

# Fisheries Management (Aquaculture) Regulation 2002

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New South Wales

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New South Wales

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# Fisheries Management (Aquaculture) Regulation 2002



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Fisheries Management (Aquaculture) Regulation 2002*.

### 2 Commencement

This Regulation commences on 1 September 2002.

**Note—**

This Regulation replaces the *Fisheries Management (Aquaculture) Regulation 1995* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**ballot application** means an application to participate in a public ballot for the allocation of an aquaculture lease area.

**extensive aquaculture** means aquaculture undertaken without providing supplementary food for the fish or marine vegetation that are being cultivated.

**food** includes any form of nutrient.

**intensive aquaculture** means aquaculture undertaken by providing supplementary food for the fish or marine vegetation that are being cultivated (whether or not naturally occurring food is consumed or available for consumption by the fish or marine vegetation).

**the Act** means the *Fisheries Management Act 1994*.

**water production area** means a water area available for aquaculture but does not include any water storage area or effluent storage area.

(2) In this Regulation, a reference to a permit of a particular class is a reference to a

permit of that class as referred to in clause 4.

(3) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 Aquaculture permits**

### **Division 1 Classification of permits**

#### **4 Kinds of aquaculture permits that can be issued**

(1) The following classes of aquaculture permits are prescribed for the purposes of section 144 (2) of the Act:

- (a) a class A permit authorising extensive aquaculture on public water land,
- (b) a class B permit authorising intensive aquaculture on public water land,
- (c) a class C permit authorising extensive aquaculture to be undertaken otherwise than on public water land,
- (d) a class D permit authorising intensive aquaculture to be undertaken otherwise than on public water land,
- (e) a class E permit authorising extensive freshwater aquaculture to be undertaken at 2 or more privately owned locations otherwise than on public water land,
- (f) a class F permit authorising a person to operate a fish pond, tank or other structure with a view to charging members of the public for the right to fish in the pond, tank or structure,
- (g) a class G permit authorising experimental aquaculture to be undertaken,
- (h) a class H permit authorising a fish hatchery to be operated,
- (i) a class I permit authorising aquaculture to be undertaken for a charitable or non-profit making purpose.

(2) A class I permit cannot be issued for a period of more than 3 months.

(3) In this clause, **fish hatchery** means a place where the progeny of fish are produced for the purpose of selling them.

**Note—**

**Public water land** is defined in section 4 (1) of the Act.

## **Division 2 Applications for, and issue of, permits**

### **5 Fee payable when applying for an aquaculture permit**

- (1) Subject to subclause (2), the fee required to accompany an application for an aquaculture permit is as follows:
- (a) for a class A permit—\$221,
  - (b) for a class B permit—\$221,
  - (c) for a class C permit—\$332,
  - (d) for a class D permit—\$553,
  - (e) for a class E permit—\$443,
  - (f) for a class F permit—\$332,
  - (g) for a class G permit—\$553,
  - (h) for a class H permit—\$553,
  - (i) for a class I permit—\$56.

**Note—**

See section 145 (2) (c) of the Act.

- (2) If a person makes more than one application for an aquaculture permit at the same time, the total fee required to be paid for those applications is the sum of the highest application fee that applies to any one of those applications, and:
- (a) for each additional application for a class I permit—\$56, or
  - (b) for each other application—\$107.

### **6 Additional grounds for refusing an aquaculture permit**

The Minister must refuse to issue an aquaculture permit if the Minister believes on reasonable grounds that there is a real risk that if the activity to which the permit relates were authorised:

- (a) fish (whether cultivated or naturally occurring) could become infected with a particular disease, or
- (b) the environment of the area where it is proposed to carry on the activity would be damaged.

**Note—**

See section 146 (2) (h) of the Act.



## **Division 3 Contributions by permit holders to pay for costs of administration**

### **7 Aquaculture permit holders liable to pay contributions towards cost of administration**

- (1) Each holder of an aquaculture permit must pay to the Minister an annual contribution for the period of 12 months beginning on 1 July in each year towards the costs of administration of Part 6 of the Act that are directly attributable to industry.

**Note—**

See section 156 (1) (a) of the Act.

