Aquaculture (Standard Lease and Licence Conditions) Policy 2022

Summary of Public Consultation Submissions and Responses

October 2021

Fisheries and Aquaculture Division

Government of South Australia
Department of Primary Industries and Regions

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Information current as of 19 October 2021

Disclaimer

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INTRODUCTION

To assist the development of the Draft Aquaculture (Standard Lease and Licence Conditions) Policy 2019 (Draft Policy), pursuant to section 12 of the *Aquaculture Act 2001* (the Aquaculture Act), the Draft Policy and supporting draft Report were referred to prescribed bodies (including all aquaculture lease and licence holders) and relevant public authorities, and made publicly available on the PIRSA Fisheries and Aquaculture (PIRSA) website for a period of two months from 23 September 2019 until 29 November 2019 inviting feedback. Calls for submissions were also placed in public notices in the SA Government Gazette, The Advertiser, and Port Lincoln Times. 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, as well as meetings with aquaculture sector representative bodies. Through the consultation process, PIRSA received valuable feedback from stakeholders with a total of 25 submissions. The majority of submissions were supportive of the Draft Policy (15), with five not in support, and five neutral. Further details regarding the consultation process are described within the supporting Report.

This document responds to the submissions **in bold** received during the consultation period for the Draft Policy, including a description of the amendments that have been incorporated into the finalised version of the *Aquaculture (Standard Lease and Licence Conditions) Policy 2022* (Final Policy) and supporting Report as a result of those submissions. Submissions are grouped into similar areas and defined by the Table of Contents. The finalised version of the *Aquaculture (Standard Lease and Licence Conditions) Policy 2022* and supporting Report, including attachments 1 and 2 which describe the previous and replacements lease and licence conditions, are available from the PIRSA webpage.

By providing objective and balanced information, PIRSA seeks to inform all stakeholders – government, industry and community – about aquaculture in South Australia.

POSITIVE FEEDBACK

General Comments:

- General support was received for the Draft Policy as it would make requirements easier, reduce red tape for lease/licence holders, simplify and clarify conditions, provide positive regional impacts, improve transparency and equity, and support policy direction.
- Support was received for flexibility built into the Draft Policy through clauses subject to specific licence conditions and provisions for amending certain conditions via Gazette notice. This recognised that certain lease/licence conditions need to be able to adapt in a relatively short timeframe if circumstances dictate in the future.
- General support was received for clauses within the Draft Policy which aim to mitigate instances of marine debris.
- General support was received for clauses 14, 27, 34, 35 and 36 (now clauses 15, 28, 35, 36 and 37 in the Final Policy) which aim to protect the environment, including the seafloor.

Specific Clause Comments:

Clause 13-Access to leased area

(now clause 14 in Final Policy)

- Support was indicated for the ability of the Minister for the *Harbors and Navigation Act 1993* to enter a lease area for purposes relating to regulation of that Act.

Clause 40-Maximum biomass-oyster

(now clause 41 and 42 in Final Policy)

- There was support for proposed oyster maximum biomass limit licence conditions (i.e. contained longline and contained rack) for licences located within the *Aquaculture (Zones-Coffin Bay) Policy 2008* aquaculture zones. The proposed contained longline limit of 4km per hectare was considered to be equivalent to the contained rack limit, equivalent to the majority of current farming practices, and to increase above this limit may lead to overstocking/reduced food availability/reduced growth rates.
- Any increase to oyster maximum biomass limits through Gazette notice (clause 5 in the Final Policy) or variations to individual licences were supported if based on scientific research.
- The proposed oyster maximum biomass limit licence condition of 3km per hectare for contained longline in any other area (i.e. not Coffin Bay, Franklin Harbor or Haslam (north bank)) was supported.
- There was support for this condition in restricting the farming practice of double hanging baskets/contained racks and hanging baskets perpendicular between two separate longlines.

RESPONSE TO COMMENTS

General Comments:

It was requested that the Aquaculture Act be amended to permit PIRSA to assess and approve aquaculture related tourism infrastructure (i.e. non-farming infrastructure) which benefits the aquaculture industry.

- This matter is outside the scope of the Draft Policy as it requires amendments to the Aquaculture Act. Note that a separate process to amend the Aquaculture Act to permit this proposal has been undertaken by PIRSA through the Aquaculture (Tourism Development) Amendment Bill 2021.

It was commented that the Draft Policy should have conditions regarding retaining licence numbers following variations to the conditions of leases (e.g. boundary or coordinate variations).

- This matter is outside the scope of the Draft Policy as licence numbers can already be retained through PIRSA's administration process for lease variation applications.

It was commented that the Draft Policy should provide more transparency to applicants in the assessment of aquaculture applications by PIRSA, including the requirement of PIRSA assigning a case manager to each applicant.

