i) the use of the leased area by the lessee or a licensee under a corresponding licence or the servants, agents and invitees of either; and

(ii) any death, illness or bodily injury sustained by any person on the leased area or any damage to property occurring on the leased area.

(3) The lessee must produce a copy of the relevant insurance policy referred to in subclause (1) and a copy of a certificate of currency in respect of that insurance policy—

(a) within 14 days of the commencement of the term of a lease; and

(b) at any other time on request of the Minister.

(4) The Minister may vary the amount of public liability insurance specified under subclause (1) during the term of the lease in accordance with the following:

(a) the Minister must give the lessee written notice of intention to adjust the amount of public liability insurance required (a ***notice of intent***);

(b) the notice of intent may specify the amount of adjustment proposed;

(c) the Minister must give the lessee written notice of the adjusted public liability insurance requirement (an ***adjustment notice***), specifying the date from which the adjusted public liability insurance requirement is effective (the ***effective date***);

(d) the effective date must be no earlier than the date of the notice of intent.

(5) The lessee must comply with any variation as required by the Minister in accordance with this clause.

(6) The public liability insurance requirement in respect of any renewed term of the lease will be as notified by the Minister before the expiry of the initial term of the lease.

1.26 Navigational Marking

Navigational marks are primarily required for maritime safety, but also for the identification of aquaculture infrastructure/sites for reporting purposes (e.g. lease holder compliance with aquaculture obligations).

The responsibility for determining navigational marking requirements for all marine users rests with the DIT. As a result of Australia being a signatory to various international maritime conventions for shipping safety, security and environmental performance, DIT is obliged to adhere to a number of international guidelines and standards when determining navigational marking requirements. For aquaculture leases, the relevant international standard is the "International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) Recommendation O-139 on the Marking of Man-Made Offshore Structures" (IALA Standard).

The *Harbors and Navigation Act 1993* gives the Minister for Infrastructure and Transport, and hence DIT, the power to determine navigational marking requirements through section 23 – establishment of navigational aids. Section 23(2) provides that "the Minister may direct any person who carries on a business involving the mooring, loading or unloading of vessels to establish, maintain and operate navigational aids of a specified kind at specified places". In practice, DIT and PIRSA work together to determine and implement navigational marking requirements. Once navigational marking requirements have been determined, they are implemented (i.e. imposed on aquaculture operators) through the inclusion of the requirements in lease and licence conditions.

Feedback obtained from marine-based aquaculture industry sectors and other stakeholders during the Aquaculture Regulation Review and preliminary consultation for development of the Draft Policy indicates that many current conditions related to navigational marking requirements are either unworkable or inconsistently applied. A cause of this has been historical changes in conditions as a result of changes in policy direction and priorities at the international, national and local levels over time. It has also been raised that existing lease conditions are likely to require the industry to construct and maintain more St Andrews Crosses (SAC), lights and radar reflectors than what is required to provide navigational safety of other users of State waters. In some instances the amount of marking requirements may pose a risk of confusing mariners, rather than increase safety, particularly in regard to the high number of SACs currently required on intertidal oyster sites located within close proximity of each other. The IALA Standard acknowledges that not every marking recommendation will be appropriate in every instance and allows and encourages marking recommendations to be adjusted on the basis of risk assessments. The IALA Standard also acknowledges that a high density of Aids to Navigation (AtoN), particularly lighting, can result in confusion for marine users and recommendations should be adjusted to mitigate this risk.

To reduce the potential for confusion and ensure efficiency in navigational marking requirements, as part of the Aquaculture Regulation Review and preliminary consultation for development of the Draft Policy, DIT, PIRSA and marine-based aquaculture industry sector representatives discussed various proposals, including minimising the total number of SACs required for intertidal lease sites. DIT also considered the current navigational marking requirements for aquaculture operators and undertook a risk assessment that considered traffic density, proximity to ports, other commercial operations and recreational destinations, tidal considerations, water depths and visual conditions in the region. The resulting navigational marking requirements proposed for the Draft Policy have been based on the above process.

1.26.1 Navigational Marking Intertidal Sites

The intent of this condition is to specify the navigational marking requirements for individual and groups of intertidal aquaculture lease sites. It also specifies the process for variation of navigational marking requirements during the term of the lease by the Minister.

Navigational mark requirements for existing intertidal sites are currently contained as conditions on both the lease and any corresponding licence, and require that SACs are maintained on each corner of the licensed site and display the licence number. The licence condition is proposed to be replaced with a single lease condition, which requires for individual intertidal leases to have SACs with the corresponding licence number displayed for the leased area or part of the leased area in the case of multiple corresponding licences for one lease, on the outermost corners of the leased area (i.e. those corners where a direct line of sight between two corners would not pass inside any portion of the lease boundary, see Figure 2). As is currently the case, additional ‘intermediate’ SACs would also be required along the outer lease boundary if the distance between any two SACs exceeded 500m, but must be installed at equal spacing between SACs (see Figure 2). There is also the provision for individual intertidal leases to have alternative navigational mark requirements stipulated in a schedule to the lease to provide flexibility for unique circumstances.

Further, for leases located within close proximity of each other (i.e. within 50m), the outer boundaries of these leases are to be considered as a ‘combined lease shape’, and SACs are required to be positioned only on the outermost corners of the ‘combined lease shape’ (see Figure 3). Additional ‘intermediate’ SACs would also be required as above for the outer ‘combined lease shape’ boundary (see Figure 3). There is also the provision for the Minister to require a lessee via a notice to install additional navigational marks on their outer lease boundary of a ‘combined lease shape’, to provide flexibility for unique ‘combined lease shape’ scenarios.

A new clause has also been added to the proposed condition, which states that individual leases may require a flashing light as specified in a lease schedule, to mitigate risks of collision to mariners in high risk areas. This is likely to be required only for a small number of leases, and will be based on advice from DIT following a risk assessment of all current intertidal leases, and included in future applications to PIRSA for new and varied (e.g. movements, reduction in lease area) intertidal leases.

DIT reserves the right to request PIRSA to change navigational marking requirements at any time should the assessed risk change. To facilitate this, there is the provision in clause 5 for this condition to be varied via Gazette notice, however in the event this occurs, industry will be consulted prior to the changes being made.

The condition has been standardised as this is an existing lease condition relevant to all intertidal leases. Standardisation within the Draft Policy will ensure a more practical approach to navigational safety for intertidal leases by effectively reducing the amount of SACs required for these sites, whilst upholding navigational safety legislative requirements of DIT for mariners. The terminology used has also been reviewed to bring it in line with modern legislative requirements.

1.26.2 Navigational Marking Subtidal Sites

The intent of this condition is to specify the navigational marking requirements for individual and groups of subtidal aquaculture lease sites. It also specifies the process for variation of navigational marking requirements during the term of the lease by the Minister for individual and 'combined lease shape' subtidal leases, which is the same process as described for intertidal leases in section 1.26.1 Navigational Marking Intertidal Sites.

Navigational mark requirements for existing subtidal sites are currently contained as conditions on the lease only, and require that SACs are maintained on each corner of the lease site, display any corresponding licence numbers, and include lighting and radar reflectors. The proposed lease condition for the Draft Policy requires for individual subtidal leases to have SACs, with the corresponding licence number displayed for the leased area or part of the leased area in the case of multiple corresponding licences for one lease, only on the outermost corners of the leased area (i.e. those corners where a direct line of sight between two corners would not pass inside any portion of the lease boundary, see Figure 2). As is currently the case, additional 'intermediate' SACs would also be required along the outer lease boundary if the distance between any two SACs exceeded 500m, but must be installed at equal spacing between SACs (see Figure 2). There is also the provision for individual subtidal leases to have alternative navigational mark requirements stipulated in a schedule to the lease to provide flexibility for unique circumstances.

Further, for leases located within close proximity of each other (i.e. within 50m), the outer boundaries of these leases are to be considered as a 'combined lease shape', and SACs are required to be positioned only on the outermost corners of the 'combined lease shape' (see Figure 3). Additional 'intermediate' SACs would also be required as above for the outer 'combined lease shape' boundary (see Figure 3).

DIT reserves the right to request PIRSA to change navigational marking requirements at any time should the assessed risk change. To facilitate this, there is the provision in clause 5 for this condition to be varied via Gazette notice, however in the event this occurs, industry will be consulted prior to the changes being made.

The condition has been standardised as this is an existing lease condition relevant to all subtidal leases. Standardisation within the Draft Policy will ensure a more practical approach to navigational safety for subtidal leases by effectively reducing the amount of SACs required for these sites, whilst upholding navigational safety legislative requirements of DIT for mariners. The terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

26—Navigational marks

(1) The lessee must, before any structures are placed in the leased area, install navigation marks in accordance with this clause.

(2) If a schedule to the lease specifies the required manner of installation of navigational marks, navigational marks must be installed as specified in the schedule.

(3) If the lease specifies that intertidal navigational marks apply to the lease but does not specify the manner of installation, navigational marks must be installed as follows:

(a) if the leased area does not form part of a combined lease shape with another leased area—

(i) intertidal navigational marks must be installed on the outermost corners of the leased area; and

(ii) additional intertidal navigational marks must be installed at equal spacing along the outer boundaries of the leased area such that the distance between any 2 marks does not exceed 500 m; and

(iii) if specified in a schedule to the lease, a flashing light as specified;

(b) if the leased area forms part of a combined lease shape with 1 or more other adjacent leased areas—

(i) intertidal navigational marks must be installed on each corner of the leased area that is an outermost corner of the combined lease shape; and

(ii) additional intertidal navigational marks must be installed at equal spacing along the outer boundary of the leased area forming part of the combined lease shape such that the distance between any 2 marks on the combined lease shape does not exceed 500 m; and

(iii) if specified in a schedule to the lease, a flashing light as specified.

(4) If the lease specifies that subtidal navigational marks apply to the lease but does not specify the manner of installation, navigational marks must be installed as follows:

(a) if the leased area does not form part of a combined lease shape with another leased area—

(i) subtidal navigational marks must be installed on the outermost corners of the leased area; and

(ii) additional subtidal navigational marks must be installed at equal spacing along the outer boundaries of the leased area such that the distance between any 2 marks does not exceed 500 m;

(b) if the leased area forms part of a combined lease shape with 1 or more other adjacent leased areas—

(i) subtidal navigational marks must be installed on each corner of the leased area that is an outermost corner of the combined lease shape; and

(ii) additional subtidal navigational marks must be installed at equal spacing along the outer boundary of the leased area forming part of the combined lease shape such that the distance between any 2 marks on the combined lease shape does not exceed 500 m.

(5) If the leased area forms part of a combined lease shape with 1 or more adjacent leased areas, the Minister may, by notice in writing to the lessee, require the installation of an intertidal navigational mark or subtidal navigational mark (as the case requires) at a specified point on the outer boundary of the leased area forming part of the combined lease shape.

(6) If subclause (2) applies, the Minister may vary the requirements of the lease in respect of navigational marks during the term of the lease as follows:

(a) the Minister must give the lessee written notice of intention to vary the conditions of the lease relating to navigational marks (a ***notice of intent***);

(b) the notice of intent may specify the proposed variation to the conditions of the lease;

(c) the Minister must give the lessee written notice of the requirements of the lease for the installation of navigational marks as varied (a ***navigational marks variation notice***), specifying the date from which the variation is effective (the ***effective date***);

(d) the effective date must be no earlier than the date of the notice of intent.

(7) The lessee must comply with any variation as required by the Minister in accordance with subclause (6).