- (2) The amount of the annual contribution is \$388.
- (3) The annual contribution is payable, at the permit holder's option, either:
- (a) within 30 days after the issue of the permit, or
  - (b) by instalments.
- (4) For the purposes of subclause 3 (b), the Minister is required:
- (a) to determine the amounts of the instalments that are payable, or the manner in which they are to be calculated, and
  - (b) to determine the dates on which the instalments are payable, and
  - (c) to notify the amounts (or the manner of the calculation) of the instalments, and the dates on which they are payable, to the permit holder concerned.
- (5) If there is a failure to pay an instalment in accordance with such a notice, the Minister may treat the total unpaid balance of the annual contribution as an overdue amount of contribution.
- (6) A person must pay the annual contribution under this clause in respect of a period of 12 months referred to in subclause (1) if the person holds an aquaculture permit at any time during the period concerned.
- (7) However, if a person is issued with an aquaculture permit after 1 July in any year:
- (a) the Minister may reduce, on a pro rata basis, the person's contribution for the 12 month period concerned, and
  - (b) the contribution must be paid within 30 days after the issue of the permit, or by instalments in such manner as is advised by the Minister in accordance with subclause (4).

### **8 Costs of administration that are directly attributable to industry**

For the purposes of section 156 (1) (a) of the Act, the following costs of administration of

Part 6 of the Act are directly attributable to industry:

- (a) the cost of developing, implementing and ensuring compliance with, strategies, policies and regulations under Part 6 of the Act for the orderly management and development of sustainable and viable aquaculture industries,
- (b) the cost of providing administrative services in connection with aquaculture permit and aquaculture lease transactions, in particular, the costs associated with the following:
  - (i) the collection of fees and contributions,
  - (ii) the assessment of permits,
  - (iii) the granting of leases.

## **9 Exemptions**

The Minister may exempt a permit holder or class of permit holders from paying an annual contribution under this Division in respect of a aquaculture permit if the Minister is satisfied that an exemption is warranted because:

- (a) the permit is a class I permit (a permit issued for charitable or non-profit purposes), or
- (b) the permit is a class F permit and the permit holder only conducts extensive fish-out operations, or
- (c) the permit is issued for the purpose of authorising embryonic or experimental aquaculture operations.

## **10 Minister may waive payment of contribution**

The Minister may waive payment of all or part of an annual contribution payable under this Division if the Minister considers it appropriate to do so.

## **Division 4 Contributions by permit holders to pay for research**

### **11 Aquaculture permit holders liable to pay contributions for research**

- (1) Each holder of an aquaculture permit must pay to the Minister an annual contribution of the prescribed amount for the period of 12 months beginning on 1 July in each year for the purposes of meeting:
  - (a) the cost of carrying out research that will benefit the New South Wales aquaculture industry (including research by the Fisheries Research and Development Corporation established under the *Primary Industries and Energy Research and Development Act 1989* of the Commonwealth), and
  - (b) the costs incurred in maintaining any relevant research committee established

under section 157 (4) of the Act.

**Note—**

See section 156 of the Act (Annual contribution to cost of administration or research or to other industry costs).

- (2) This clause does not apply to the holder of a class G or a class I permit.
- (3) The prescribed annual contribution is (subject to subclause (4)) \$23 for each hectare, or part of a hectare, of the area of the aquaculture farm or farms to which the permit relates.
- (4) If the aquaculture farm or farms to which the permit relates are not located on public water land, the prescribed annual contribution is:
  - (a) in the case of a class D or H permit, the greater of:
    - (i) \$111, or
    - (ii) \$23 per hectare of the total water production area on the aquaculture farm or farms, or
  - (b) in the case of a class C, E or F permit, \$111.
- (5) A contribution under this clause must be paid, at the permit holder's option, either:
  - (a) on or before 31 July in each year for which it is payable, or
  - (b) by instalments.
- (6) For the purposes of subclause (5) (b), the Minister is required:
  - (a) to determine the amounts of the instalments that are payable, or the manner in which they are to be calculated, and
  - (b) to determine the dates on which the instalments are payable, and
  - (c) to notify the amounts (or the manner of the calculation) of the instalments, and the dates on which they are payable, to the permit holder concerned.
- (7) If there is a failure to make a payment in accordance with such a notice, the Minister may treat the total unpaid balance as an overdue amount of contribution even if payment by instalments has begun.
- (8) If the total area of the aquaculture farm or farms to which an aquaculture permit relates is less than 1 hectare, the contribution payable by the holder of the permit under this clause is that payable for 1 hectare.
- (9) If a person holds 2 or more aquaculture permits, the prescribed annual contribution for that person is the highest annual contribution that applies to any one of that

person's permits.