- This matter is outside the scope of the Draft Policy as it relates to PIRSA's administrative process for the assessment of aquaculture applications. Note that PIRSA's website currently provides details regarding the assessment process for aquaculture applications, and there is also detailed information on each application form. PIRSA also currently assigns a case manager to each application, who liaise with applicants during the assessment process, including providing details of the steps/information required.

Concerns were raised that there is no licence condition in the Draft Policy requiring land-based aquaculture licence holders to obtain approvals from relevant government agencies for intake/discharge pipelines which extend off an aquaculture site.

- The Aquaculture Act does not regulate the construction of pipelines or the approval of pipelines to use Crown Land (e.g. the seabed) which extend off an aquaculture licensed site, only the operation of those pipelines. These other activities are regulated under the *Planning, Development and*

Infrastructure Act 2016 via the requirement for development approval and the *Harbors and Navigation Act 1993* via the requirement for a seabed licence, and it is up to the proponent to seek these authorities. It is not appropriate to duplicate these requirements through aquaculture legislation and has therefore not been included in the Draft Policy. Note that in the interests of good governance, PIRSA do request evidence of development consent and seabed licence approvals when granting new land-based aquaculture licences or variations to conditions of existing land-based aquaculture licences, as well as reminding land-based aquaculture licence holders of their obligations in relation to other relevant legislation when providing approvals, such as the *Planning, Development and Infrastructure Act 2016* and *Harbors and Navigation Act 1993*. Site visits of land-based aquaculture licences by PIRSA may detect potential issues regulated by other government agencies and where possible these are referred to those agencies for consideration.

Concerns the Draft Policy does not support integrated multi-trophic aquaculture (IMTA).

- The farming technique of IMTA is still in its infancy. The Draft Policy doesn't prohibit IMTA, and flexibility built into the Draft Policy, such as the ability to amend certain conditions via Gazette notice or unique conditions on individual licences over-riding standard conditions, allows adaptive management arrangements should multiple species be grown on a single licence (e.g. max biomass licence conditions).

It was suggested that maximum biomass conditions, which are an indication of regional productivity, should be used in cost recovery models by PIRSA for leases/licences (e.g. the higher the productivity or maximum biomass conditions the higher the cost recovered by PIRSA).

- The specifics of models for the recovery of costs from the aquaculture industry are not contained within conditions of aquaculture leases or licences but are rather contained within the South Australian Government's Cost Recovery Policy, see: https://www.pir.sa.gov.au/fishing/commercial_fishing/pirsa_services_to_fisheries_industry . Therefore it is not appropriate to prescribe these as standard conditions and is outside the scope of the Draft Policy.

Concerns the consultation process was not adequate to allow individuals to appropriately respond to the Draft Policy.

- The two month consultation process was followed according to the requirements of section 12 of the Aquaculture Act. Additional consultation above the minimum requirements was also undertaken, including preliminary consultation with industry associations and government agencies prior to developing the Draft Policy, and two public briefings and further briefings with industry associations and government agencies following release of the Draft Policy. The consultation documents and feedback form were available in hard copy upon request, and electronically available on the PIRSA website. Letters were also sent to all aquaculture lease and licence holders to notify them of the consultation process for the Draft Policy. See the supporting Report for further information surrounding the consultation process undertaken.

Specific Clause Comments:

Clause 5 and 31-Interpretation

(now clauses 6 and 32 in the Final Policy)

Additional definitions were suggested in the interpretation clauses 5 and 31.

- The Draft Policy was subsequently reviewed in consultation with the Office of Parliamentary Council to determine if current definitions in clauses 5 and 31 were appropriate and if further definitions (as suggested) were required. As a result, current definitions were considered adequate to enforce the

Policy, apart from the addition of the definition of a culture unit to clause 31, which included examples of those structures (e.g. basket, tray, rack).

Clause 7-Renewal of lease

(now clause 8 in the Final Policy)

It was suggested that PIRSA should remind a lease holder of the impending expiry of their lease term at least six months in advance to ensure they comply with the condition.

- This is an existing lease condition, and has been varied to ensure that a lease renewal application is submitted to PIRSA by the lessee well in advance of the expiry date (i.e. 90 days minimum prior) so that PIRSA has sufficient time to process the application. Further, there is no longer any requirement which specifies the earliest timeframe for which a lease holder can apply to PIRSA to renew their lease (i.e. can apply any time prior to the 90 day timeframe). In addition, when administering this condition, PIRSA will send the lease renewal application to the lessee well in advance of the 90 day timeframe, to provide sufficient time for the lessee to complete and return the renewal application. Given this, no further amendments were made to the Final Policy.

Clause 11-Performance requirement

(now clause 12 in the Final Policy)

For the oyster sector it was recommended that performance requirement criteria, which are percentages of oyster maximum biomass limit licence conditions (i.e. levels of expected site development), take into consideration the productivity of growing regions.