(8) In this clause—

combined lease shape—if 2 or more adjacent leased areas are within 50 m of each other, the outer boundaries of the combined shape of those leased areas and any further adjacent leased area within 50 m of 1 of those leased areas form a ***combined lease shape*** (and such a lease shape will be taken to include a gap in between any 2 leased areas);

intertidal navigational mark means a post that—

(a) is yellow; and

(b) extends 900 mm above mean high water; and

(c) has a St Andrew's Cross as a top mark; and

(d) is marked in 70 mm high text with the number of the corresponding licence for the leased area or part of the leased area for which it is a navigational mark;

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

(a) is yellow; and

(b) has cross arms measuring 900 mm long and 75 mm wide; and

(c) has the ends of the cross arms marked with—

(i) 200 mm yellow retro-reflective tape; or

(ii) 75 mm yellow retro-reflective discs;

subtidal navigational mark means a spar buoy that—

(a) is yellow; and

(b) has a top mark of a St Andrew's Cross attached to a post at least 900 mm above the buoy; and

(c) is marked with lights being yellow in colour and flashing once every 4 seconds and visible over an arc of 360° for a distance of two nautical miles; and

(d) is marked with radar reflectors that meet—

(i) International Standard ISO 8729-1:2010—*Ships and marine technology—Marine radar reflectors—Part 1: Passive type*; or

(ii) International Standard ISO 8729-2:2009—*Ships and marine technology—Marine radar reflectors—Part 2: Active type*; and

(e) is marked in 70 mm high text with the number of the corresponding licence for the leased area or part of the leased area for which it is a navigational mark.

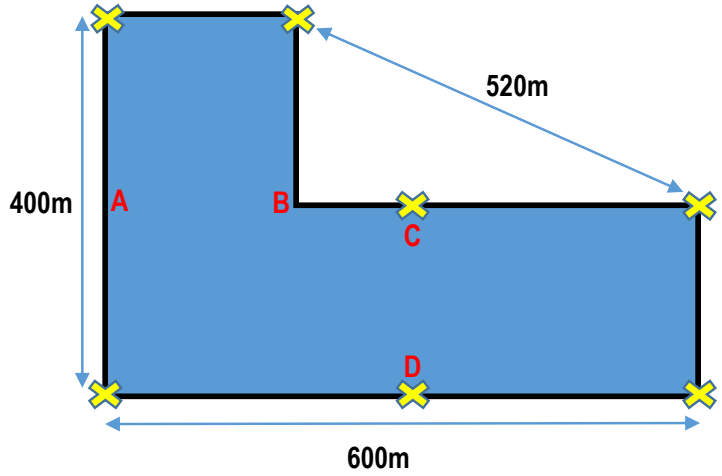

Figure 2. Example diagram of navigational marking requirements for an individual intertidal and subtidal lease site. Note: no SACs are required at 'A' due to the distance between SACs being less than 500m, and at 'B' due to the corner not being an outermost corner; and intermediate SACs are required at 300m along the outer lease boundary at 'C' and 'D' as the distance between SACs is greater than 500m.

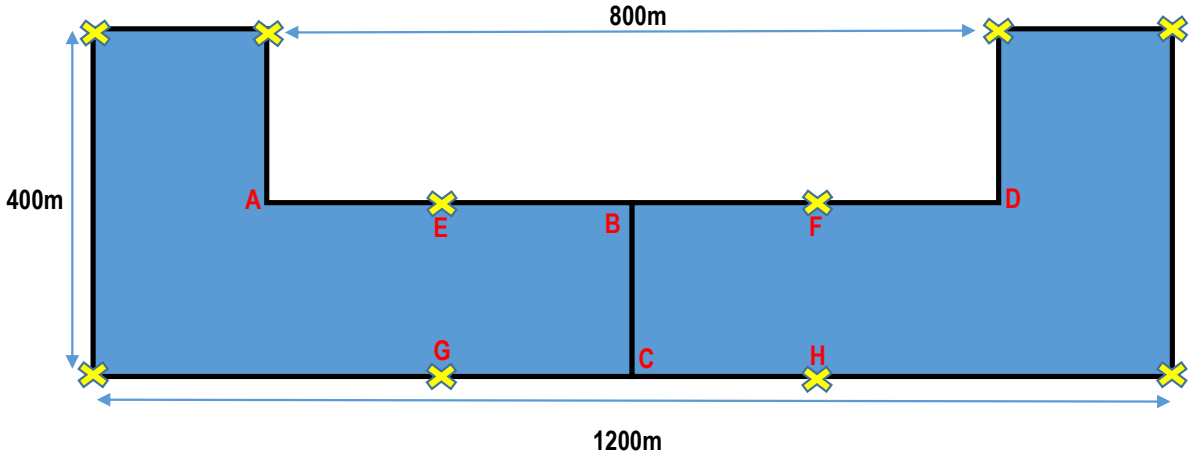

Figure 3. Example diagram of navigational marking requirements for an intertidal and subtidal lease site, if their lease boundary forms a 'combined lease shape'. Note: no SACs are required at 'A', 'B', 'C', and 'D' due to the corners not being an outermost corner; and intermediate SACs are required at 400m along the outer lease boundary at 'E', 'F', 'G', and 'H' as the distance between SACs is greater than 500m.

1.27 Marking-off requirements

The intent of this condition is to provide the requirements for establishing a marked-off area of the lease, should a lessee choose to do so, which provides the lessee with rights for exclusive occupation of the marked-off area pursuant to section 45, 46, 47 and 48 of the Act. These requirements may also be stipulated in a schedule to the lease.

The condition has been standardised as this is an existing lease condition relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

27—Marking-off requirements

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

(a) by 1 or more signs that—

(i) are no larger than 700 mm by 400 mm; and

(ii) contain the words: "Marked off area, no trespass"; and

(iii) are each attached to a post to which a St Andrew's cross is also affixed; or

(b) as specified in the lease.

1.28 Rehabilitation of leased area

The intent of this condition is to prescribe scenarios where the lessee is required to rehabilitate the lease area, including for expiry of the term of the lease, refusal of an application to renew a lease, cancellation of the lease, surrender of the lease, movement of the lease, and a reduction in the area of the lease (not including a subdivision). The period of time required to be provided to rehabilitate the lease area is described, in addition to further guidance on what constitutes a rehabilitated site. Rehabilitation of the site needs to be done to the same condition existing prior to the lease being in that location.

The condition has been standardised as this is an existing lease condition, currently called "Lease Variation" and "Lease Expiry" in existing leases, relevant to all leases regardless of the prescribed lease type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the timeframes for rehabilitation in the scenario of the refusal of an application to renew a lease, cancellation of the lease, movement of the lease, and a reduction in the area of the lease (not including a subdivision) have been increased from immediately prior, to within 90 days of the date of the scenario transpiring. This is because it is not reasonable to expect that a lease holder would be able to pre-empt a decision of the Minister in relation to these scenarios. Should a lease holder be unable to comply with a rehabilitation timeframe under this condition, then pursuant to section 48A of the Act, the Minister may direct the lessee to take the required action within a certain timeframe, and failing that the Minister may then undertake the action themselves and recover the cost from the lessee (including accessing a bank guarantee or approved scheme as outlined in section 1.24 Guarantee or Approved Scheme). The terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

28—Rehabilitation of leased area

(1) The lessee must, at the lessee's cost in all things and to the reasonable satisfaction of the Minister, rehabilitate the leased area as follows:

(a) if the lessee does not apply for renewal of the lease—immediately before the expiry of the term of the lease;

(b) if the lease is surrendered before the expiry of the term of the lease—immediately before the surrender of the lease;

(c) if an application for renewal of the lease is refused—within 90 days of the date of the notice of refusal of the application or the expiry of the term, whichever is the later;

(d) if the lease is cancelled—within 90 days of the date of the notice of cancellation;

(e) if a variation of the lease consists of or involves the substitution of the coordinates of the area leased through a reduction in the area leased or movement of the area leased (but not including a subdivision or amalgamation of the area leased)—within 90 days of the variation.

(2) In order to rehabilitate the leased area pursuant to subclause (1), the lessee must—

(a) remove and carry away from the leased area all farmed aquatic organisms, aquaculture equipment, and other improvements, plant, goods and property located or brought upon the leased area by or on behalf of the lessee and in doing so cause as little damage to the leased area as practicable; and

(b) on completion of such removal required by paragraph (a), remove all debris, rubbish and waste from the leased area and rehabilitate the leased area in respect of any damage caused by the presence of such waste, rubbish and debris; and

(c) reinstate and rehabilitate the leased area and any areas of it affected by the conduct of aquaculture or otherwise in the leased area to the condition existing before the commencement of the lease.

1.29 Wild caught southern bluefin tuna – use of lease area

The allocation of lease area for the tuna sector is different to allocations for other sectors because the tuna is sourced from wild tuna stocks taken by the commercial Commonwealth Southern Bluefin Tuna Fishery and not from hatchery produced fish common for other finfish sectors. Lease size for this sector is therefore linked directly to allocated quota entitlements (Statutory Fishing Rights (SFR's)) of the commercial fishery to ensure each operator has leases sufficient enough to grow tuna allocated through each SFR. Tuna is caught and then grown out in sea cages over approximately 3 to 7 months to a harvestable size, with all tuna typically harvested at the end of the farming season. This removes all tuna biomass from leases until commercial fishing for the next season's fish is harvested. Given the majority of tuna is grown and all is harvested within the Lincoln (inner) sector of the Lincoln aquaculture zone prescribed within the *Aquaculture (Zones - Lower Eyre Peninsula) Policy 2013*, the limited lease area available within this zone sector requires lease area to be effectively 'shared' amongst tuna farmers. This is so that, as far as possible, all tuna farmers are able to farm their quota with an optimum lease area.

To ensure fair and equitable access to lease area based on tuna quota acquired, there must be a formal method of allocating lease area at the beginning of each fishing season to account for variations in quota from season to season. Currently, by lease condition, an area would be considered to be under-

utilised by applying a SFR to lease hectare ratio of 3325:1. However through the development of the Draft Policy, it is intended to standardise the method used for determining if a site is utilised sufficiently through performance criteria (see section 1.12 Performance Requirement) established on the lease schedule which is currently used for all other marine based aquaculture sectors. With implementation of the Draft Policy, this will be standardised at 70% of the maximum biomass permitted on the lease site by a corresponding licence condition (see section 1.38 Maximum biomass—wild caught southern bluefin tuna). However, if it is determined that a tuna lease is under-utilised (i.e. performance criteria is not met), then this lease condition provides the Minister with the ability to vary the size of the lease, whilst taking into consideration a number of factors.

Should the situation arise where an existing tuna lease holder requires additional lease area or a new operator is seeking an allocation of lease area and an aquaculture zone or aquaculture zone sector is fully allocated, after considering the utilisation of all tuna leases within that area, an internal negotiation process through the ASBTIA is proposed. PIRSA will work with the ASBTIA to formalise this arrangement separate to this process and on implementation of the Draft Policy, including arrangements if the negotiation process fails to identify a solution to resolve conflict of lease area.

The current condition provides for the Minister to reduce a lease area either temporarily or permanently if a lease is determined to be under-utilised. The draft condition provides a lease holder with further guidance on what may be considered when determining to temporarily or permanently reduce a lease area and brings the tuna sector into alignment with other industry sectors in terms of lease performance criteria.

The condition has been standardised to tuna lease types for which the corresponding licence permits the farming of wild caught tuna only as this is the only sector it currently applies to. Standardisation within the Draft Policy will ensure transparency to the tuna industry in the allocation of available biomass and hectares within aquaculture zones, whilst ensuring the State's resources are used to their full potential. The terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

29—Wild caught southern bluefin tuna—use of leased area

(1) This clause applies to the lease if a corresponding licence authorises the farming of southern bluefin tuna (wild caught) (*Thunnus maccoyii*).

(2) The Minister may, if satisfied that the leased area is at any time not fully utilised, reduce the size of the leased area as the Minister sees fit and such reduction may, as the Minister considers appropriate, be for a specified period or for the remainder of the term of the lease.