- (10) If a person is issued with an aquaculture permit after 31 July in any period of 12 months referred to in subclause (1):
- (a) the Minister may reduce, on a pro rata basis, that person's contribution for that financial year, and
  - (b) the contribution must be paid within 30 days after the issue of the permit, or by instalments in such manner as is advised by the Minister in accordance with subclause (6).

**Note—**

**Public water land** is defined in section 4 (1) of the Act.

**12 Research trust accounts to be maintained for the purposes of this Division**

- (1) The Minister is required to maintain a separate research trust account for the purposes specified in clause 11 (1).
- (2) The trust account is to consist of:
  - (a) all contributions paid or recovered under this Division by or from permit holders, and
  - (b) the interest or other income accruing from investing the money in the trust account.
- (3) The money held in the trust account is vested in the Minister as trustee and is to be applied in accordance with this Division.

**13 Where research trust account money is to be kept and how the account is to be operated**

- (1) The Minister must keep at an authorised deposit-taking institution located in New South Wales a research trust account for the purposes specified in clause 11 (1). The name of the account must include the relevant purpose and the words "NSW Fisheries Trust Account".
- (2) The Minister must ensure that all money referred to in clause 12 (2) is paid to the credit of the relevant trust account.
- (3) Subject to this Division, the Minister is responsible for determining the manner in which the trust account is to be operated.

**14 Money held in research trust account to be invested**

The Minister may invest money held in a research trust account that is not immediately required for the purposes of this Division:

- (a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the money were trust funds, or
- (b) on deposit with the Treasurer.

### **15 Purposes for which money held in research trust account can be used**

Money held in a research trust account may be applied only for:

- (a) meeting the costs incurred in carrying out the purpose for which the trust account was established, and
- (b) meeting the expenses incurred by the Minister in administering the trust account.

### **16 Committees in respect of research trust account**

Schedule 1 applies to committees appointed by the Minister in respect of research trust accounts under section 157 of the Act.

## **Part 3 Security arrangements for aquaculture permit holders**

### **Division 1 Preliminary**

#### **17 “Payment obligation” defined**

In this Part, **payment obligation**, in relation to a permit holder, means:

- (a) an obligation of the permit holder to pay a debt to the Minister in consequence of the Minister or an agent of the Minister having undertaken work under section 162 (4), 170 (4) or 171 (4) of the Act, or
- (b) an obligation of the permit holder to pay a debt to the Minister arising in consequence of a fisheries officer having taken action under section 183 (6) of the Act, or
- (c) an obligation of the permit holder arising under section 213 of the Act to pay a debt in consequence of a fisheries officer having taken measures to destroy noxious fish.

#### **Note—**

The above provisions of the Act provide, among other things, for the following:

- (a) Section 162 of the Act enables the Minister or an agent of the Minister to enter an area to which an aquaculture permit relates and carry out work necessary to achieve compliance with a notice requiring the area to be kept in a tidy condition, or to remove from land (other than that area) anything that has been left there by the permit holder or that has come from that area and become deposited on that land.
- (b) Section 170 of the Act enables the Minister or an agent of the Minister to enter a leased area to remove any fence unlawfully erected on the area.
- (c) Section 171 of the Act enables the Minister or an agent of the Minister to enter an area that was held by a former lessee who has failed to comply with a notice requiring improvements on the area to be removed,

and to remove those improvements from the area.

- (d) Section 183 of the Act enables a fisheries officer to enter an area quarantined because of a fish disease to take action required by an order to enforce the quarantine.
- (e) Section 213 of the Act enables a fisheries officer to enter premises where noxious fish are believed to be located and to take measures to destroy the fish if a notice served on the owner or occupier of the premises to destroy the fish has not been complied with.

