



AQUACULTURE

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Western Australia has a growing aquaculture industry driven by an expanding market for seafood consumption, both domestically and internationally. The profile of aquaculture in Western Australia has risen with the increasing exploitation of terrestrial aquaculture in the south west, as well as along the coastline. Aquaculture operations have the potential to cause a range of environmental impacts, including pollution, damage to ecosystems, adverse interactions with wildlife, and spread of diseases.

This factsheet looks at the laws relating to marine and inland aquaculture projects in Western Australia. Currently, aquaculture is legislated under the Fish Resources Management Act. Industry has been pushing for separate legislation dealing specifically with aquaculture. The Minister for Fisheries has set 2008 for a review of whether this is necessary. In the interim, amendments to the current legislation are to be implemented.

What is aquaculture?

“Aquaculture” means the keeping, breeding, hatching or culturing of fish. Fish used for aquaculture include non-pearl oysters, mussels, yabbies, marron, crayfish, abalone, prawns, freshwater and marine finfish, trochus and algae for beta carotene (ie any marine organism other than reptiles, birds and mammals). Note: the Fish Resources Management Act does not include pearl oysters, which are regulated under the *Pearling Act* and not considered in this factsheet.

Who regulates aquaculture?

Aquaculture is primarily regulated under the *Fish Resources Management Act 1994*, administered by the Department of Fisheries. The Aquaculture Development Council advises the Minister for Fisheries about aquaculture.

A new Aquaculture Development Group Board is to take over the duties of the Aquaculture Development Council, working concurrently until the Council is phased out.

Approval to engage in aquaculture

When is an aquaculture licence required?

Subject to the exemptions below, a person must have an aquaculture licence to

- engage in aquaculture
- sell fish, or take fish for the purpose of sale, from waters on private land
- receive or purchase fish taken from private land for the purpose of sale.

The penalty for engaging in aquaculture without a licence is a maximum fine of up to \$20,000 for a body corporate and up to \$10,000 for an individual.

Exceptions

You do not require an aquaculture licence if you

- keep or breed fish for any of the following purposes
 - non-commercial purposes
 - display or ornamental purposes (excluding marron)
 - display or ornamental purposes in retail establishments
 - display in a public aquarium or oceanarium
- keep fish for the purpose of processing in accordance with a fish processor's licence
- keep fish at a restaurant for the purpose of serving it as a meal to the public
- sell any prescribed fish (yabbie, koonac, gilgie or black bream) taken from a dam or lake on your land to a person who holds an aquaculture licence, provided the land is within a prescribed area (check with the Department of Fisheries for current details).

How is a licence granted?

In considering whether or not to grant an aquaculture licence, the CEO of the Department of Fisheries must take into account whether

- the applicant is a fit and proper person to hold a licence
- issuing the licence is in the better interests of the aquaculture industry
- issuing the licence would adversely affect other fish or the aquatic environment

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- the activities have been approved by other relevant authorities.

The licence will not be issued in relation to

- an area of a marine nature reserve
- an area of a marine park that is classified as a sanctuary, recreational area or special purposes area
- an area of marine management.

What conditions can be placed on a licence?

There are a number of standard conditions that are included on all aquaculture licences. These conditions include (but are not limited to)

- ensuring that fish sold under the licence authority are packed in the manner specified by the Executive Director
- ensuring the sale of marron is comprehensively documented
- requiring the licenceholder to notify the Department of Fisheries within 24 hours of becoming aware (or suspecting) that fish may be affected by an enzootic disease, or any disease or condition that the licence holder cannot identify
- requiring the licenceholder to take all reasonable precautions to prevent the spread of any disease – including no discharge of water into any natural waterway and no removal of the suspected fish without the consent of the Executive Director.

The Executive Director may set additional conditions on a particular licence. These conditions may be drawn from the Department of Fisheries’ Set of Standard Conditions or from the recommendations of the Department of Environment and Conservation (DEC).

Who can object to a licence?

An objection to the proposed grant of an aquaculture licence can only be made by affected persons and must be made within 21 days of public notification of the proposed decision. “Affected persons” are the existing holders of an aquaculture licence likely to be affected by the grant of a licence.

Are details of aquaculture licences available to the public?

The Fisheries’ Licence Register can be inspected at the Department of Fisheries’ Perth office, or undertaken by correspondence. There is a fee. The Register must include information about the licenceholder, the fish that the licence holder is authorised to keep, and the licence conditions.

What is the penalty for breaching a licence condition?

It is an offence to breach a condition of an aquaculture licence. The maximum penalty is a fine of up to \$20,000 for a body corporate.

In addition to a fine, the Executive Director may cancel, suspend or not renew a licence. Fisheries officers (and other authorised personnel) may issue an infringement notice against a person who is reasonably

believed to have committed an offence under the Fish Resources Management Act.

What species of fish can be used in an aquaculture project?

Any fish can be used in an aquaculture operation except fish declared to be “noxious”. Keeping or breeding a noxious fish in a prohibited area is an offence, the maximum penalty for which is a fine up to \$40,000.

Aquaculture licences can allow for ‘translocated fish’ – fish that are not endemic to that part of the State – to be used in aquaculture operations. Aquaculture licences can also allow for fish species that are otherwise “protected” from commercial fishing to be bred and harvested.

Where can aquaculture be undertaken?

See above for where aquaculture can be undertaken without a licence.

Private land and waters

Private land and waters can be used for commercial aquaculture where

- the activity is approved by the owner of that land or those waters
- the person holds an aquaculture licence
- the activity complies with any other laws relating to the use, development or management of that land or those waters – including local planning controls, pollution controls, and restrictions on interfering with a watercourse or public water supply area.