(3) Without limiting the matters that the Minister may take into account in determining whether the leased area is not fully utilised for the purposes of subclause (2), the Minister may have regard to—

(a) whether the leased area is larger than the area reasonably required to carry on the aquaculture operations of the lessee; and

(b) the performance criteria specified in a schedule to the lease; and

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

1.30 Wild caught southern bluefin tuna – access to southern bluefin tuna

The intent of this condition is to ensure a tuna lease holder can demonstrate at any time their capability to farm their lease site in accordance with the prescribed performance criteria (see section 1.12 Performance Requirement) outlined in the lease schedule (i.e. by having sufficient access to tuna SFRs to warrant the number of hectares granted to the lease holder). The Minister can request that this information is provided at any time and it is up to the lease holder to demonstrate with supporting evidence their capability. The industry considers a minimum holding of 60 tonnes equivalent of SFRs is required to be able to apply and be granted a tuna lease, which has not been amended through this standardisation process, however should this value change there is the provision in clause 5 to vary this value via Gazette notice.

The condition has been standardised to tuna lease types for which the corresponding licence permits the farming of wild caught tuna only as this is the only sector it currently applies to. Standardisation within the Draft Policy will ensure transparency to the tuna industry in the allocation of available biomass and hectares within aquaculture zones, whilst ensuring the State's resources are used to their full potential. The terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

30—Wild caught southern bluefin tuna—access to southern bluefin tuna

(1) This clause applies to the lease if a corresponding licence authorises the farming of southern bluefin tuna (wild caught) (*Thunnus maccoyii*).

(2) The lessee must at all times maintain access to statutory fishing rights under the *Fisheries Management Act 1991* of the Commonwealth in respect of the Southern Bluefin Tuna Fishery equivalent to a minimum of 60 t of southern bluefin tuna (*Thunnus maccoyii*).

(3) The lessee must, within 30 days of a requirement of the Minister by notice in writing, provide to the Minister evidence of the lessee's compliance with subclause (2).

1.31 Survival of Conditions

The intent of this lease condition is to ensure that lease conditions in sections 1.15-Notification to Minister of damage, degradation and risks arising due to aquaculture activity, 1.18-Exclustion of liability, 1.23 Indemnity, 1.24 Guarantee or Approved Scheme, 1.25 Public Liability Insurance, and 1.26 Navigational Marking continue to remain in place when the term of the lease expires, a lease is cancelled, surrendered, or moved, or the area of the lease is reduced (not including a subdivision), as there may be aquaculture infrastructure and waste remaining on the former site.

The condition has been standardised within the Draft Policy for all leases regardless of the prescribed lease type or class and is a new requirement to ensure that the above lease conditions continue to apply to mitigate risks associated with aquaculture infrastructure and waste, as long as they continue to remain on a former lease site.

Condition Text:

31—Survival of conditions

The obligations of the lessee under clauses 15, 23, 24, 25 and 26 of this lease and the exclusion of liability under clause 18 survive the expiry, cancellation or surrender of the lease or a change in the leased area (other than a subdivision or amalgamation of the leased area) until such time as the Minister is satisfied that the leased area has been rehabilitated to the extent contemplated under clause 28(2).

PROPOSED STANDARD LICENCE CONDITIONS – ALL LICENCES

1.32 Interpretation

The intent of this condition is to provide clarification on how each licence condition outlined in the Draft Policy shall be interpreted. For example it determines that any amendments over time of legislative requirements, require that the current version be used, that headings used to describe each licence condition are merely that and have no bearing on how the condition may be applied or enforced and that if any part of a condition is considered unenforceable, than this part does not need to be considered in order to prove a breach in a court setting. The condition also reinforces that any listed licensee is jointly responsible for ensuring activities conducted within the licence area comply with all licence conditions and may be held accountable in the event there is a breach of any licence conditions. The condition also further defines terms used throughout the Draft Policy to ensure each condition is interpreted appropriately.

The condition has been standardised as this is an existing licence condition relevant to all licences regardless of the prescribed licence type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has been reviewed to bring it in line with modern legislative requirements.

Condition Text:

32—Interpretation

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

Act means the *Aquaculture Act 2001*;

culture unit means any structure used to contain aquatic organisms in the course of farming those organisms and includes, without limitation, a basket, rack, bag, tray or sock;

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

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

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

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

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

Minister means the Minister responsible for the administration of the Act;

Regulations means the *Aquaculture Regulations 2016*;

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

(2) Unless the contrary intention appears, terms used in the licence that are defined in the Act, the Regulations or an aquaculture policy have the respective meanings assigned to those terms by the Act, the Regulations or other policy (as the case requires).

(3) Every word in the singular number will be construed as including the plural number, every word in the plural number will be construed as including the singular number and every word implying a particular gender will be construed as including every other gender.

(4) Where 2 or more persons are included in the designation ***the licensee***, the obligations on the part of the licensee contained in the licence will bind such persons and any 2 or greater number of them jointly and each of them severally and the expression ***the licensee*** will include all or any 1 or more of such persons.

(5) References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.

(6) Headings are for convenience of reference only and do not affect the construction or interpretation of the licence.

(7) Each word, phrase, sentence, paragraph and clause of the licence is severable and where a court determines that a part of the licence is unenforceable, invalid or void the court may sever that part of the licence and such severance will not affect any other part of the licence.

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

1.33 Notice to Minister

The intent of this condition is to ensure a licence holder is aware of the appropriate mechanisms to notify the Minister and PIRSA if they are required to do so under relevant legislative obligations and for general matters. This includes, annual submission of EMP reports (see section 1.5 Environmental Monitoring and Management) and production returns pursuant to the Regulations, notification by marine-based licence holders of the escape of stock and entanglement or confinement of a protected animal pursuant to the Regulations, notification to the Minister of damage, degradation and risks arising due to the aquaculture activity pursuant to proposed licence conditions in section 1.35, and notification by land-based licence holders of the escape of stock pursuant to proposed licence conditions in section 1.45. There is the provision in clause 5 for this condition to be varied via Gazette notice should changes in contact details require.

The condition has been standardised as this is an existing licence condition relevant to all licences regardless of the prescribed licence type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

33—Notice to Minister

(1) If the licensee is required to give notice in writing, submit or furnish a report, provide a periodic return, or provide or produce any other documents, records or information to the Minister, such notice, report, periodic return, record, document or information may be sent—

(a) by post to PIRSA Fisheries and Aquaculture, GPO Box 1625, Adelaide SA 5001; or

(b) by email to PIRSA.Aquaculture@sa.gov.au; or

(c) by facsimile transmission to (08) 8207 5331; or

(d) to such other postal or email address or facsimile number as notified by the Minister to the licensee in writing.

(2) If the licensee is required to notify the Minister of a matter by telephone call—

(a) in the case of a notification under regulation 26 or 27 of the Regulations or clause 36 or 47—the licensee must notify the Minister by calling 1800 065 522 or such other number as notified by the Minister to the licensee in writing; and

(b) in any other case—the licensee must notify the Minister by telephone call to (08) 8207 5333, or such other number as notified by the Minister to the licensee in writing.

(3) Notice given or sent to, or served on, 1 of the natural persons or bodies corporate comprising the licensee will be taken to be notice to all persons comprising the licensee.

PROPOSED STANDARD MARINE-BASED LICENCE CONDITIONS

1.34 Escape and interaction prevention

The intent of this condition is to ensure that marine-based licence holders take all reasonable and practical measures to prevent the escape of stock and adverse interactions with seabirds and large marine vertebrates (i.e. sharks, dolphins, and whales etc), in the event that a sector based aquaculture strategy or licence specific strategy has not yet been approved by the Minister pursuant to the Regulations. This scenario may occur between the time a new licence has been granted, strategy submitted, that strategy assessed and then approved, however this occurs infrequently and the duration is relatively short.

The condition has been standardised as this is an existing licence condition relevant to all marine-based licences regardless of the prescribed licence type or class. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

35—Escape and interaction prevention

If—

(a) there is not a sector-based aquaculture strategy applying to a licensee; and

(b) an individual aquaculture strategy for the licensee has not been approved by the Minister,

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

(c) the escape of the licensed species; and

(d) adverse impacts on, and adverse interactions with, seabirds and large marine vertebrates.

1.35 Notification to Minister of damage, degradation and risks arising due to aquaculture activity

As for leases, the intent of this marine-based licence condition is to ensure a licensee notifies PIRSA if they become aware of anything that may be causing damage or degradation to the seafloor of the aquaculture licensed site or outside of the licence area, or the adjacent coastal environment as a result of aquaculture activity associated with the licence, and if there is anything that may pose a risk to navigational safety (i.e. lost farming structures). Reporting of these circumstances to PIRSA may result in further management arrangements being undertaken, including directing the licence holder to cease

the aquaculture activity under the proposed licence condition in section 1.36 Degradation or damage to the seabed, marine or coastal environments or to recover the lost farming structure pursuant to section 58 of the Act if they had failed to do so under regulation 12 of the Regulations. This condition is a new condition to ensure that environmental impacts from an aquaculture activity are reported and can be addressed, so that the activity is conducted in an ecologically sustainable manner as per the objects of the Act.

The condition has been standardised as this condition is relevant to all marine-based licences regardless of the prescribed licence type or class. Standardisation of the condition within the Draft Policy has been designed to ensure it does not duplicate the requirements of the *Environment Protection Act 1993* and captures environmental degradation that may not be caused by a pollutant as defined within this Act.

Condition Text:

36—Notification to Minister of damage, degradation and risks arising due to aquaculture activity

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

(a) damage or degradation to the seabed or the marine or coastal environment;

(b) a material risk to navigational safety.

(2) For the purposes of this clause, damage, degradation or a material risk is taken to occur due to an aquaculture activity if the activity is a contributing factor in the occurrence of the damage, degradation or material risk (as the case requires).

1.36 Degradation or damage to the seabed, marine or coastal environments

Further to the condition described in section 1.35 Notification to Minister of damage, degradation and risks arising due to aquaculture activity, this additional condition allows the Minister to direct a marine-based licensee via a written notice to cease from continuing an aquaculture activity indefinitely or for a specified period to ensure further or potential degradation or damage does not occur. The direction by the Minister may also be varied (i.e. period to cease an activity increased or decreased) or revoked, to adaptively manage any further or potential degradation or damage. This condition replaces a similar existing condition on current marine-based licences where the definition of environmental harm under the *Environment Protection Act 1993* was used, which only considers harm caused by pollutants. The revised condition considers broader causes of harm, such as shading impacts to seagrass from farming structures, to ensure that the activity is conducted in an ecologically sustainable manner as per the objects of the Act.

The condition has been standardised as this is an existing condition relevant to all marine-based licences regardless of the prescribed licence type or class. Standardisation within the Draft Policy has refined the condition further to ensure it does not duplicate the requirements of the *Environment Protection Act 1993* and captures environmental degradation that may not be caused by a pollutant as defined within this Act. The terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

37—Degradation or damage to seabed, marine or coastal environment

(1) If the licensee has engaged, or is engaging, in any activity which in the opinion of the Minister has caused, is causing or is likely to cause an unacceptable level of degradation or damage to the seabed or the marine or coastal environment, the Minister may direct the licensee by notice in writing to cease engaging in the activity and refrain from further engaging in the activity.

(2) A direction under subclause (1) in respect of an activity—

(a) may direct the licensee to refrain from engaging in the activity indefinitely or for a specified period; and

(b) may be varied or revoked by the Minister at any time by notice in writing to the licensee.

(3) The licensee must comply with a direction of the Minister under subclause (1).