Generally, the costs incurred in taking the above measures (after certain deductions) are a debt owing to the Minister.

## **Division 2 Security to be provided by class A and class B permit holders**

### **18 Persons to whom this Division applies**

This Division applies to and in respect of class A and class B permit holders.

### **19 Class A and B permit holders to enter into financial arrangement to provide security**

- (1) It is a condition of every class A or class B permit that the permit holder must enter into, and maintain, one of the following arrangements:
  - (a) the depositing with the Minister by the permit holder of the required amount of cash to secure the due performance of the permit holder's payment obligations under the Act,
  - (b) a guarantee issued by an authorised deposit-taking institution, or by a corporation authorised to carry on insurance business in Australia, indemnifying the Crown to the extent of the required amount to secure that performance,
  - (c) a financial arrangement approved by the Minister under which a corporation of which the permit holder is a member agrees with the Minister to indemnify the Crown to the extent of an amount specified in the agreement to secure that performance.
- (2) However, a class A permit holder of a class 1 lease (as referred to in clause 30) may decide not to enter into, or to cease, an arrangement under subclause (1). In that case, the permit holder is taken to have entered into a financial arrangement for the payment of annual contributions as provided by Division 3 and that arrangement is taken to be a condition of the permit.
- (3) A permit holder may choose which kind of arrangement is to be entered into under subclause (1), and may, with the concurrence of the Minister, change the chosen arrangement to another arrangement at any time while the permit is in force.
- (4) For the purposes of this clause, the required amount is \$1,000 for each hectare (or part of a hectare) of the leased area or areas held by the permit holder or permit

holders concerned.

- (5) The Minister is required to keep a separate account in respect of cash deposited under this clause and to invest the cash:
- (a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the cash were trust funds, or
  - (b) on deposit with the Treasurer.
- (6) The Minister may:
- (a) reduce the amount otherwise payable by a class A permit holder of a class 1 lease under an arrangement referred to in subclause (1) (a) or (b), or
  - (b) reduce the amount of annual contributions otherwise payable by a class A permit holder of a class 1 lease under an arrangement referred to in subclause (2), or
  - (c) exempt a class A permit holder of a class 1 lease from the operation of subclause (1),
- if the Minister considers that the reduction or exemption is just and reasonable, given the type of aquaculture to which the permit and lease relate and the manner in which the aquaculture is to be undertaken.
- (7) The Minister may revoke a grant of a reduction or exemption if the Minister is satisfied that the reduction or exemption is no longer warranted.
- (8) The Minister may grant, or revoke a grant of, a reduction or exemption:
- (a) in a particular case, by instrument in writing served on the permit holder, or
  - (b) in a particular class of case, by notice published in the Gazette.
- (9) The grant, or revocation of a grant, of a reduction or exemption takes effect on and from the date specified in the instrument or notice, as the case may be.

## **20 When secured amounts are liable to be forfeited**

- (1) If it appears to the Minister that a permit holder who has entered into an arrangement referred to in clause 19 (1) has incurred a payment obligation under the Act, the Minister may serve on the permit holder a notice requiring the permit holder to perform the obligation within a period specified in the notice (being not less than 14 days).
- (2) If the permit holder fails to perform the payment obligation within the period specified in the notice, the Minister may forfeit the amount deposited or secured under the arrangement to the Crown to the extent of that obligation.

- (3) If the amount forfeited is an amount secured under an arrangement of a kind referred to in clause 19 (1) (b) or (c), the guarantor or the party to the financial arrangement concerned must, within 7 days after being served by the Minister with a notice declaring the amount to be forfeited, pay the amount to the Minister. The amount is recoverable by proceedings brought in a court of competent jurisdiction as a debt due to the Crown.
- (4) An amount may be forfeited under this clause even though the person who entered into the arrangement concerned is no longer a permit holder.

## **21 What happens to an arrangement when a person stops being a permit holder**

- (1) Any arrangement of a kind referred to in clause 19 (1) that a person who is a class A or class B permit holder has entered into ceases at the time at which the person ceases to be the holder of the permit, but only if the Minister is satisfied that the person has no payment obligations outstanding.
- (2) If the arrangement is a deposit of cash with the Minister, the person (or the person's legal personal representative) is entitled to:
  - (a) a refund of the cash, and
  - (b) payment of the interest accruing on the investment of the deposit,less any amount that the Minister certifies to be attributable to administration costs.