Crown land and waters

It is an offence to undertake aquaculture activities on Crown land or waters without authority. This generally means that you will need the approval of the body responsible for managing that land or waters before commencing operations. Before granting consent, the management body will need to consider whether the project is consistent with the purpose of the land. For further information on the laws applying to the use of Crown land and waters, refer to **Fact Sheet 12: Crown land management**.

Aquaculture in marine parks and marine nature reserves

Aquaculture licences cannot be granted within

- a marine nature reserve, or
- a marine park aquaculture-free zone.

An aquaculture licence may be lawfully issued by the Department of Fisheries with the approval of the Environment Minister in a

- marine park (other than in an aquaculture-free zone) when it is not designated as a sanctuary, recreational area or special purposes area, or
- marine management area.

Other conservation areas

Generally, aquaculture proposals on land or waters managed by the DEC will not be permitted where the project

- will have an adverse impact on an environmentally significant factor that the reservation of the land or water was intended to preserve
- will affect the aesthetic values, flora, fauna, air, water, soil or other aspects of the environment of conservation reserves or terrestrial national parks
- is inconsistent with a marine park zoning and management plan.

Pastoral leases

A diversification permit for aquaculture must be obtained from the Pastoral Lands Board before an aquaculture licence can be granted. When granting permits, the Board must ensure that pastoral leases are managed on an ecologically sustainable basis and satisfy any written law relating to environmental conservation.

Aquaculture leases

The Minister for Fisheries may grant an aquaculture lease over

- land vested in the Minister for the purpose of aquaculture
- any coastal waters.

An aquaculture lease gives the leaseholder

- the exclusive right to
 - (i) keep, breed, hatch and culture the fish within the leased area
 - (ii) take the species of fish from the leased area
- the ownership of all fish in the leased area as specified in the lease.

A person who holds a lease will still need an aquaculture licence to engage in aquaculture. The purpose of the lease is to provide operators with a secure interest in a defined area.

Future amendments to the current legislation will allow for subdivision, sub-letting, consolidation and the transfer of leases. Three-month emergency aquaculture leases will also be able to be set up.

Zoning

New aquaculture zoning provisions are to be implemented. An environmental reference group will be established to work with industry and the Aquaculture Development Group to develop guidelines on sustainability.

Does native title impact on licence applications?

A native titleholder was previously an “affected person” for the purposes of objecting to the grant or change of an aquaculture licence under the Fish Resources Management Act. This section of the Act has now been repealed, so native title holders no longer have standing

before the State Administrative Tribunal for disputing any applications or grants of aquaculture licenses.

What other approvals are required?

Licences and works approval

A works approval and licence is required from the DEC for the following types of aquaculture proposals:

- where more than 1000kg of fish are fed in artificial ponds or tanks, and waste from the tanks or ponds is discharged into waters or onto other land
- where fish or prawns are raised in any enclosures in natural waters where supplementary feeding occurs.

The DEC and the Department of Fisheries publish guidelines on aquaculture projects, both generally and in relation to specific areas and species. Each specific location and proposed species will have its own environmental factors that need to be considered.

Failure to obtain a works approval and licence when required is an offence. It is also an offence to cause pollution or environmental harm. For more information, see **Fact Sheet 29A: Pollution**.

The need for licences and works approvals from DEC is currently being reviewed. The current policy is to aim for the Department of Fisheries licensing system to address these concerns.

Environmental impact assessment

Aquaculture projects that might have a significant effect on the environment must be referred by a decision-maker to the Environmental Protection Authority (EPA) for environmental impact assessment. Once a referral is made, a decision-maker cannot approve an aquaculture proposal until the EPA process has been completed – see **Fact Sheet 4: Environmental impact assessment in WA**.

See below for environmental impact assessment at the Commonwealth level.

Development approval

Development approval may be required under a local town planning scheme or a region scheme. Not all local governments will have specific planning scheme controls for aquaculture operations. However, it is likely that general development controls will include aquaculture, and thereby require development approval under a town planning scheme. There are significant financial penalties for development undertaken without approval.

Local government planning laws do not usually include beach foreshore below the high water mark, so aquaculture projects in marine waters may not require planning approval from local government. Check with the relevant local government to see whether its planning scheme applies to particular land or waters.

Interference with rivers, wetlands and groundwater

Approval, licensing and/or advice may be required from the Department of Water (DOW) if the aquaculture project might cause pollution or damage to a watercourse, wetland or underground water resource.

For more information on the laws that may apply, see **Fact Sheet 23: Rivers and watercourses**.

Special controls under Commonwealth legislation

The Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) regulates the assessment and approval of activities which may have a significant impact on a “matter of national environmental significance”. For example, the Commonwealth marine area (roughly the area between three nautical miles and 200 nautical miles from the coast) is a “matter of national environmental significance” and is therefore subject to the controls under the EPBC Act – see **Fact Sheet 5: Commonwealth environmental impact assessment**. Threatened or endangered marine species listed under the EPBC Act is also a matter of national environmental significance.

Boats and jetties used for aquaculture

A jetty licence will be required from the Department for Planning and Infrastructure for any aquaculture that requires a jetty. Rafts, rigs or moored facilities in a mooring controlled area also require approval.



Where can I find out more?

- Boulter, S. Aquaculture in Western Australia in Coast Law of Western Australia. Boulter, S. (Ed) EDO WA Inc., 2003
- www.edowa.org.au
- All Fisheries’ orders, regulations or management plans must be made available at head office in business hours. Department of Fisheries www.wa.gov.au/westfish/aqua
- Department of Environment and Conservation, www.dec.wa.gov.au
- Department of Water www.water.wa.gov.au