- As described in section 1.12 in the supporting draft Report, the level of development that a lease holder is expected to achieve depends on a number of considerations. This includes demand for access to lease area in a zone or region which links directly to the productivity of that zone or region. In addition, oyster maximum biomass limit licence conditions are themselves based on the productivity of growing regions (see section 1.41.1 in the supporting Report for further information). Therefore the performance requirement lease condition does take into consideration regional productivity and no further amendments were deemed necessary.

Clause 14-Notification to Minister of damage, degradation and risks arising due to aquaculture activity

(now clause 15 in the Final Policy)

It was suggested that this clause needed further expansion to require notification to the Minister by aquaculture lease holders if they were aware of damage or degradation to the seabed or the marine or coastal environment as a result of other activities (i.e. non-aquaculture related activities by other individuals/industries).

- It was not considered appropriate as a mandatory requirement for aquaculture lease holders to report on non-aquaculture related impacts by other individuals/industries. However, clause 14 (now clause 15 in the Final Policy) has been expanded to include aquaculture activities occurring in connection with the leased area as well. 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, these amendments have also been made to the reciprocal corresponding licence condition in clause 36 of the Final Policy (previously clause 35 in the Draft Policy). The supporting Report has also been updated to reflect these amendments. In addition, this lease condition doesn't prevent a lease holder from reporting non-aquaculture related impacts by other individuals/industries to relevant authorities.

It was commented that environmental risks to the seabed or the marine or coastal environment should also be a trigger for a lease holder to notify the Minister.

- It was not considered appropriate to require aquaculture lease holders to report on environmental risks due to the subjective nature of risk interpretation. Environmental risks are already identified and managed by PIRSA through existing management arrangements, including PIRSA's aquaculture lease and licence assessment process for applications (incorporating an ecologically sustainable development risk assessment), provisions contained within the Aquaculture Act and Regulations, annual environmental reporting by licence holders, and periodic site inspections by PIRSA.

Concerns were raised about the intent of clause 14 compared to the original condition it was revised from.

- This condition was originally entitled "Contamination and Contaminating Substances" on leases (see Attachment 1) and was amended as some wording within was identified to be duplication of the *Environment Protection Act 1993* requirements. This included removing references to pollution and contaminating substances, but maintaining references to degradation in relation to the seabed or the marine or coastal environment and the requirement to notify PIRSA. The Environment Protection Authority (EPA) were consulted regarding this condition and were supportive of the proposed amendments.

  The intent of this condition is to ensure a lease holder notifies PIRSA if they become aware of any damage or degradation occurring or being likely to occur to the seabed of the aquaculture lease or outside of the lease area, or the adjacent marine/coastal environment as a result of aquaculture activity associated with the lease. In addition, this condition requires a lessee to notify PIRSA if there is anything that may pose a risk to navigational safety (i.e. lost farming structures or marine debris) from the aquaculture activity associated with the lease. 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 clause 37 in the Final Policy or to recover the marine debris pursuant to section 58 of the Aquaculture Act if they had failed to do so under regulation 12 of the *Aquaculture Regulations 2016* (the Regulations). There are also provisions under clause 28 in the Final Policy, should rehabilitation of the lease area be required (see the supporting Report for further information).

  In response to submissions, the condition in the Final Policy has been expanded (see below, now clause 15) 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 the Final Policy, clause 36. The supporting Report has also been updated to reflect these amendments.

  "Clause 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)."

Clause 15-Notice to Minister

(now clause 16 in the Final Policy)

In regard to clause 15(2)(a), it was suggested that if a lessee is required to provide notice to the Minister under clause 14 then a specific timeframe (e.g. within 24 hours) should be imposed.

- There is no specific timeframe in clause 15(2)(a) as clause 14 itself specifies the notification timeframe, which is 'immediately'. This reporting timeframe is consistent with the Regulations reporting timeframes for other scenarios, and as such the clause has not been altered.

Clause 18-Dealing with lease

(now clause 19 in the Final Policy)

It was suggested that this clause be varied to include that in the decision making process of the Minister when granting a sublease, the grant cannot be 'unreasonably withheld'.

- This is an existing condition and the intent has remained the same. It is up to the discretion of the Minister when deciding whether or not to grant a sublease. In making a decision, the Minister already has an obligation to ensure that it is fair and reasonable based on the circumstances and is in accordance with the Aquaculture Act. The clause has not been amended based on this.

Clause 23-Guarantee or approved scheme

(now clause 24 in the Final Policy)

Concerns were raised about accessing industry approved schemes or Bank Guarantees under this clause for the recovery of outstanding annual lease fees from lease holders.

- This is an existing condition and the intent has remained the same. This includes the entitlement of the Minister to be able to access an approved scheme or Bank Guarantee if the lessee fails to fully and punctually perform **any** of its obligations under the terms and conditions of the lease, and in particular, the obligations of the lessee to rehabilitate the leased area under clause 27 (now clause 29 in the Final Policy). Obligations of a lessee also include the payment of annual lease fees, however it does not include the payment of annual licence fees (these are the responsibility of the licence holder).