## **Division 3 Financial arrangements by way of contributions taken to be entered into by certain class A permit holders**

### **22 Persons to whom this Division applies**

This Division applies to every class A permit holder of a class 1 lease (as referred to in clause 30) who, by virtue of clause 19 (2), is taken to have entered into a financial arrangement for the payment of annual contributions in accordance with this Division.

### **23 Contributions to be made by certain class A permit holders**

#### **Note—**

The obligations imposed by this clause are a continuation of the obligations imposed by clause 19 of the [Fisheries Management \(Aquaculture\) Regulation 1995](#) as in force immediately before the repeal of that Regulation.

- (1) A class A permit holder to whom this Division applies must pay to the Minister to secure the due performance of the permit holder's payment obligations under the Act:
  - (a) for the period of 12 months beginning on 1 January 2002—an annual contribution of \$20 for each hectare, or part of a hectare, of the aquaculture farm or farms to which the permit relates, and



- (b) for the period of 12 months beginning on 1 January 2003—an annual contribution of \$30 for each hectare, or part of a hectare, of the aquaculture farm or farms to which the permit relates, and
  - (c) for the period of 12 months beginning on 1 January 2004 and on 1 July in each subsequent year—an annual contribution of \$40 for each hectare, or part of a hectare, of the aquaculture farm or farms to which the permit relates.
- (2) If the total area of the aquaculture farm or farms to which an aquaculture permit relates is less than 1 hectare, the contribution required by this clause is that payable for 1 hectare.
  - (3) A contribution required by this clause must be paid, at the permit holder's option, either:
    - (a) on or before 31 January in the period of 12 months for which it is payable, or
    - (b) by instalments.
  - (4) For the purposes of subclause (3) (b), the Minister is required:
    - (a) to determine the amounts of the instalments that are payable, or the manner in which they are to be calculated, and
    - (b) to determine the dates on which the instalments are payable, and
    - (c) to notify the amounts (or the manner of the calculation) of the instalments, and the dates on which they are payable, to the permit holder concerned.
  - (5) If there is a failure to make a payment in accordance with such a notice, the Minister may treat the total unpaid balance as an overdue amount of contribution even if payment by instalments has begun.
  - (6) A class A permit holder to whom this Division applies may at any time elect to enter into an arrangement of a kind referred to in clause 19 (1). However, such an election does not affect the liability of the permit holder to pay the contribution for the period of 12 months in which the election is made.
  - (7) A contribution paid under this clause is not refundable.

#### **24 Minister may suspend requirement to make contributions**

- (1) The Minister may, by order published in the Gazette, suspend the operation of clause 23 for a particular period of 12 months if satisfied that the amount held in the trust account kept under clause 26 is for the time being sufficient for the purposes of the account.
- (2) The Minister must also notify in writing the effect of an order made under this clause to all permit holders affected by the order. However, failure to comply with this

subclause does not affect the validity of the order.

## **25 Minister to enforce permit holder's obligations**

- (1) If it appears to the Minister that a class A permit holder to whom this Division applies has incurred a payment obligation under the Act, the Minister may, by notice in writing served on the permit holder, require the permit holder to perform the obligation within a period specified in the notice (being not less than 14 days).
- (2) If:
  - (a) the permit holder has failed to perform the payment obligation within the period specified in the notice, and
  - (b) the Minister certifies in writing that all reasonable practicable steps have been taken to recover the debt arising from the permit holder's failure to perform that obligation or the permit holder's whereabouts are unknown,the Minister may then (and only then) withdraw from the trust account under clause 26 an amount equal to that debt.
- (3) In order to reduce the amounts withdrawn under subclause (2) from the trust account, the Minister is to arrange for aquaculture leases to be inspected every 2 years for matters that may give rise to payment obligations by the lessees.
- (4) Subclause (2) applies even if proceedings brought under the Act to recover the debt have been unsuccessful and even if the person who has failed to perform the obligation concerned has ceased to be a permit holder.