1.37 Maximum biomass—finfish (other than wild caught southern bluefin tuna)

The intent of this marine-based licence condition is to ensure that licences authorised to farm finfish species (apart from wild caught tuna and wild caught tuna broodstock, but including propagated tuna (i.e. hatchery sourced) – see section 1.4.2 Marine-based Aquaculture Licences - (Corresponding Licences)) are stocked at acceptable levels which minimise the risk to the adjacent marine environment. Further background on biomass limits is outlined in section 1.4.2 Marine-based Aquaculture Licences - (Corresponding Licences). Finfish maximum biomass limits are restricted to 15 tonnes per hectare, which has been calculated from a kg/m^3 amount to a hectare equivalent tonnage over time to ensure biomass limits can be administered and compliance demonstrated. For example, the maximum permitted biomass able to be farmed on a 10 hectare licensed site is 150 tonnes. There is the provision for individual marine-based finfish licences to have alternative maximum biomass limit conditions stipulated in the licence to provide flexibility for unique circumstances.

The condition has been standardised as this an existing licence condition relevant to all marine-based licences that are permitted to farm finfish species (apart from wild caught tuna, but including tuna broodstock and propagated tuna). Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

38—Maximum biomass—finfish (other than wild caught southern bluefin tuna)

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

(2) Subject to any licence specific condition providing otherwise, the licensee must ensure that the maximum biomass of finfish on the licensed site does not exceed 15 t per licensed hectare.

1.38 Maximum biomass—wild caught southern bluefin tuna

The intent of this marine-based licence condition is to ensure that licences authorised to farm wild caught southern bluefin tuna (apart from tuna broodstock and propagated tuna - see section 1.4.2 Marine-based Aquaculture Licences - (Corresponding Licences)) are stocked at acceptable levels which minimise the risk to the adjacent marine environment. Further background on biomass limits is outlined in section 1.4.2 Marine-based Aquaculture Licences - (Corresponding Licences). Tuna maximum biomass limits are restricted to 6 tonnes per hectare, which has been calculated from a kg/m^3 amount to

a hectare equivalent tonnage over time to ensure biomass limits can be managed and compliance demonstrated. For example, the maximum permitted biomass able to be farmed on a 10 hectare licensed site is 60 tonnes. There is the provision for individual marine-based tuna licences to have alternative maximum biomass limit conditions stipulated in the licence to provide flexibility for unique circumstances.

The condition has been standardised as this is an existing licence condition relevant to all marine-based licences that are permitted to farm wild caught southern bluefin tuna (apart from tuna broodstock and propagated tuna). Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

39—Maximum biomass—wild caught southern bluefin tuna

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

(2) Subject to any licence specific condition providing otherwise, the licensee must ensure that the maximum biomass of wild caught southern bluefin tuna on the licensed site does not exceed 6 t per licensed hectare.

1.39 Maximum biomass—mussel

The intent of this marine-based licence condition is to ensure that licences authorised to farm mussel species are stocked at acceptable levels which minimise risks to growth rates of filter feeding organisms which other aquaculture licence holders are authorised to farm, in addition to the amount of phytoplankton available for native filter feeding organisms within adjacent State waters. Mussel maximum biomass limits are restricted by the amount of farming structures able to be established on a licensed site, which in turn restricts the amount of mussels able to be attached to these farming structures and hence farmed on a licensed site. This is the maximum total length of backbone (the supporting rope structure on the surface for all submerged longlines on which the mussels are attached) permitted to be held on a licensed site (i.e. 560 m per hectare), and the maximum length of submerged longline permitted per meter of backbone (i.e. 15 m per meter of backbone) (see Figure 4). For example, the maximum permitted total length of backbone and submerged longline able to be farmed on a 1 hectare licensed site is 560 m of backbone and 8400 m of submerged longline. There is provision in clause 5 for the standard maximum biomass limit for mussel species in the Draft Policy to be varied via Gazette notice should circumstances dictate, which would also include consultation with licence holders and other relevant stakeholders, such as the EPA. Further, there is the provision for individual marine-based mussel licences to have alternative maximum biomass limit conditions stipulated in the licence to provide flexibility for unique circumstances.

The condition has been standardised as this is an existing licence condition relevant to all marine-based licences that are permitted to farm mussel species. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

40—Maximum biomass—mussel

(1) This clause applies to the licence if it authorises the farming of mussel species.

(2) This clause applies subject to a licence specific condition.

(3) The licensee must ensure that—

(a) the total length of backbone on the licensed site does not exceed 560 m per hectare; and

(b) no more than 15 m of longline, for each metre of backbone, is submerged.

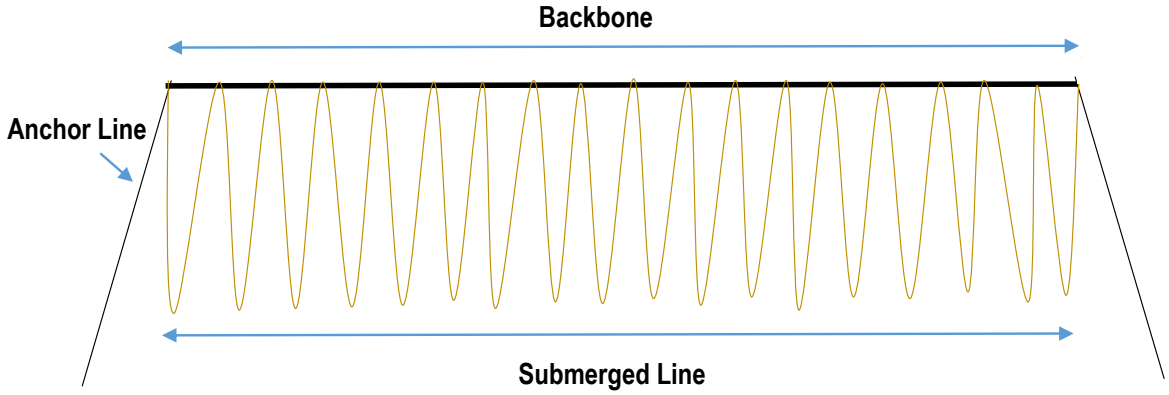

Figure 4. Example diagram of mussel farming structures.

1.40 Oyster farming—farming systems

This proposed marine-based licence condition is an existing condition (see section 1.40.2 Securing culture units – oysters), which has new subclauses added (see section 1.40.1 Culture unit positioning – oysters). The condition has been standardised within the Draft Policy for all marine-based licences that permit the farming of oyster species. Should circumstances dictate, such as further research or scientific data, the condition may be varied by Gazette notice under clause 5, which would also include consultation with licence holders and other relevant stakeholders such as the EPA. Note individual licences can have alternative conditions to provide flexibility for unique circumstances.

1.40.1 Culture unit positioning - oysters

Subclauses 41(3) to (6) in the Draft Policy are new and have been added to an existing licence condition (see section 1.40.2 Securing culture units – oysters). The intent of these subclauses is to ensure any authorised culture units used to contain oysters (e.g. baskets, racks, bags, trays or socks; see definition of culture unit in the Draft Policy) are positioned or used on the licence area in a manner which minimises the risk of overstocking the site and negative impacts to the seabed, in particular shading of seagrass.

Contained longline is defined as the supporting adjustable line structure on/near the surface which baskets containing oysters are attached, and railing is defined as the supporting fixed rail structure on/near the surface which rack baskets containing oysters i.e. otherwise known as contained racks, are attached (see Figure 5).

The term ‘double hanging’ of culture units on contained longline or railing farming structures, is where culture units are hung so that they overlap or are hung below each other (see Figure 6).

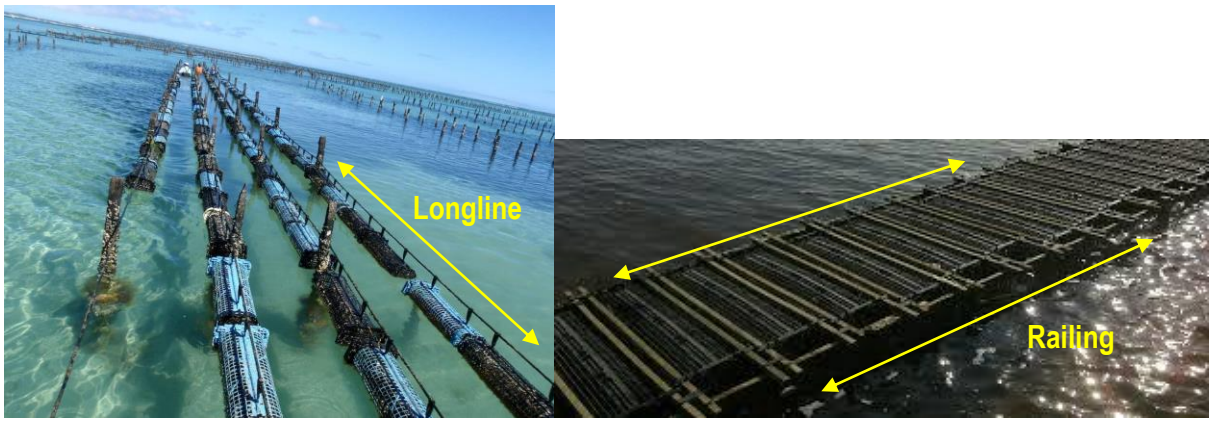

Figure 5. Example images of oyster longline and railing structures (source: http://www.seapa.com.au).

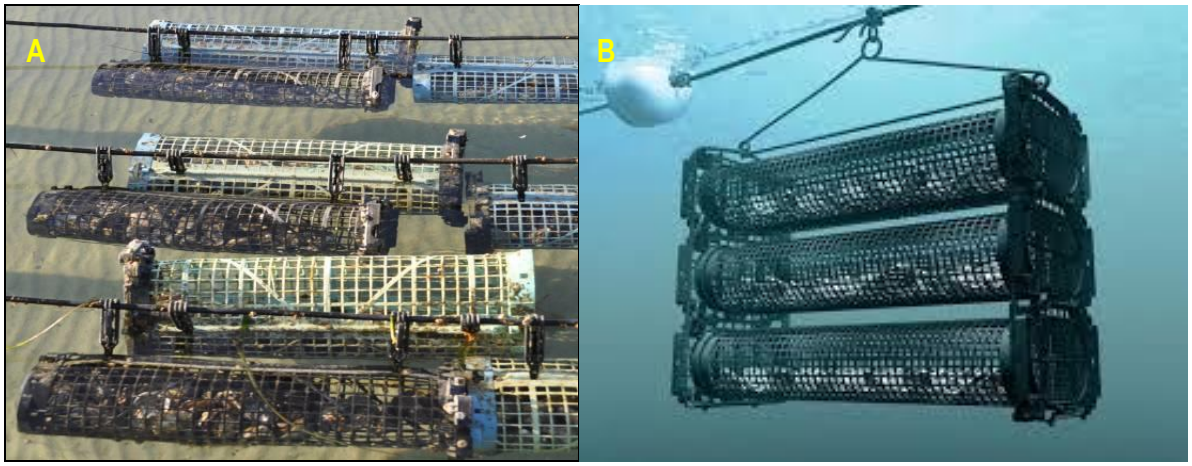

Figure 6. Example images of oyster baskets on contained longline overlapping (A) (source: PIRSA 2016) and hung below each other (B) (source: http://www.seapa.com.au).

Swinging type oyster baskets hung sequentially along a single contained longline (e.g. Baker-Schultz-Turner (BST) type baskets) have been found through independent scientific research to minimise shading impacts to underlying seagrass compared to the more fixed contained rack and railing type farming method (see Figure 5) (Madigan *et al.,* 2000; Wear *et al.,* 2004). However, if these baskets are double hung then this will alter the swinging motion and subsequently likely increase shading impacts to underlying seagrass. Secondly, the proposed oyster maximum biomass stocking limit conditions in section 1.41 Maximum biomass - oyster, have been designed on the assumption that only a single culture unit (i.e. basket or contained rack) will be hung on a length of longline or railing at any one time. Double hung culture units, may lead to a licensee overstocking the site and breaching the intent of the proposed maximum biomass stocking limit conditions. This licence condition aims to minimise these risks from occurring by prohibiting double hanging.