  Note that in regard to PIRSA's practice for the recovery of outstanding lease fees, while accessing an approved scheme or Bank Guarantee is an option, other recovery mechanisms are first employed. Outstanding lease fees are first attempted to be recovered through written notices under clause 8 (now clause 9 in the Final Policy), with mandated timeframes imposed and penalties for non-compliance under clause 10 (now clause 11 in the Final Policy). Should a notice not be complied with, the Minister may recover the fees through debt collection services and by action in a court pursuant to regulation 42 of the Regulations, and may also cancel the lease (which would also terminate any corresponding licences) pursuant to clause 12 (now clause 13 in the Final Policy) as the lessee had failed to abide by the conditions of their lease. A lessee may also be directed under section 48A of the Aquaculture Act to pay outstanding lease fees within a specified timeframe, with a maximum penalty of $35,000 for non-compliance. Agreed payment plans are an additional option which PIRSA initially offer to lease holders that may be struggling with the payment of lease fees.

Concerns were raised about the time period to enable a new Bank Guarantee to be provided if it is called upon.

- This time period is consistent with the existing lease condition and the initial timeframe of 5 days to provide a Bank Guarantee upon commencement of a lease under clause 23(1) (now clause 24(1) in the Final Policy). The timeframe provides security to the Minister in the event that further obligations of the lessee are breached (e.g. outstanding lease fees, rehabilitation required). Note that providing a new Bank Guarantee is not the only option under clause 23 for a lessee to choose from as there are other alternatives (e.g. approved scheme by Minister). Further, should the 5 day period not be met, a direction may be issued by the Minister under section 48A of the Aquaculture Act to require the lease holder to comply within an additional timeframe.

Clause 24-Public liability insurance

(now clause 25 in the Final Policy)

A one month timeframe was suggested for lease holders to provide updated public liability insurance if the amount is adjusted by the Minister.

- While the condition does not prescribe a specific timeframe for a lessee to provide the Minister with updated public liability insurance if the amount is adjusted by the Minister, it does prescribe that the Minister must provide the lessee with prior written notice of their intention to vary this amount, including the amount proposed to be adjusted to. This provides flexibility for the lessee and the Minister to determine the appropriate timeframe required for the lessee to obtain the updated public liability insurance amount. Note that this provision is consistent with the previous existing condition.

Clause 25-Navigational marks

(now clause 26 in the Final Policy)

It was recommended that the corresponding licence number be displayed on intertidal navigational marks rather than lease numbers to be consistent with subtidal navigational mark requirements.

- The requirement to install intertidal navigational marks is an existing lease condition, which implies it is the lease holders responsibility, and has always stipulated that the lease number must be displayed. The lease number assists with identification of responsibility of aquaculture sites (e.g. farming infrastructure/stock) under certain scenarios, including for compliance purposes by PIRSA and reporting of debris/damage/stock escape/navigational risks by members of the public. It is a common occurrence though for the lease holder and corresponding licence holder to be different entities, and there may be multiple corresponding licence holders for a single lease (e.g. 10 hectare lease with 10 one hectare corresponding licences). The licence holder is the entity undertaking the aquaculture activity and is responsible for farming infrastructure/stock. Given this, PIRSA has made amendments to subclause 26(8)(d) in the Final Policy to now 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 a subtidal navigational mark has also been modified in the same way. This will provide efficiencies for identification of farming infrastructure/stock, including in the scenarios of debris/damage/stock escape/navigational risks. Should circumstances dictate (e.g. standards of navigational marks change), there is the provision in the Final Policy to amend this condition via Gazette notice (clause 5) and individual leases can have unique conditions which override this condition in the Final Policy to permit alternative navigational marking requirements (see the supporting Report for further information).

Clause 30-Survival of conditions

(now clause 31 in the Final Policy)

It was suggested that it was not clear when the survival of clauses 22, 23, 24 and 25 terminated.

- The intent of this lease condition, as described in the supporting draft Report, was to ensure that lease conditions in sections 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 (i.e. not rehabilitated). The condition was standardised within the Draft Policy for all leases regardless of the prescribed lease type or class and was a new requirement to ensure that the above lease conditions continue to apply to mitigate associated risks.

  Once a former site was confirmed to be rehabilitated, the survival lease condition was intended to cease. To put this beyond any doubt, a deadline for the expiry of this lease condition has been added to the Final Policy, which is until such time as the Minister is satisfied that the leased area has been appropriately rehabilitated as per clause 28(2) in the Final Policy. In addition, clauses 15-Notification to Minister of damage, degradation and risks arising due to aquaculture activity, and 18-Exclusion of liability, have been added to the lease condition in the Final Policy to continue to survive until a former site has been rehabilitated. This will further mitigate risks associated with non-rehabilitated former sites, including risks to the environment, public, and the Minister.

