



**ENVIRONMENTAL STAKEHOLDER ADVISORY GROUP**

**ACWA SUBMISSION**

**November 2009**

## **ABOUT ACWA**

The Aquaculture Council of Western Australia (ACWA) is the State's peak aquaculture industry body.

ACWA's membership represents over 80% of both the current and future gross value of production of Western Australian aquaculture industry, and consists of Institutions, Corporations, Aquaculture Sector Associations and individual members. Most members are private businesses, all of which undertake their business in all regions of Western Australia.

## **Introduction**

The Aquaculture Council of Western Australia would like to thank the Environmental Stakeholder Advisory Group (ESAG) for the opportunity to provide input on issues that have impacted on the aquaculture industry. The WA aquaculture industry is keen to participate, and contribute, to the continual improvement of the Environmental Impact assessment process.

The inefficiencies in any regulatory and policy arrangements have the following effects on the industry.

1. There is significant reduction in the ability of existing firms, to
  - Expand
  - Develop new product lines
  - Obtain financing
  - attract investment;
  - Minimise costs; and
  - At times, defend the reputation of their products.
2. Expansion of aquaculture production is impeded because of delays in approval of new growing areas, which results in missed opportunities for economic activity and job creation.
3. The uncertain regulatory and policy environment has impacts on government ability to meet its obligations in terms of prioritising resource use; and carrying out operational duties.

ACWA's submission is presented without prejudice, with the overriding objective to design a minimally effective regulatory regime that will facilitate a world class aquaculture industry in Western Australia. ACWA utilised the following principles to make its submission:

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1. **Industry development** – that public policy will enable investment and enterprise development.
2. **Certainty** – for industry and the community. The basis for a competitive and sustainable industry in Western Australia which can generate significant investment and employment opportunities.

3. **Adaptive Management** - that the policy is supported by effective monitoring, review and appropriate management responses in order to improve performance against the objectives after each period of review t
4. **Transparency** – for all stakeholders. A regulatory regime which delivers clear lines of decision making and responsibility, and which is open, affective and efficient.
5. **Accountability** – of government and industry. A regulatory regime that ensures clear, effective and enforceable lines of accountability, which do not place undue burdens on industry.
6. **Streamlined** – creating an efficient and timely regime through greater coordination.
7. **Anticipatory** – placing the emphasis on early planning and coordination to prevent or mitigate problems before they occur;
8. **Integrating and complementary** - ensuring that environmental management and decision-making responsibilities are consistent and mutually reinforcing; and
9. **Parity** - The need to achieve equivalence with other jurisdictions and water users.

ACWA recommends that the ESAG take into consideration the Keating review, in particular the following recommendations: 1,2,3,7,9,10,11,18,19,22, 24, 47, 50, and the Productivity Commission Research Paper “*Assessing Environmental Regulatory Arrangements for Aquaculture*” and incorporate the Aquaculture Committee’s benchmarking program.

Under the current Environmental Impact Assessment (EIA) process, the EPA has set the following levels of assessment on WA aquaculture projects. See attachment 1 for detail.

<b>EPA Level of Assessment</b>	<b>Numbers</b>
Not Assessed – Public Advice Given - Managed Under Part V Of EP Act	6
<i>Assessment On Referral Information (ARI);</i>	1
<i>Proposal Unlikely To Be Environmentally Acceptable (PUEA);</i>	0
<i>Environmental Protection Statement (EPS);</i>	0
Public Environmental Review (PER)	5
Environmental Review And Management Program (ERMP)	0
Public Inquiry	0
Appeals	2

Aquaculture projects that were assessed experience undue delays in the processing of their applications. This is appears to be due to the following factors:

- a low priority being given by the EPA service unit to the processing and assessment of aquaculture projects, as a consequence of the current assessment demand from the resource sector;
- relatively naïve EPA service unit and DEC licensing teams, when compared to their experience in undertaking industrial and property development assessments, due to the infrequency with which aquaculture projects are assessed by the EPA; and
- Limited understanding the Department of Fisheries aquaculture licensing process is a planning or zoning process for the purpose of pearling or aquaculture (Ref: Ministerial Policy Guideline No. 8. *Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia* <http://www.fish.wa.gov.au/docs/mp/mpg008/fmpg008.pdf>)

The above factors, combined with the complexities of the EIA process, which enable additional advice/evidence through Appeals convenor or the Ministerial condition stages (see case study below), have resulted in poor outcomes for the WA aquaculture industry, highlighting the need for the following systemic reform:.