The contained longline farming method has been designed to also allow culture units (e.g. baskets and spat trays) to be hung across (i.e. perpendicular between or perpendicular hanging) two parallel contained longlines, which more so mirrors the contained rack and railing type of oyster farming method (see Figure 7).

Figure 7. Example image of oyster baskets hung across two contained longlines (source: PIRSA 2016).

However, this type of farming method will also alter the swinging motion of baskets and increases the shading footprint of culture units (e.g. baskets and spat trays), which will subsequently likely increase shading impacts to underlying seagrass. Currently, if seagrass is identified on a proposed site during PIRSA's licence assessment process (e.g. for new licences, licence movements), to mitigate potential shading impacts to seagrass, it is standard practice to not permit contained rack and railing method but only permit contained longline method on the licence, with the understanding that single culture units (e.g. baskets and spat trays) will be hung sequentially along a single contained longline (see Figure 5). For consistency and clarity in mitigating shading impacts to seagrass, the proposed licence condition (subclause 41(3)(c)(i)) prohibits perpendicular hanging of culture units (e.g. baskets and spat trays) between two parallel longlines (see Figure 7), unless the licence already authorises contained longlines **and** contained racks as a permitted farming method. By allowing this practice on licences where contained racks are a permitted farming method (as well as contained longlines) takes into consideration that no seagrass was identified on the licence site during PIRSA's licence assessment process for the initial licence application at that location.

PIRSA understands from consultation with the oyster industry sector, that it has been historical common practice and is critical for oyster development, for some oyster licence holders to hang spat trays perpendicular between two parallel longlines. This practice is for relatively short periods of time over a year, there is spacing between spat trays, and the number of spat trays used in this manner on a site is negligible compared to sequentially hung culture units along contained longline for the majority of a site. The oyster industry sector have advised PIRSA, that while the proposed licence condition (subclause 41(3)(c)(i)) caters for the majority of licence holders who undertake perpendicular hanging of spat trays between two parallel longlines (i.e. permits them to do this activity), there are a small number of growers for which it does not (i.e. do not have contained racks as a permitted farming method on their licence) and it is critical for their aquaculture operation. Taking into consideration oyster industry sector consultation regarding this practice, subclause 41(3)(c)(ii) has been added to the proposed licence condition to allow culture units (e.g. spat strays) to be hung perpendicular between two parallel longlines if contained racks are not a permitted farming method on the licence, but only if the licence authorises contained longlines and the culture units being hung perpendicular must only contain oyster species with a shell length of 15mm or **less** in any dimension (i.e. only contain oyster spat). By limiting this practice to certain sized oysters potential shading impacts to any underlying seagrass will be minimised.

To further minimise potential impacts to any underlying seagrass, and also the seabed in general from perpendicular hanging, subclause 41(4) has been added, which provides that a licensee must take all reasonable measures to minimise any damage or degradation to the seabed when undertaking this activity. Should a licensee fail to comply with subclause 41(4), subclause 41(5) has been added to provide the Minister with the power to direct a licensee by written notice to cease from continuing this activity indefinitely or for a specified period, and the Minister may also impose unique conditions on an individual licensee when undertaking this activity, to ensure further damage or degradation does not

occur. The direction by the Minister may also be varied (i.e. period to cease an activity increased or decreased, or conditions changed) or revoked, to adaptively manage any further or potential damage, or to allow a licence holder to resume this activity if the risk has been adequately mitigated.

Should the holder of a licence that is only authorised for contained longlines wish to hang culture units containing oyster species with a shell length **greater** than 15mm in any dimension (i.e. juvenile or adult oysters) perpendicular between two parallel longlines, the proposed condition allows for the licensee to apply to PIRSA to vary their licence to permit this. In assessing such an application, PIRSA would take into consideration if any seagrass was present on the site, and whether any additional unique licence conditions are required (e.g. a periodic EMP) to mitigate potential impacts from this farming method.

Note that there are also overstocking risks associated with hanging culture units perpendicular between two parallel longlines which are addressed through proposed oyster maximum biomass limit licence conditions in section 1.41 Maximum biomass—oyster. These proposed licence conditions restrict biomass through limiting the maximum length of parallel longline, between which culture units are hung perpendicular, permitted per hectare on a licensed site. By limiting the per hectare amount of this type of farming infrastructure, potential impacts to the seabed, including any underlying seagrass, will be further minimised.

1.40.2 Securing culture units - oysters

Subclauses 41(7) and (8) in the Draft Policy are existing marine-based licence conditions that intend to ensure that only approved devices are used to attach oyster culture units (e.g. baskets, racks, bags, trays or socks; see definition of culture unit in the Draft Policy) to farming structures (e.g. contained longlines, railing). This is aimed at mitigating the risk of marine debris occurring, and potential environmental risks from that debris. All such devices are required to be approved by the Minister prior to use within the industry sector. The Minister has previously provided oyster licence holders with a report containing approved devices, which was assessed through a stakeholder working group. Any future proposed devices would need to be assessed through a similar process in order to be approved. Standardisation within the Draft Policy has resulted in no changes to the intent of these conditions, however the terminology used has been reviewed to bring it in line with modern legislative requirements.

Condition Text:

41—Oyster farming—farming systems

(1) This clause applies to the licence if it authorises the farming of oyster species.

(2) This clause applies subject to a licence specific condition.

(3) The licensee must ensure that a culture unit used to hold oyster species—

  (a) is not hung on a contained longline or railing below another culture unit; and

  (b) does not overlap with another culture unit hung on the same contained longline or railing; and

  (c) is not hung perpendicular between 2 parallel longlines unless—

    (i) the licence authorises the farming of oyster species using both contained longlines and contained racks; or

    (ii) the licence authorises the farming of oyster species using only contained longlines and the culture unit contains only oyster species with a shell length of 15 mm or less in any dimension.

(4) If the licensee undertakes the farming of oyster species using parallel longline between which culture units are hung perpendicular, the licensee must take all reasonable steps to minimise any damage or degradation to the seabed that may occur as a result of that activity.

(5) If the Minister is satisfied that the licensee has failed to comply with subclause (4), the Minister may (without limiting the action that the Minister may otherwise take on such a failure)—

(a) direct the licensee to refrain from the farming of oyster species using parallel longline between which culture units are hung perpendicular indefinitely or for a specified period; or

(b) impose conditions or restrictions on the licensee farming oyster species using parallel longline between which culture units are hung perpendicular.

(6) A direction under subclause (5)(a) or a condition or restriction imposed under subclause (5)(b) may be varied or revoked by the Minister at any time by notice in writing to the licensee.

(7) Subject to subclause (8), the licensee must not use any device other than hard plastic clips to secure an oyster species culture unit.

(8) The Minister may, by notice in writing, authorise a licensee to use a device other than hard plastic clips to secure oyster species culture units.

1.41 Maximum biomass—oyster

This proposed marine-based licence condition is an existing condition (see section 1.41.1 Farming method limits - oysters), which has new subclauses added (see section 1.41.1 Farming method limits – oysters and 1.41.2 Combination farming methods - oysters). The condition has been standardised within the Draft Policy for all marine-based licences that permit the farming of oyster species. Should circumstances dictate, such as further research or scientific data, the condition (i.e. standard maximum biomass limit conditions) may be varied by Gazette notice under clause 5, which would also include consultation with licence holders and other relevant stakeholders such as the EPA. Note individual licences can have alternative conditions (i.e. alternative maximum biomass limit conditions) to provide flexibility for unique circumstances (i.e. new farming methods).

1.41.1 Farming method limits - oysters

Subclauses 42(3) and (4) in the Draft Policy are existing marine-based licence conditions that intend to ensure that licences authorised to farm oyster species are stocked at acceptable levels which minimise risks of reduced growth rates to filter feeding organisms aquaculture licence holders are authorised to farm, and minimise risks of competition between neighbouring oyster licensed sites. In addition, maximum stocking rates are established to minimise impacts to the amount of phytoplankton available for native filter feeding organisms within adjacent State waters. This needs to consider the different productivity levels of each growing region, with this known to vary across State waters. For example, the Coffin Bay oyster growing region is considered by industry to be the most productive for oyster aquaculture in the State.

Prior to implementation of the Act, oyster maximum biomass limits were historically regulated via Aquaculture Management Plans, legislated through the development regulations under the *Development Act 1993*, as well as aquaculture licences issued under the *Fisheries Act 1982* (now superseded). These restricted growers to a maximum number of sized oysters permitted to be farmed per hectare of growing water. For example, the Far West Aquaculture Management Plan (1996), prescribed the maximum stocking density of adult oysters (80 mm or weight equivalent) at 100,000 per hectare (as determined in Hone (1995)) as well as a stocking guide (see Table 1). These limits were similar to conditions imposed on all growing regions at the time, and were also subsequently outlined on associated aquaculture licences.

Table 1. Historical stocking guide for oysters.

Size (mm)	Number per Hectare
3	2,500,000
10	1,600,000
20	1,100,000
30	750,000
40	500,000
50	350,000
60	200,000
70	150,000
80	100,000

Following implementation of the Act, PIRSA, in consultation with the oyster industry sector, refined this oyster maximum biomass limit condition over time for each growing region to more practical forms for licence holders to apply, and for PIRSA to monitor for compliance purposes. Oyster maximum biomass limit licence conditions were converted to farming structure limits able to be established on a licensed site for each growing region, which in turn restricted the amount of oysters able to be held in those farming structures and hence cultured on a licensed site. This was the maximum total length of longline (the supporting adjustable line structure on/near the surface which baskets containing oysters are attached; see Figure 5), maximum total length of railing (the supporting fixed rail structure on/near the surface which rack baskets containing oysters are attached; see Figure 5), and the maximum amount of baskets (rack baskets, Baker-Schultz-Turner (BST) type longline baskets, and SEAPA type longline baskets containing oysters) permitted on a licensed site.

The application of oyster maximum biomass limit conditions on existing licences has not been consistently applied over time and therefore these conditions can vary between and within growing regions. As a result, there has been inconsistency in the interpretation amongst growers regarding the quantity of farming structures (i.e. longlines, railing, baskets) that are permitted to be farmed on an oyster licensed site per hectare. In addition, some growers have adopted new innovations in farming structure design that make existing licence conditions outdated in some instances. It has also been identified that there is limited scientific data currently available to determine maximum carrying capacity for oysters within each growing region. Therefore a conservative approach to oyster maximum biomass limits (as achieved by limiting farming structure quantity) has, and will be, implemented within each growing region by PIRSA until such time that further research or scientific data justifies an increase or decrease in the oyster maximum biomass limits. PIRSA has also taken into consideration that at present there is no evidence available to suggest there has been a significant measurable impact to industry, or the surrounding marine environment, with current stocking densities.

Oyster maximum biomass limit licence conditions have been standardised by growing region within the Draft Policy to remove the confusion identified above. Maximum biomass limits, through quantifying allowable farming structure limits, will be transparent and enforceable, so as to ensure growing regions are stocked appropriately. The farming structure limits of total length of longline (or contained longline as described in the Draft Policy condition) and total length of railing (to which rack baskets containing oysters i.e. otherwise known as contained racks, are attached) (see Figure 5) have been included as conditions in the Draft Policy, with conditions relating to basket numbers excluded and to be removed from individual licences on implementation of the Draft Policy.