Clause 34-Escape and interaction prevention; Clause 35-Notification to Minister of damage, degradation and risks arising due to aquaculture activity; Clause 36-Degradation or damage to seabed, marine or coastal environment

(now clauses 35, 36 & 37 in Final Policy)

A definition of what constitutes an unacceptable level of degradation or damage was suggested for clauses 35 and 36.

- This condition is based on an existing lease condition which used the same terminology and also provided no definition of what constituted an unacceptable level of degradation or damage in the opinion of the Minister. It is difficult to provide a definition due to the varied nature of potential impacts from aquaculture, therefore it has been left to the discretion of the Minister to determine this. In making a decision the Minister would need to take into account if the activity is being undertaken in an ecologically sustainable manner as per the objects of the Aquaculture Act, and for which there is a definition within the Aquaculture Act. However, an additional subclause (subclause 2) has been added to clause 35 (now clause 36 in the Final Policy) 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.

Further detail was requested surrounding reporting and management of entanglements of wildlife in relation to clauses 34, 35 and 36.

- Subdivision 2 of the Regulations requires marine-based licence holders to submit to PIRSA an aquaculture strategy specifying a strategy for avoiding or minimising adverse impacts on, or adverse interactions with seabirds and large marine vertebrates (defined under the Regulations e.g. whales and dolphins), as well as a response plan for dealing with these events should they occur. This aquaculture strategy must be approved by the Minister. Licence holders must ensure that activities under the licence conform to the aquaculture strategy. A maximum penalty of $10,000 applies should activities not conform.

Clause 34 (now clause 35 in the Final Policy) is an existing licence condition and is intended to ensure that marine-based licence holders take all reasonable and practical measures to prevent adverse interactions with seabirds and large marine vertebrates, as well as the escape of stock, in the event that an aquaculture 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, aquaculture strategy submitted, that strategy assessed and then approved, however this occurs infrequently and the duration is relatively short.

In regard to reporting requirements, regulation 27 requires marine-based licence holders to immediately report entanglements and confinements of protected animals (as defined under the Regulations e.g. white shark) to the Minister, with a penalty and expiation fee applying for non-compliance. Clause 35 (now clause 36 in the Final Policy) is not intended for these reporting purposes as it would be duplication of the Regulations.

Management responses by PIRSA to entanglement and confinement of protected animals, and adverse interactions with seabirds and large marine vertebrates from aquaculture activities under a marine-based licence are dependent on the circumstances of each event. This includes, but not limited to, the species of animal, any injuries to the animal, and the frequency of these types of events from the aquaculture licence holder or aquaculture sector. Management responses by PIRSA to mitigate an immediate risk and any future risks from an event may include: engaging the South Australian Research and Development Institute (SARDI) and other experts in marine entanglements (e.g. officers from the Department for Environment and Water, and the South Australian Museum) to assist in the removal of entanglements; directing the licensee under clause 36 (now clause 37 in the Final Policy) to cease engaging in the activity indefinitely or for a specified period to ensure further damage to the surrounding marine environment (i.e. entanglements of these animals) does not occur; requiring the licensee to amend their aquaculture strategy under regulation 19 and 20 of the Regulations to mitigate further occurrences; declaring a particular class of licensee (e.g. aquaculture sector such as the Oyster Sector) to discontinue or not commence specified farming practices or the use of specified aquaculture equipment, or to undertake specified action in a specified manner in the course of undertaking aquaculture to mitigate further occurrences under regulation 21 of the Regulations; and varying the conditions of marine-based licences under section 52 of the Aquaculture Act to prevent or mitigate significant environmental harm or the risk of significant environmental harm.

Note that there is also other specific legislation that aquaculture activities are required to be compliant with that deal with the protection of wildlife, for example:

(a) The *National Parks and Wildlife Act 1972* provides the legislative framework dealing with native fauna in this State. Most native mammals, reptiles and birds are protected in South Australia. Under the provisions of the Act it is an offence to kill, hunt, catch, restrain, injure, molest or harass a protected animal.

(b) The *Fisheries Management Act 2007* provides the provisions, under section 71 for interactions with marine mammals, in particular killing or injuring of the same. Under the provisions of section 71(1)(a) of the Act, a person must not kill, injure or molest, or cause or permit the killing, injuring or molestation of, a marine mammal. Under the same section of the Act it, is an offence to take protected species, which include White Sharks (*Carcharodon carcharias*).

(c) The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) addresses the protection of matters of national environmental significance (NES). A person must not take action that has, will have or is likely to have a significant impact on a matter of NES. Sections (iv) and (v) of the nine triggers of NES for Commonwealth assessment and approval of the EPBC Act are:

(iv) The protection and wellbeing of Nationally Threatened Species and Communities listed under the EPBC Act.

(v) The protection and wellbeing of Listed Migratory species listed under the EPBC Act.