**Case Study:** Marine Produce Australia

**EPA level of Assessment** – Public Environmental Review

**Advice-** provided by the DEC, EPA Services and Assessment unit. The environmental conditions were agreed by the Unit and the proponent.

**Advice** - The DEC, EPA Services and Assessment unit, at the Ministerial condition stage, post an appeal, tried to re-negotiate the environmental conditions, placing new prescriptive measures on the company, despite the risk being managed. The appeal was dismissed and the EPA's advice on conditions upheld– Appeal No. 2008-222.

It is noteworthy that the Department of Fisheries provided detailed advice to the EPA, prior to the setting of proposed environmental conditions. Prime facie, this advice appears to have not been fully considered until it was re-issued by the Minister for Fisheries at the Ministerial Condition setting stage.

### Systemic Reform

The three platforms of systemic reform that will create certainty in the environmental approval process for aquaculture, are as follows:

Deregulation of aquaculture as a prescribed premise under Part V of the EP Act	<i>to be completed December 2009</i>
Memorandum of Understanding with the EPA and DoF under EP Act, regarding referral guidelines.	<i>to be completed June 2010</i>
Developing assessed schemes for aquaculture development zones (See Appendix 1 for notes)	<i>Proposed. This requires law reform</i>

The above reforms will allow the development of integrated management framework for aquaculture development, and remedy the symptoms of the current approval system.

### Higher Level Reforms

At a higher level, marine based industries would also benefit from the following:

1. Marine Planning Policy framework (Appendix 1 for notes);
2. Completion of the State Water marine parks and reserve plans; and
3. Statutory timeframes for EPA assessment (See Appendix 1 for notes); and
4. Legislation for continuous improvement practices (See Appendix 1 for notes).

## APPENDIX 1 – NOTES

### **Developing assessed schemes for aquaculture development zones**

ACWA seeks gazettal of aquaculture development sites on land and coastal waters.

There is genuine need for forward planning for development sites that simplifies site access and gains pre-approvals for operators<sup>1</sup>. Aquaculture, is a small user of the finite resources, such as land and water<sup>2</sup>, and provides significant regional development and return on allocation per unit area.

There is considerable competition for the use of public waters among various groups. Integrated coastal zone management (ICZM) is one means whereby long term, balance decisions could be made on the use of coastal and open seas, including use for aquaculture and enhancement purposes. The timeframe for implementation of an effective mechanism for ICZM, however, is lengthy. To meet current need for the aquaculture industry, waiting for a system of coastal zone management to be implemented is not acceptable.

It is on this basis, the government needs to utilize existing legislation that caters for the establishment of aquaculture development zones.

### **Regional Marine Planning Policy**

The lack of planning has acted as disincentive to investment in marine based activities. There is, therefore, a case to provide a State policy basis for marine planning.

For aquaculture development to work, the State will need to develop a Regional Marine Planning policy to provide a framework for the consistent and appropriate zoning of marine areas. The purpose of the zones will be to protect identified biodiversity and/or socio-economic values as well as to give effect to the allocation of marine resources between users.

Zoning will need to involve an assessment of risk to identified values in the area of interest. After Regional Marine Plans have been developed they shall be given statutory effect and will bind the Crown.

Regional marine planning should ideally be underpinned by targeted strategic science.

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<sup>1</sup> This links with Lendich recommendations 1, 10 & 11 and Keating Review recommendation No.47 that states Government should undertake strategic planning for development sites on a regional basis. Government should encourage development projects and industries to locate where there are fewer environmental and social constraints by the greater use of strategic level EPA assessments, strategic planning for industrial estates, and regional environmental management plans. These plans should be made available to potential developers as a basis for development so that developers could expect approval so long as their proposal complied with the plans. This planning should be undertaken within the State Sustainability Strategy framework.

<sup>2</sup> Currently, only 0.00092 of the coast is licenced for coastal and marine aquaculture, with a potential annual GVP \$200 million.

## Statutory Timeframes

Legal reform is required to create absolute certainty in the approval process. This can only be achieved through the introduction of statutory timeframes.

### Background

There is a strong market signal for aquaculture in Western Australia, the EPA and DEC needs, as a matter of public interest, to prepare systems that will allow decision making over a reasonable period of time and create certainty.