For the most part, the proposed licence conditions aim to maintain the status quo of these existing farming structure limits (excluding basket numbers) as they are currently applied to licences within each growing region, whilst taking into consideration the farming structures currently developed by oyster licence holders across these areas given the inconsistency in interpretation outlined above. However, for the Coffin Bay growing region, it is proposed that licence conditions relating to oyster maximum biomass limits are standardised at 4km of contained longline per hectare, which is an increase in

stocking of 1km per hectare (or 25% per hectare) from historical licence conditions applied. This new stocking rate for Coffin Bay will minimise the need for growers to remove infrastructure and also ensure effective compliance of oyster growers with licence conditions in the future. In addition, as mentioned in section 1.40.1 Culture unit positioning – oysters, following consultation with the oyster industry sector a new subclause (subclause 42(5)) has been added to the existing licence condition to prescribe a standard oyster maximum biomass limit when hanging culture units perpendicular between two parallel longlines (see Figure 7), as permitted under the circumstances in subclause 41(3)(c). As this farming method is similar to contained rack and railing type of oyster farming method, for consistency the farming structure limit for this method has been set the same across all growing regions (i.e. 1km per hectare).

Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however minor amendments have been made to cater for current farming practices and the terminology used has been reviewed to bring it in line with modern legislative requirements.

1.41.2 Combination farming methods – oysters

Subclause 42(6) in the Draft Policy is new and has been added to an existing licence condition (see section 1.41.1 Farming method limits – oysters). The intent of this subclause is to ensure that where a licence holder is permitted to farm oyster species using contained longline and/or contained rack farming structures, and the hanging of culture units perpendicular between two parallel longlines (see Figure 7) in combination at the same time, overstocking risks to existing industry and the surrounding marine ecosystem within a growing region are minimised (i.e. maximum biomass limits are consistent with those limits for using a single farming method in section 1.41.1 Farming method limits - oysters). A ratio has been developed to determine this that is embedded within the licence condition. There are only a limited number of licences which farm oysters using a combination of the farming methods above and therefore this is likely to impact only a small number of licence holders. Standardisation within the Draft Policy has resulted in no changes to the original intent of the existing licence condition it has been added to.

Condition Text:

42—Maximum biomass—oyster

(1) This clause applies to the licence if it authorises the farming of oyster species using contained longlines or contained racks or both.

(2) This clause applies subject to a licence specific condition.

(3) The licensee, if farming oyster species using contained longlines as authorised under the licence, must ensure that—

(a) in the case of farming oyster species in the Haslam (north bank) aquaculture zone—

(i) contained longline does not exceed 4 km per hectare; and

(ii) stocked contained longline does not exceed 3 km per hectare; and

(b) in the case of farming oyster species in an area within an aquaculture zone identified in the *Aquaculture (Zones—Coffin Bay) Policy 2008*—contained longline does not exceed 4 km per hectare; and

(c) in the case of farming oyster species in an area within the harbor boundary of Cowell (Franklin Harbor) (as defined in Schedule 3 of the *Harbors and Navigation Regulations 2009*)—

(i) contained longline does not exceed 4 km per hectare; and

(ii) stocked contained longline does not exceed 3 km per hectare; and

(d) in the case of the farming of oyster species in any other area—contained longline does not exceed 3 km per hectare.

(4) The licensee, if farming oyster species using contained racks as authorised under the licence, must ensure that the length of the railing to which contained racks are attached does not exceed 1 km per hectare.

(5) The licensee, if farming oyster species using parallel longline between which culture units are hung perpendicular as authorised under the licence (see clause 41(3)(c)), must ensure that the length of parallel longline between which culture units are hung perpendicular does not exceed 1 km per hectare.

(6) The licensee, if farming oyster species using a combination of farming methods referred to in subclauses (3), (4) and (5) as authorised under the licence, must ensure that the addition of—

(a) the length of contained longline used expressed as a percentage of the relevant limit of contained longline permitted under subclause (3); and

(b) the length of railing used expressed as a percentage of the relevant limit of railing permitted under subclause (4); and

(c) the length of parallel longline between which culture units are hung perpendicular used expressed as a percentage of the relevant limit of parallel longline permitted under subclause (5),

must at all times be equal to or less than 100.

1.42 Mollusc farming – farming structures

This is a proposed new marine-based licence condition, which intends to further prevent overstocking of licensed sites permitted to farm mollusc species (excluding mussel species), but primarily oyster species, caused by variations in the design of farming structures which contain molluscs (e.g. variations in oyster basket design) that haven't been assessed and approved by PIRSA. It is recognised that there have been several innovations in oyster farming structure design since maximum biomass limit conditions were developed under the Act, making these conditions outdated in some instances (see section 1.41.1 Farming method limits - oysters), and there is likely to be further innovations in the future. PIRSA encourages innovation in farming structure design which may provide efficiencies for growers, however PIRSA needs to ensure that the risks associated with such innovations are acceptable, including the risk of overstocking by undermining maximum biomass limit conditions. The proposed condition provides the ability for the Minister to specify to licence holders the type, including dimensions, of farming structures permitted to be used by licence holders to contain mollusc species. This decision making process would include an ecologically sustainable development risk assessment by PIRSA that contemplates potential risks from farming structures (including current and future designs), as well as consultation with industry and other stakeholders as required, and may require the submission of a licence variation application form by licence holders.

The proposed condition is new and has been standardised for all marine-based licences that permit the farming of molluscs other than mussels.

Condition Text:

43—Mollusc farming—farming structures

(1) This clause applies to the licence if it authorises the farming of molluscs.

(2) The Minister may by written notice to a licensee, specify the form and dimensions of farming structures which must be used to contain molluscs (other than mussel species) authorised to be farmed under the licence.

1.43 Signage

This marine-based licence condition applies only to licences classed as intertidal whose licence boundary is within close proximity to other licence boundaries (i.e. within 50m of each other), and intends to provide a clear indication of the licence holder identity to which farming structures belong in this scenario. Licensee identification for farming structures is important for PIRSA to monitor a licensee's compliance with aquaculture legislative obligations (e.g. maximum biomass limit licence conditions). The condition updates an current existing licence condition, by replacing the requirement for SACs on each corner of a licensed site with 'Street Signs' marking the beginning of farming structures closest to each corner of an adjacent licence boundary (see Figure 8). The condition will effectively reduce the amount of structures required to identify farming structures located within a licensed site, whilst maintaining the intent of the current existing licence condition.

There is the provision in clause 5 for this condition in the Draft Policy to be varied via Gazette notice should circumstances dictate, which would also include consultation with licence holders and other relevant stakeholders. The condition has been standardised as this is a variation to an existing licence condition relevant to all licences classed as intertidal. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

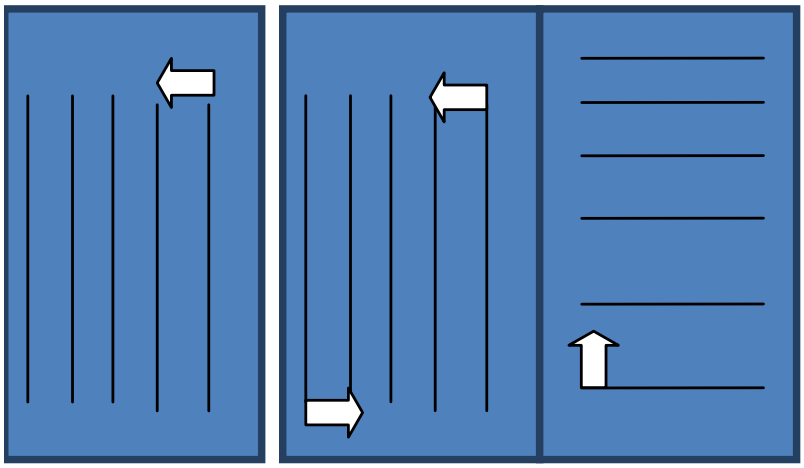

Figure 8. Example diagram of proposed street sign marking requirements for adjacent intertidal licensed sites.

Condition Text:

44—Signage

(1) This clause applies to the licence if it authorises a class of aquaculture that is intertidal.

(2) If—

(a) farming structures are present on the licensed site; and

(b) the licence boundary and an adjacent licence boundary are within 50 m of each other,

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

(3) For the purposes of this clause a post must—

(a) extend 500 mm above mean high water; and

(b) be a colour other than yellow, green or red; and

(c) have a white coloured sign (being a sign 500 mm long, 75 mm wide, and marked with the licence number in 70 mm high black coloured text) attached to the top facing perpendicular to the direction of the farming infrastructure it is attached to and towards the opposite boundary of the licensed site.

PROPOSED STANDARD LAND-BASED LICENCE CONDITIONS

1.44 Land-based category A licence – discharge of wastewater

This land-based licence condition applies only to licences categorised by the Minister pursuant to the Regulations as a category A land-based licence. It intends to ensure that these licences adhere to the activities that are permitted to occur within this category of licence, which includes no discharge or pumping of wastewater off the licensed site or into State waters. For existing category A licences that intend on discharging in the future, this can be applied for by the licensee through a licence variation application to PIRSA, which if approved, is likely to cause the category of land-based licence to be reviewed to a higher category of licence as a result.

The condition has been standardised as this is an existing land-based licence condition relevant to all category A licences. Standardisation within the Draft Policy has resulted in no changes to the intent of this condition, however the terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

46—Land-based category A licence—discharge of wastewater

(1) This clause applies to the licence if it is classified by the Minister as a category A licence under the Regulations.

(2) The licensee must not discharge or pump wastewater—

(a) off the licensed site; or

(b) into State waters.

1.45 Escape prevention and reporting (All Land-based Licences)

This is an existing licence condition that applies to all land-based licences, and intends to ensure licensee's implement all reasonable and practical measures to prevent the escape of the licensed species from the licensed site. Unlike marine-based licences, there are no escape strategies required under the Regulations for this industry sector due to the likelihood of escape for land-based licences being lower. Additional specific conditions to prevent the escape of stock may be prescribed on individual land-based licences under the Act should the circumstances dictate during the assessment of a new land-based licence application or for an existing land-based licence.

The second part to this licence condition is a new requirement, and provides that all land-based licensee's must immediately report the escape of stock from the licensed site to the Minister (see section 1.33 Notice to Minister for reporting contact details). This reporting mechanism would trigger further investigation by PIRSA into the matter, and if required the implementation of additional licence conditions to prevent this from occurring.

The condition has been standardised as this is an existing land-based licence condition relevant to all land-based licences. Standardisation within the Draft Policy has included an additional reporting requirement for licence holders in the event of an escape of stock, to ensure that land-based licensed activities are conducted in an ecologically sustainable manner (an object of the Act). The terminology used has also been reviewed to bring it in line with modern legislative requirements.

Condition Text:

47—Escape prevention and reporting

(1) The licensee must, in the course of aquaculture undertaken under the licence, take all reasonable and practical measures to prevent the escape of the licensed species.

(2) In the event of the escape of a licensed species, the licensee must immediately notify the Minister by telephone of the escape.

CONSULTATION UNDERTAKEN

Following preparation of the Draft Policy and Report, the Minister is required to refer both documents to prescribed bodies and to any public authority whose area of responsibility is, in the opinion of the Minister, likely to be affected by the Policy (section 12(4) of the Act).

The following bodies are prescribed:

- South Australian Native Title Services Limited;
- Conservation Council of South Australia Incorporated;
- Local Government Association of South Australia;
- South Australian Aquaculture Council;
- Wildcatch Fisheries SA Incorporated;
- RecFish SA;
- Any registered representatives of native title holders or claimants to native title in land comprising or forming part of an aquaculture zone or area to which the policy applies;
- Any person holding an aquaculture licence or aquaculture lease over an area comprising or forming part of a zone or area to which the policy applies;
- Any regional NRM Board (within the meaning of the *Natural Resources Management Act 2004*) responsible for a region comprising or forming part of an aquaculture zone or area to which the policy applies; and
- Economic development agencies.