Any action, including that of aquaculture must abide by the EPBC Act. If that action is to significantly impact on species falling within these categories, it must be assessed by the Commonwealth and approved by the Minister before operation.

Further detail was requested surrounding reporting and management of marine debris in relation to clauses 34, 35 and 36, including rehabilitation requirements.

- In relation to mitigating marine debris, subdivision 2 of the Regulations requires marine-based licence holders to submit to PIRSA an aquaculture strategy specifying a strategy for: maintaining farming structures and other aquaculture equipment; avoiding or minimising adverse impacts on, or adverse interactions with seabirds and large marine vertebrates (defined under the Regulations e.g. whales and dolphins); and inspections or monitoring by the licensee of the licence area. This aquaculture strategy must be approved by the Minister. Licence holders must ensure that activities under the licence conform to the aquaculture strategy. A maximum penalty of $10,000 applies should activities not conform.

  Clause 34 (now clause 35 in the Final Policy) is an existing licence condition and is intended to ensure that marine-based licence holders take all reasonable and practical measures to prevent adverse interactions with seabirds and large marine vertebrates (which would include mitigating marine debris), as well as the escape of stock, in the event that an aquaculture 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, aquaculture strategy submitted, that strategy assessed and then approved, however this occurs infrequently and the duration is relatively short.

  In addition, there are other requirements for licensee's under the Regulations for mitigating (regulation 11, 24(b), 25(b)(ii)) and recovery of marine debris (regulation 12) with penalty and expiation fees applying for non-compliance.

  In regard to reporting requirements, clause 35 (now clause 36 in the Final Policy) requires marine-based licence holders to immediately report to PIRSA if they become aware of anything (including marine debris) 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 or marine debris).

  Management responses by PIRSA to marine debris from aquaculture activities under a marine-based licence are dependent on the circumstances of each event. This includes, but not limited to, the type and amount of debris, the frequency of these types of events from the aquaculture licence holder or aquaculture sector, the cause of the debris, and the resulting risks and any impacts from the debris to the marine environment and mariners. Management responses by PIRSA to mitigate an immediate risk and any future risks from an event may include: requesting the Department for Infrastructure and Transport to issue a notice to mariners; directing the licence holder to recover marine debris pursuant to section 58 of the Aquaculture Act if they had failed to do so under regulation 12 of the Regulations; PIRSA undertaking the recovery of marine debris through Fisheries Officers or contractors if the licensee had failed to do so under a direction issued pursuant to section 58 of the Aquaculture Act and recovering the cost, as a debt, from the licensee; directing the licensee under clause 36 (now clause 37 in the Final Policy) to cease engaging in the activity indefinitely or for a specified period to ensure further damage to the surrounding marine environment (i.e. marine debris) does not occur; requiring the licensee to amend their aquaculture strategy under regulation 19 and 20 of the Regulations to mitigate further occurrences; declaring a particular class

of licensee (e.g. aquaculture sector such as the Oyster Sector) to discontinue or not commence specified farming practices or the use of specified aquaculture equipment, or to undertake specified action in a specified manner in the course of undertaking aquaculture to mitigate further occurrences under regulation 21 of the Regulations; and varying the conditions of marine-based licences under section 52 of the Aquaculture Act to prevent or mitigate significant environmental harm or the risk of significant environmental harm. There are also provisions under clause 28 in the Final Policy, should rehabilitation of the lease area be required in regard to marine debris (see the supporting Report for further information).

Clause 39-Max Mussel Biomass

(now clause 40 in the Final Policy)

It was suggested that total length of surface backbone should not be used to regulate mussel maximum biomass, but rather only total length of submerged longline.

- As the condition wording for the maximum permitted length of submerged longline includes reference to and is linked with the length of surface backbone, both infrastructure limits must be included in the condition to effectively restrict and monitor (i.e. more efficient to monitor surface structures rather than submerged structures) maximum mussel biomass for licences. Further, this is an existing condition and the intent has remained the same.

Clause 40-Maximum biomass-oyster

(now clauses 41 and 42 in Final Policy)

It was commented that this condition does not relate to biomass of oysters, is not evidence based, hinders innovation and best practice, and is too complicated.

- The condition relates directly to biomass of oysters as it limits the amount of farming structures (i.e. length of longline and railing) permitted per hectare, which culture units containing oysters are attached to. Similar conditions are used in other jurisdictions to regulate oyster aquaculture biomass, and the limits are based on a mixture of historical farming practices, consultation with the oyster industry sector, and available research, including research undertaken by SARDI (see section 1.40 and 1.42 in the supporting Report for further information).

  There is flexibility built into the Final Policy to amend this condition via Gazette notice (clause 5) and individual licences can have unique conditions which override maximum biomass clauses in the Final Policy, therefore providing for innovation in farming practices. Any future amendments to the Policy or unique conditions on licences would need to be justified (i.e. evidence based), including through provision of scientific research such as an environmental monitoring program.