These delays place aquaculture projects at risk, as the capitalization of aquaculture businesses are geared for assessments being made over a reasonable period, but not the lengthy delays being experienced.

Historically, the regulation and policy that has governed aquaculture has not been the only impediment to development, but rather the speed in which they are administered<sup>3</sup> (see also Appendix 1 for summary of further case histories). These time delays do not serve the applicant, or the public good. It is on this basis, there is a need for the implementation of mechanism(s) that improve accountability.

Pilot commercial scale aquaculture take years to get their pilot scale projects to start line. This significant opportunity cost to the State, the business and the capital invested, and is not commensurate with the risk of the projects of this scale. The primary reason for the delays is a direct consequence of the environmental approvals process. This is despite the productivity commission report, Keating review and the EPA approval process reform. (See Appendices 1: for two case histories)

## Legislate for Continuous Improvement practices.

There is a need to include the following section that details the Efficient Administrative practices, in Fisheries Resource Management Act and other statutes

### *New Section: Efficient administrative practices*

(1) The Minister and other [relevant Ministers](#) are to endeavour to ensure that practices are established to integrate and expedite administrative processes under [this Act](#) and other Acts so far as is practicable for the efficient and effective regulation of the fishing and aquaculture industry.

(2) Directions may be given by a [relevant Minister](#) for the purposes of subsection (1) that will be binding (according to their terms) on a body or persons engaged in the administration of an Act for which the [relevant Minister](#) has responsibility.

(3) However, this section is not to be taken to authorise a direction that would be inconsistent with a provision of this or another Act or that would govern the nature of a decision that may be made under an Act (as distinct from the processes leading up to the making of a decision).

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<sup>3</sup> *Case Aquaculture leases.*

An example of the delays encountered with the issuing of aquaculture leases. To date, the industry has waited 6 years since gazettal of the FRMA amendments that enable leases to be issued. This degree of slippage in timeframes is an impediment to development, and places in to question the government's commitment to aquaculture industry development. For other examples please refer to Appendix 2.

(4) In this section— "relevant Minister" means a Minister responsible for the administration of an Act that has application in relation to fishing and aquaculture.

	Western King Fish	Latitue Fisheries Pty Ltd	Maxima Pearling Pty Ltd	Maxima Fish Farms Pty Ltd	MG Kailis Tuna Pty Ltd	Lake Argyle	MahiMahi Aquaculture	Global Barramundi	MPA	Cape Sea Farms	Kimberley Prawn Company	SIFT
Date		8/9/2003	4 June 2006 19.5.2008	17 Oct 2005	25 April 2009		3 Feb 2003	18 Feb 2008				
Assessment No.	N/A	1109	1305	1598	N/A							
EPA level of assessment	Not assessed	ASSESSMENT ON REFERRAL INFORMATION	NOT ASSESSED - PUBLIC ADVICE GIVEN AND MANAGED UNDER PART V OF EP ACT (Works Approval)  PUBLIC ENVIRONMENTAL REVIEW	PUBLIC ENVIRONMENTAL REVIEW	PUBLIC ENVIRONMENTAL REVIEW		NOT ASSESSED - PUBLIC ADVICE GIVEN - MANAGED UNDER PART V OF EP ACT (Requires works approval and/or licence)	NOT ASSESSED - PUBLIC ADVICE GIVEN AND MANAGED UNDER PART V OF EP ACT (Works Approval)	NOT ASSESSED - PUBLIC ADVICE GIVEN AND MANAGED UNDER PART V OF EP ACT (Works Approval)	PUBLIC ENVIRONMENTAL REVIEW	PUBLIC ENVIRONMENTAL REVIEW	NOT ASSESSED - PUBLIC ADVICE GIVEN - MANAGED UNDER PART V OF EP ACT (Works Approval)
Appeal	Yes 2007-52	No	Yes 2008-222		Yes 2005-68 to 77 2005-69				Yes 2005-270			
Appeal Status	Dismissed	N/A	Dismissed									
Appeal Lodged												
Appeal Decision	26/9/2007		15/4/2009									
Scale	200t	200t	150t & 1000t	& 1000t	200t	2000t	200t	500t	10Ha			N/A
Location	Jurein Marine Park	Abrolhos Island	Cone Bay	Crawford Bay	Recherché Archipelago	Lake Argyle	Exmouth	Lake Argyle	Yeeda Station			Fremantle Harbour