In addition to prescribed bodies, PIRSA consults with the following parties:

- Aquaculture and fishing industry representatives, EPA, Attorney General's Department (AGD), DIT, SA Tourism Commission, DEW, Department of the Premier and Cabinet - Aboriginal Affairs and Reconciliation, local councils, Department for Trade, Tourism and Investment, Regions SA, PIRSA Legal Unit, Fisheries Compliance Services, Biosecurity SA, Flinders Ports, and the Ministers Recreational Fishing Advisory Council.

The Draft Policy and Report were referred to the above prescribed bodies and parties for consultation. These documents were also available on the PIRSA website for the mandatory two month public consultation process as per the Act. Public notices were placed in The Advertiser and Port Lincoln Times seeking comment from interested persons. To provide stakeholders with the opportunity to speak directly with PIRSA Officers, two public briefings were organised to take place during the consultation period, with details placed in public notices and on the PIRSA website.

The following stakeholder group meetings and discussions were held prior, during and after the mandatory two month public consultation process:

Date	Name of Meeting	Attendees
14 November 2018 Adelaide	Tuna Industry Preliminary Consultation	PIRSA ASBTIA
15 November 2018 Port Lincoln	Finfish, Mussel, Oyster and Tuna Industry Preliminary Consultation	PIRSA ASBTIA SAOGA

		Mussel and Finfish industry representatives
12 December 2018 Adelaide	Department of Infrastructure and Transport Preliminary Consultation	PIRSA DIT
6 February 2019 Adelaide	Department for Environment and Water Preliminary Consultation	PIRSA DEW (NRM)
21 February 2019 Adelaide	Environment Protection Authority Preliminary Consultation	PIRSA EPA
21 October 2019 Adelaide	Public briefing on Draft Policy and Report	PIRSA General public Aquaculture lease and licence holders DEW Aboriginal Affairs Regional Development Australia
24 October 2019 Port Lincoln	Public briefing on Draft Policy and Report	PIRSA General public Aquaculture lease and licence holders
25 October 2019 Port Lincoln	SAOGA briefing on Draft Policy and Report	PIRSA SAOGA
25 October 2019 Port Lincoln	SAMGA briefing on Draft Policy and Report	PIRSA SAMGA
25 October 2019 Port Lincoln	ASBTIA and Finfish briefing on Draft Policy and Report	PIRSA ASBTIA Finfish industry representatives
28 February 2020 Port Lincoln	SAOGA Information Day – overview and status update of Draft Policy and Report	PIRSA SAOGA Oyster lease and licence holders
22 May 2020 Adelaide	DEW submission consultation	PIRSA DEW
2 June 2020 Adelaide	SANTS and NNAC submission consultation	PIRSA SANTS NNAC AGD
16 September 2020 Adelaide	SAOGA submission consultation	PIRSA SAOGA
25 September 2020 Adelaide	SAOGA submission consultation	PIRSA SAOGA

POTENTIAL EFFECTS OF IMPLEMENTATION OF THE DRAFT POLICY

The Draft Policy defines standardised lease and licence (marine-based and land-based) conditions that apply across the whole aquaculture industry down to the specific sector, region or farming type. The Draft Policy aims to streamline and modernise the leasing and licensing framework for all aquaculture lease and licence holders to ensure there is a level playing field in terms of applicable conditions applied to each industry sector.

1.46 Economic and Employment Factors

The aquaculture industry plays an important role in creating wealth and prosperity for South Australia, particularly in regional communities (Herreria *et al.*, 2004; BDO EconSearch, 2021). The aquaculture industry in South Australia has recorded strong growth in volume and product range during the past decade and this trend is set to continue. Aquaculture is evolving, with more environmentally sustainable farming systems and practices now available such as; inland ventures using recycled water, emerging filter-feeding species such as cockles, razorfish and native flat oysters, integrated multi-trophic aquaculture and aquaponic-type production systems. Aquaculture can provide significant investment and employment opportunities to rural and regional economies, as previously described approximately 70% of jobs generated by the industry are located in regional areas.

The implementation of the Draft Policy will allow consideration of innovation within the industry to be managed in an ecologically sustainable manner by providing the flexibility to industry to have specific lease and licence conditions applied outside of the Draft Policy on an individual lease or licence document to ensure new sectors and farming methods can still be trialled and used within an industry sector.

For existing farmers, this may mean modification to current farming practices or infrastructure, however this has been minimised during the review and subsequent standardisation to ensure minimum disruption to current lease and licence holders. A transition period is planned in addition to ensure smooth transition for compliance with any new or modified conditions.

1.47 Social Effects

The social effects of the implementation of the Draft Policy will be limited to existing lease and licence holders and those wishing to enter the industry. The Draft Policy will however provide more transparency to the public on the requirements placed on lease and licence holders, with the intention of ensuring the industry is developed in an ecologically sustainable manner, whilst maximising the use of the State's aquaculture resources.

MAKING A SUBMISSION

The Draft Policy and Report was made publicly available for a period of two months for comment as per the legislative requirements of the Act. The Draft Policy and Report was available for viewing during this time on the PIRSA website, along with a submission template to provide feedback.

Information on the proposed changes was provided during two public briefings held in Adelaide and Port Lincoln at dates prescribed in public notices and on the PIRSA website. A hard-copy of the Draft Policy and Report was available if requested, as well as further information regarding the Draft Policy and Report, by contacting PIRSA on Email: pirsa.aquaculture@sa.gov.au or by phoning (08) 8226 0900.

Following this period of consultation, the content of the submissions received was considered, and any consequential amendments to the Draft Policy and Report was made. All stakeholders who made a

submission through the period of statutory consultation will receive a response outlining how their feedback has been incorporated into the Policy and Report.

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APPENDIX A – GLOSSARY OF TERMS

Benthic	Of or relating to or happening on the bottom under the ocean/lake.
Biomass	The total live weight of a group (or stock) of living organisms (e.g. fish, plankton) or of some defined fraction of it (e.g. spawners), in an area, at a particular time. Any quantitative estimate of the total mass of organisms comprising all or part of a population or any other specified unit, or within a given area at a given time; measured as volume, mass (live, dead, dry or ash-free weight) or energy (joules, calories).
Bivalve mollusc	Any mollusc belonging to the taxonomic class Bivalvia, being characterised by a shell consisting of two hinged sections. Includes clams, cockles, mussels, oysters, pipis and scallops.
Broodstock	Aquatic organisms from which subsequent generations are intended to be produced for the purpose of aquaculture.
Carrying capacity	The maximum population of a given organism that a particular environment can sustain.
Ecologically sustainable development (ESD)	ESD is described in the Aquaculture *Act 2001* as: 'Development is ecologically sustainable if it is managed to ensure that communities provide for their economic, social and physical well-being while— (a) natural and physical resources are maintained to meet the reasonably foreseeable needs of future generations; and

	(b) biological diversity and ecological processes and systems are protected; and (c) adverse effects on the environment are avoided, remedied or mitigated. In making decisions as to whether development is ecologically sustainable or to ensure that development is ecologically sustainable— (a) long-term and short-term economic, environmental, social and equity considerations should be effectively integrated; and (b) if there are threats of serious or irreversible environmental harm, lack of full scientific certainty should not be taken to justify the postponement of decisions or measures to prevent the environmental harm'.
Ecosystem	A dynamic complex of plant, animal, fungal, and microorganism communities and the associated non-living environment interacting as an ecological unit.
Habitat	The place or type of site in which an organism naturally occurs.
Harvest	A productivity measuring technique relating to the yield of seasonal aquaculture produce.
Infauna	Aquatic organisms (animals only) that live within particulate media such as sediments or soil.
Marine Park	Means an area established as a marine park under Part 3 Division 1 of the *Marine Parks Act 2007*.
Integrated Multi-trophic Aquaculture (IMTA)	An aquaculture farming system whereby two (or more species) are farmed together and waste products of one species are recycled as feed for another species.
Population	A group of individuals of the same species, forming a breeding unit and sharing a habitat.
Spatial	Of or relating to space.
Stakeholder	An individual or a group with an interest in the conservation, management and use of a resource.
Stock	A group of individuals of a species occupying a well-defined spatial range independent of other groups of the same species, which can be regarded as an entity for management or assessment purposes.
Supplementary fed	Supplementary feeding is the giving of feed to aquatic organisms to supplement any naturally available food.

APPENDIX B – LIST OF ACRONYMS

AGD	Attorney General's Department
ASBTIA	Australian Southern Bluefin Tuna Industry Association
ATAB	Aquaculture Tenure Allocation Board
DEW	Department for Environment and Water
DIT	Department for Infrastructure and Transport
Draft Policy	Draft Aquaculture (Standard Lease and Licence Conditions) Policy 2021

EMP	Environmental Monitoring Program
EPA	Environment Protection Authority
ERDC	Environment, Resources and Development Committee
ESD	Ecological Sustainable Development
FTE	Full Time Equivalent
ILUA	Indigenous Land Use Agreement
NNAC	Narungga Nations Aboriginal Corporation
NRM	Natural Resource Management
PIRSA	Department of Primary Industries and Regions
Report	Report Supporting the Draft Aquaculture (Standard Lease and Licence Conditions) Policy 2021
SAMGA	South Australian Mussel Grower's Association
SANTS	South Australian Native Title Services
SAOGA	South Australian Oyster Grower's Association
The Act	*Aquaculture Act 2001*
The Minister	The Minister responsible for administration of the Act

APPENDIX C – CONSISTENCY OF THE POLICY WITH OTHER LEGISLATIVE REQUIREMENTS/POLICIES

Legislation / Policy	Objectives	Consistency
Growth State	Growth State is the State Governments formal plan for broad based business collaboration to create more jobs, investment and economic opportunity for the future. The government is actively engaging with nine identified growth sectors, including Food, Wine and Agribusiness, to understand what they need in order to grow as they develop specific strategies for their respective sectors.	The Draft Policy is consistent with the Growth State plan in that it will promote aquaculture investment and development, which is a primary industry that falls within the identified growth sector of Food, Wine and Agribusiness.
Plans for regional South Australia	The South Australian Planning Strategy includes plans for seven regional areas of the State, as well as the 30 year plan for greater Adelaide. The regional plans contain the State Government's directions on land use and development, including policies relating to population growth and demographic changes among others.	The Draft Policy is consistent with the strategies relating to diversifying primary production into new areas to replace or complement existing activities and the integrated and sustainable management of natural resources in a manner that maintains ecological processes.
Planning, Development and Infrastructure Act 2016 *Planning, Development and Infrastructure Regulations (Transitional Provisions) 2017* Planning and Design Code	The *Planning, Development and Infrastructure Act 2016* and *Planning, Development and Infrastructure Regulations (Transitional Provisions) 2017* detail the processes for making and assessing development applications. 'Development' is defined in the *Planning, Development and Infrastructure Act 2016* to include: (a) a change in the use of land; or (b) building work; or (c) the division of an allotment; or (d) the construction or alteration (except by the Crown, a council or other public authority (but so as not to derogate from the operation of paragraph (e))) of a road, street or thoroughfare on land (including excavation or other preliminary or associated work); or (e) in relation to a State heritage place—the demolition, removal, conversion, alteration or painting of, or addition to, the place, or any other work that could materially affect the heritage value of the place; or (f) in relation to a local heritage place—any work (including painting) that could materially affect the heritage value of the place (including, in the case of a tree, any tree-damaging activity) specified by the Planning and Design Code for the purposes of this paragraph (whether in relation to local heritage places generally or in relation to the particular local heritage place); or (g) the external painting of a building within an area specified by the Planning and Design Code for the	The Draft Policy is consistent with these provisions in that it seeks to ensure the ecologically sustainable development of the marine-based aquaculture industry and recognises and respects other users of the marine resource. The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect.