  The conditions contained within the Final Policy have been reviewed in conjunction with the Office of Parliamentary Council to make them as simple as possible, which is a key objective for creating this Policy. However, it is acknowledged that some conditions may still be difficult for stakeholders to interpret. To improve understanding of the Policy the supporting Report provides detailed information for each clause, and will continue to be available on the PIRSA website. In addition, PIRSA intends to implement the Policy in a way that ensures a smooth transition for all members of the aquaculture industry. Further, PIRSA intends to develop an aquaculture industry 'user guide' to highlight and explain in a condensed manner key obligations of aquaculture lease and licence holders in relation to aquaculture legislation, including the Aquaculture Act, Regulations and lease and licence conditions.

It was suggested that clause 40(6)(a) and (b) (now clause 41(3)(a) and (b) in the Final Policy) should not apply to 'double hanging' spat bags.

- It was not considered appropriate to permit 'double hanging' of spat bags due to the unknown potential impacts of this farming method to the environment (e.g. shading of seagrass), the fact that PIRSA has not previously assessed and approved this farming method, and there were submissions both for and against this farming method. Further, should future circumstances dictate (e.g. scientific research) that this is an acceptable farming method, there is the provision in the Final Policy to amend this condition via Gazette notice (clause 5) and individual licences can have unique conditions which override this clause in the Final Policy to permit the farming method.

Basket numbers were suggested as an alternative method to regulate oyster maximum biomass limits, which could be monitored through an electronic stock register recording culture unit (i.e. basket) numbers.

- The measures of length of longline and railing were used in the Draft Policy as they are existing standard conditions on licences for oyster maximum biomass limits and can be efficiently measured by PIRSA for compliance purposes. The number of culture units (i.e. baskets) was not standardised in the Final Policy as it is not a standard condition across the majority of licences and farming areas, there are a number of different culture unit designs which hold different amounts of oysters, and counting baskets in-situ is not considered an efficient method for compliance purposes by PIRSA. However, there is provision in the Final Policy to amend clauses 41 and 42 via Gazette notice in the future (clause 5) and individual licences can have unique conditions which override these clauses to permit different measures for quantifying oyster maximum biomass limits (see section 1.40 and 1.42 in the supporting Report for further information; note any amendments or unique conditions would need to be appropriately justified).

  While advances in technology such as electronic stock registers recording culture unit (i.e. basket) numbers could be used to regulate oyster maximum biomass limits for compliance purposes, it would require approval from PIRSA with certain conditions for its use. This includes all licence holders adopting this technology and permitting PIRSA access to the data with confidentiality provisions. In addition, it would still require counting of baskets in-situ by PIRSA to independently validate electronic reporting, which as mentioned above is not considered an efficient method for compliance purposes. There are already requirements for licence holders to maintain a stock register under regulation 15 of the Regulations, and as such the Regulations are the appropriate legislative mechanism to permit this proposal rather than standard conditions of licences. Therefore, an electronic stock register has been deemed outside the scope of the Draft Policy.

It was suggested that oyster maximum biomass limits (i.e. length of contained longline and railing) should be higher in the Coffin Bay aquaculture zones to mitigate negative economic impacts to the oyster aquaculture industry.

It was commented that oyster maximum biomass limits should be re-evaluated by PIRSA for each growing region based on the productivity of that region.

- While it is commonly known that oyster aquaculture productivity differs between growing regions, including Coffin Bay which is considered to be the most productive for oyster aquaculture in the State, there is limited scientific data currently available to validate maximum carrying capacity for oysters within these areas. This information would in turn influence oyster maximum biomass limits and the amount of hectares available for oyster aquaculture within aquaculture zones. Therefore, a conservative approach to oyster maximum biomass limits 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. Should justification be provided, there is provision in the Final Policy to amend clauses 41 and 42 via Gazette notice in the future (clause 5)

and individual licences can have unique conditions which override these clauses to permit different oyster maximum biomass limits (see section 1.40 and 1.42 in the supporting Report for further information).

Oyster maximum biomass limit licence conditions contained within the Final Policy have been standardised and are specific for each growing region. For the most part, the licence conditions aim to maintain the status quo of existing limits as they are currently applied to licences within each growing region. However, for the Coffin Bay growing region licence conditions relating to oyster maximum biomass limits have been 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 acknowledges the higher productivity levels within the region, takes into consideration the farming structures developed by oyster licence holders, reduces confusion and improves equity caused by historical inconsistent application of licence conditions, will minimise the need for growers to remove infrastructure, and assists compliance of oyster growers with licence conditions in the future (see section 1.40 and 1.42 in the supporting Report for further information). PIRSA intends to implement the Policy in a way that ensures a smooth transition for all members of the aquaculture industry.

The oyster farming method of ZAPCO was suggested to be standardised within the Policy in relation to oyster maximum biomass limit licence conditions.

- The oyster farming method of ZAPCO has not been standardised in relation to oyster maximum biomass limit licence conditions within the Final Policy as it is a relatively new farming method and is not a standard farming practice used across the industry. This is also the case for other recent innovations in farming design, such as "flip-farming". Potential environmental and industry impacts, in particular to seagrass from shading and to productivity, from licences which are currently authorised to use alternative farming methods (e.g. ZAPCO) are still being assessed by PIRSA through licence monitoring programs. The Final Policy still provides for these licences to continue to use alternative farming methods (e.g. ZAPCO), as well as other licences, as individual licences can (and will) have unique conditions which override clauses in the Final Policy to permit different farming methods (see section 1.40 and 1.42 in the supporting Report for further information). In addition, should an alternative farming method be deemed by PIRSA as a standard farming practice in the future, clauses 41 and 42 in the Final Policy can be varied via Gazette notice (clause 5) to permit the use of alternative farming methods across all licences within specific growing regions or all regions.

It was requested that culture units (i.e. baskets and spat trays) be permitted to be hung perpendicular between two contained longlines, in particular for holding certain sizes of oyster spat.

- In addition to culture units (e.g. baskets, spat trays) being hung sequentially along a contained longline, the farming method has been designed to also allow culture units 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. However, this type of farming method will also alter the swinging motion of baskets and increases the shading footprint of culture units, 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 will be hung sequentially along a single contained longline. Subclause 40(6)(c) was proposed in the Draft Policy to further strengthen this requirement to mitigate potential shading impacts to seagrass.

  Submissions from the oyster industry identified that this subclause would have significant negative impacts to their farming operations, as perpendicular hanging was crucial for farming in certain regions

due to oceanographic conditions and for certain oyster size classes development (i.e. spat). In regard to perpendicular hanging culture units containing spat, the oyster industry advised that this practice is for relatively short periods of time over a year, there is spacing between culture units, and the number of culture units used in this manner on a site is negligible compared to sequentially hung culture units along contained longline for the majority of a site.

Following further consultation with the oyster industry, including the South Australian Oyster Grower's Association, amendments were made to the Final Policy as a compromise to permit perpendicular hanging but also to mitigate shading impacts to seagrass. Specifically, subclause 41(3)(c)(i) was added to the Final Policy to prohibit perpendicular hanging of culture units (e.g. baskets and spat trays) between two parallel longlines, 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 likely identified on the licence site during PIRSA's licence assessment process for the initial licence application at that location.

Further consultation with the oyster industry sector identified that while the proposed subclause catered for the majority of licence holders who undertake perpendicular hanging of culture units containing spat (i.e. permits them to do this activity), there were a small number of growers for which it did not (i.e. do not have contained racks as a permitted farming method on their licence). Taking into consideration oyster industry sector consultation regarding this practice, subclause 41(3)(c)(ii) has been added to the Final Policy. This new subclause allows 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 to the Final Policy, 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 the Final Policy 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 condition in the Final Policy 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 environmental monitoring program) to mitigate potential impacts from this farming method. In addition, should justification be provided in the future (e.g. scientific research), clause 41 in the Final Policy can be amended via Gazette notice (clause 5) to vary the licence condition restrictions surrounding perpendicular hanging for all licence holders in a growing regions or all regions.

Note that there are also overstocking risks associated with hanging culture units perpendicular between two parallel longlines. To mitigate potential overstocking risks, subclause (5) has been added to condition 42 in the Final Policy to prescribe a maximum amount of this farming method able to be used per hectare on a licensed site. As this farming method more so mirrors the contained rack and railing type of oyster

farming method, the maximum oyster biomass limit for perpendicular hanging is the same i.e. the length of parallel longline between which culture units are hung perpendicular must not exceed 1 km per hectare. Further, the existing subclause 40(5) in the Draft Policy (now subclause 42(6) in the Final Policy) 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. By limiting the per hectare amount of this type of farming infrastructure, potential impacts to the seabed, including any underlying seagrass, will also be further minimised. These conditions in the Final Policy can also be varied in the future by Gazette notice (clause 5), and individual licences can have unique licence conditions which override this part of the Final Policy (note any amendments or unique conditions would need to be appropriately justified; see section 1.40 and 1.42 in the supporting Report for further information).

Clause 41-Oyster farming-securing baskets

There was concern that this condition hindered innovation and plastics were a pollution problem.

- This is an existing licence condition and the intent has remained the same. The condition provides for innovation and the use of alternative materials to plastics, such as steel shark clips which are already approved, through a Ministerial approval process. This approval process includes prior assessment and recommendations of devices proposed for use by industry through a stakeholder working group, which includes representatives from PIRSA, the Oyster Sector, the Department for Environment and Water, and the EPA. A report containing a number of approved devices submitted by industry has previously been provided to oyster licence holders by the Minister, and any future proposed devices would need to be assessed through a similar process. A list of current approved devices can be found on the PIRSA website.


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