Legislation / Policy	Objectives	Consistency
	purposes of this paragraph; or (h) in relation to a regulated tree—any tree-damaging activity; or (i) the creation of fortifications; or (k) prescribed earthworks (to the extent that any such work or activity is not within the ambit of a preceding paragraph); or (l) an act or activity in relation to land declared by or under the regulations to constitute development, (including development on or under water) but does not include an act or activity that is declared by or under the regulations not to constitute development for the purposes of this Act; Aquaculture development within an Aquaculture Zone is not delineated as development. Development approvals are not required for aquaculture in such circumstances. However, aquaculture proposed outside of a zone remains subject to full development assessment.	
Aboriginal Heritage Act 1988	The *Aboriginal Heritage Act 1988* provides for the protection and preservation of Aboriginal sites, objects and remains, whether registered or not, without an authorisation from the Minister for Aboriginal Affairs and Reconciliation pursuant to section 23. Section 20 of this Act requires that any Aboriginal sites, objects or remains discovered on land, be reported to the Minister for Aboriginal Affairs and Reconciliation.	The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect.
Native Title Act 1993	The *Native Title Act 1993* (Cth) provides for the recognition by Australian law that some Indigenous people have rights and interests that come from their traditional laws and customs (National Native Title Tribunal (NNTT) 2009). In particular, the *Native Title Act 1993* may validate past acts; provide for future acts; extinguish native title either in full or part; provide a process to determine native title; provides three approaches to negotiating native title, including Indigenous Land Use Agreements (ILUA); and, provides for a range of other matters including the establishment of a land trust and the National Native Title Tribunal.	The Native Title Unit of the Attorney General's Department are consulted during the development of aquaculture policies. Additionally, advice is sought from the Native Title Unit to determine who are the appropriate Native Title Groups to consult during the development of the Draft Policy. The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions

Legislation / Policy	Objectives	Consistency
		will take effect. Specifically, as part of the individual lease/licence application process (within and outside of aquaculture zones) details of the application are referred for comment to any relevant representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants pursuant to section 24HA of the *Native Title Act 1993* (Cwth).
Australia's Ocean Policy (Cth)	Australia's Oceans Policy sets in place a framework for integrated and ecosystem-based planning and management for Australia's marine jurisdictions. It promotes ecologically sustainable development of the ocean resources and encourages internationally competitive marine industries, whilst ensuring the protection of marine biological diversity. The key tool is Regional Marine Planning i.e., planning based on large areas that are ecologically similar, and seeks to integrate the use, management and conservation of marine resources at the ecosystem level. Marine Plans establish an overarching strategic planning framework to guide State and local government planners and natural resource managers in the development and use of the marine environment. Fundamental to these Marine Plans is an ecologically based zoning model. Each of these zones is supported by goals and objectives.	The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect.
Marine Parks Act 2007	The *Marine Parks Act 2007* provides the legislative framework for the dedication, zoning and management of South Australia's marine parks. South Australia's marine parks are zoned for multiple-use to protect coastal, estuarine and marine ecosystems, while also providing for continued ecologically sustainable use of suitable areas. This means that most activities, including aquaculture operations, are allowed within a marine park. However, some activities are not permitted in particular zones. Areas with high conservation values are designated as either Restricted Access Zones or Sanctuary Zones to provide the necessary level of protection for habitats, species, ecological and geological features. Both of these zones preclude commercial fishing, recreational fishing and aquaculture operations.	It is widely recognised that Aquaculture is an important and growing industry in this State that provides significant benefits to South Australia. The needs of the industry have been considered with commitments to accommodate, as far as possible, existing aquaculture operations. The Draft Policy has been prepared having regard to Marine Park objects and boundaries and will apply to lease and licences already granted within Marine Park boundaries. The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment

Legislation / Policy	Objectives	Consistency
		process of which applicable standardised conditions will take effect. In addition, as required by Section 12(7a) of the *Aquaculture Act 2001*, concurrence from the Minister to whom the administration of the *Marine Parks Act 2007* is committed has been obtained for the Draft Policy to apply within the specially protected area of Marine Parks.
Natural Resources Management Act 2004 Regional Natural Resources Management Plan	The intent of the *Natural Resources Management Act 2004* is to establish an integrated system of natural resource management that will assist in achieving sustainable natural resource management in South Australia. Regional Natural Resources Management Plans are underpinned by ecologically sustainable development principles and are required to recognise best practice by an industry sector.	The *Aquaculture Act 2001* and its supporting policies are also underpinned by ecologically sustainable development principles. The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect. Note that the *Landscape South Australia Act 2019*, which is intended to supersede the *Natural Resources Management Act 2004*, was not operational during the development of the Draft Policy.
Environment Protection Act 1993 *Environment Protection (Water Quality) Policy 2015*	The Objects of the *Environment Protection Act 1993* (EP Act) include the promotion of the principles of ecologically sustainable development, and in particular, to prevent, reduce, minimise and, where practicable, eliminate harm to the environment. The EP Act provides that communities must be able to provide for their economic, social and physical well-being. The *Environment Protection (Water Quality) Policy 2015* provides the structure for regulation and management of water quality in South Australian inland surface waters, marine waters and groundwaters. The principle object of the Environment Protection (Water Quality) Policy 2015 (Water Quality Policy) established under the EP Act is to ensure that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment while having regard to the principles of ecologically sustainable development. The Policy:	The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect.

Legislation / Policy	Objectives	Consistency

	• declares environmental values for the protection of streams, rivers, oceans and groundwater.
	• encourages better management of wastewater by:
	  o avoiding its production
	  o eliminating, or reducing it
	  o recycling and re-using it
	  o treating it to reduce potential harm to the environment
	• promotes best practice environmental management.
	• allows for discharge limits for particular activities to be established.
	The Water Quality Policy refers to the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (ANZECC 2000) as part of the guidance regarding the general environmental duty. In this context, the ANZECC guidelines are used as trigger values for aquatic ecosystems and primary industries.	

Harbors and Navigation Act 1993	The *Harbors and Navigation Act 1993* sets out the following objectives: • To provide for the efficient and effective administration and management of South Australian harbors and harbor facilities for the purpose of maximising their use and promoting trade; • To ensure that efficient and reliable cargo transfer facilities are established and maintained; • To promote the safe, orderly and efficient movement of shipping within harbors; • To promote the economic use and the proper commercial exploitation of harbors and harbor facilities; • To provide for the safe navigation of vessels in South Australian waters; • To provide for the safe use of South Australian waters for recreational and other aquatic activities; and • Insofar as this Act applies to the Adelaide Dolphin Sanctuary, to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*.	The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect. Section 20 of the *Aquaculture Act 2001* provides that the grant of aquaculture leases is subject to the concurrence of the Minister responsible for administration of the *Harbors and Navigation Act 1993*.
Coast Protection Act	The *Coast Protection Act 1972* establishes the Coast Protection Board. The functions of the Board are:	The implementation of the Draft Policy will affect existing lease and licences, which were granted in

Legislation / Policy	Objectives	Consistency
1972	• To protect the coast from erosion, damage, deterioration, pollution and misuse; • To restore any part of the coast that has been subjected to erosion, damage, deterioration, pollution or misuse; • To develop any part of the coast for the purpose of aesthetic improvement, or for the purpose of rendering that part of the coast more appropriate for the use or enjoyment of those who may resort thereto; • To manage, maintain and, where appropriate, develop and improve coast facilities that are vested in, or are under the care, control and management of the Board; • To report to the Minister upon any matters that the Minister may refer to the Board for advice; • To carry out research, to cause research to be carried out, or to contribute towards research, into matters relating to the protection, restoration or development of the coast; and • To perform such other functions assigned to the Board by or under this or any other Act.	accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect.
Native Vegetation Act 1991	The objects of the *Native Vegetation Act 1991* are: • The conservation, protection and enhancement of the native vegetation of the State and, in particular, remnant native vegetation, in order to prevent further - • Reduction of biological diversity and degradation of the land and its soil; and • Loss of quantity and quality of native vegetation in the State; and • Loss of critical habitat; and • The provision of incentives and assistance to landowners to encourage the commonly held desire of landowners to preserve, enhance and properly manage the native vegetation on their land; and • The limitation of the clearance of native vegetation to clearance in particular circumstances including circumstances in which the clearance will facilitate the management of other native vegetation or will facilitate the sustainable use of land for primary production; and • The encouragement of research into the preservation, enhancement and management of native vegetation; and • The encouragement of the re-establishment of native vegetation in those parts of the State where native vegetation has been cleared or degraded.	The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect.

Legislation / Policy	Objectives	Consistency
Historic Shipwrecks Act 1976 (Cth) *Historic Shipwrecks Act 1981* (SA)	Any shipwreck or relic that is older than 75 years is protected under the *Historic Shipwrecks Act 1976* (Cth), which covers water off the South Australian coast from the low water mark or the agreed baselines but does not include State internal waters – i.e. the River Murray, Gulf St. Vincent, Spencer Gulf, Encounter Bay, Lacepede Bay, Rivoli Bay and Anxious Bay – which are covered under the *Historic Shipwrecks Act 1981* (SA). If there are declared historic shipwrecks in the vicinity of aquaculture development, the developer is advised that a 550 metre radius buffer zone applies around the historic shipwreck, and that no aquaculture development should take place within this area. It should also be noted that while a shipwreck may not currently be protected, the 75 year rolling protections date means that it will be at some future time.	The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect.
National Parks and Wildlife Act 1972	An Act to provide for the establishment and management of reserves for public benefit and enjoyment; to provide for the conservation of wildlife in a natural environment; and for other purposes.	The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect.
Fisheries Management Act 2007	An Act to provide for the conservation and management of the aquatic resources of the State, the management of fisheries and aquatic reserves, the regulation of fishing and the processing of aquatic resources, the protection of aquatic habitats, aquatic mammals and aquatic resources and the control of exotic aquatic organisms and disease in aquatic resources; to repeal the *Fisheries Act 1982* and the *Fisheries (Gulf St. Vincent Prawn Fishery Rationalisation) Act 1987*; to make related amendments to other Acts; and for other purposes.	To minimise adverse interactions with seabirds and large marine vertebrates, section 18 of the *Aquaculture Regulations 2016* requires a licensee to have a written strategy approved by the Minister, which includes avoiding or minimising adverse impacts on/or adverse interactions with, seabirds or large marine invertebrates, which is also a licence condition proposed within the Draft Policy. The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect.

Legislation / Policy	Objectives	Consistency
		In addition, risks posed by the aquaculture activity are assessed at the time of licence application through the ESD Assessment process, consistent with the National ESD Framework (Fletcher *et al.*, 2004).
River Murray Act 2003	An Act to provide for the protection and enhancement of the River Murray and related areas and ecosystems; and for other purposes.	The implementation of the Draft Policy will affect existing licences, which were granted in accordance with this legislative instrument, including those granted within a River Murray Protection Area. Consistency with new lease and licences proposed, including those within a River Murray Protection Area, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect. In addition, as required by Section 12(7a) of the *Aquaculture Act 2001*, concurrence from the Minister to whom the administration of the *River Murray Act 2003* is committed has been obtained for the Draft Policy to apply within the specially protected area of a River Murray Protection Area.
Adelaide Dolphin Sanctuary Act 2005	An Act to establish a sanctuary to protect the dolphin population of the Port Adelaide River estuary and Barker Inlet and its natural habitat; to provide for the protection and enhancement of the Port Adelaide River estuary and Barker Inlet; and for other purposes.	The implementation of the Draft Policy will affect existing lease and licences, which were granted in accordance with this legislative instrument, with none currently granted that impact or are located within the Adelaide Dolphin Sanctuary. Consistency with new lease and licences proposed, will occur during the lease and licence assessment process of which applicable standardised conditions will take effect. In addition, as required by Section 12(7a) of the *Aquaculture Act 2001*, concurrence from the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed has been obtained for the Draft Policy to apply within the specially protected area of the Adelaide Dolphin Sanctuary.