## **26 Trust account to be maintained for the purposes of this Division**

- (1) The Minister is required to maintain a trust account for the purposes of this Division.
- (2) The trust account is to consist of:
  - (a) all contributions and additional contributions paid or recovered under this Division by or from class A permit holders to whom this Division applies, and
  - (b) all money required to be paid to the trust account in accordance with this Division, and
  - (c) the interest or other income accruing from investing the money in the trust account.
- (3) The money held in the trust account is vested in the Minister as trustee and is to be applied in accordance with this Division.

## **27 Purposes for which money held in trust account can be used**

Money held in the trust account under clause 26 may be applied only for the following purposes:

- (a) subject to clause 25, meeting the expenses incurred by the Minister in carrying out a payment obligation of a class A permit holder to whom this Division applies,
- (b) meeting the expenses incurred by the Minister in administering the trust account and of any committee appointed by the Minister in respect of that trust account.

## **28 Where trust account money is to be kept and how the account is to be operated**

- (1) The Minister must maintain the trust account under clause 26 at an authorised deposit-taking institution located in New South Wales. The name of the account must include the words “NSW Fisheries Trust Account”.
- (2) The Minister must ensure that all amounts referred to in clause 26 (2) are paid to the credit of the trust account.
- (3) Subject to this Division, the Minister is responsible for determining the manner in which the trust account is to be operated.

## **29 Money held in trust account may be invested**

The Minister may invest money held in the trust account under clause 26 that is not immediately required for the purposes of this Division:

- (a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the money were trust funds, or
- (b) on deposit with the Treasurer.

# **Part 4 Aquaculture leases**

## **Division 1 Classification of leases**

### **30 Classes of aquaculture leases**

- (1) The kinds of aquaculture leases that may be granted under Part 6 of the Act are as follows:
  - (a) a class 1 lease for a leased area:
    - (i) where extensive cultivation of fish or marine vegetation is undertaken and a majority of the area under cultivation is in water the depth of which is less than 6 metres, or
    - (ii) where the leased area comprises or includes a bed from which oysters are dredged (whether the bed is at a depth of less than 6 metres or not),

- (b) a class 2 lease for a leased area where:
    - (i) extensive cultivation of fish or marine vegetation is undertaken and a majority of the area under cultivation is in water the depth of which is 6 metres or more, and
    - (ii) the area does not comprise or include a bed of the kind referred to in paragraph (a) (ii),
  - (c) a class 3 lease for a leased area where intensive cultivation of fish or marine vegetation is undertaken,
  - (d) a class 4 lease for a leased area where fish ranching is undertaken.
- (2) For the purposes of this clause, **fish ranching** is the artificial stocking of an area with juvenile fish of a species that is able to roam freely and feed on naturally available food.
- (3) The depths referred to in this clause are to be measured at lowest astronomical tide.

## **Division 2 Applications for, and grant and renewal of, aquaculture leases**

### **31 Procedure for applying for an aquaculture lease**

- (1) An application for an aquaculture lease is to be made to the Minister and must:
- (a) be in accordance with a form provided or approved by the Director, and
  - (b) be accompanied by the processing fee prescribed by subclause (2).
- (2) The processing fee is as follows:
- (a) for a class 1 lease—\$553,
  - (b) for a class 2 lease—\$553,
  - (c) for a class 3 lease—\$553,
  - (d) for a class 4 lease—\$885.

#### **Note—**

Section 163 (7) of the Act makes provision for the advertising and grant of an application for an aquaculture lease. If the lease is to be offered by auction, public tender or ballot, the other provisions of this Part apply.

### **32 Applicant's obligations to mark area applied for**

- (1) The Director may give to an applicant for an aquaculture lease directions for marking out the boundaries of the area applied for.

- (2) Within 30 days after the Director has given to an applicant for an aquaculture lease directions under subclause (1) (or within such extended period as the Director may allow), the applicant is to mark out in accordance with those directions the boundaries of the area concerned.
- (3) The Minister may refuse to consider an application for an aquaculture lease unless the applicant has marked out the boundaries of the area concerned, and is maintaining the markings, in accordance with the directions given under this clause.
- (4) The applicant must remove the markings:
  - (a) within 30 days after the application for the aquaculture lease is granted, refused or withdrawn, or
  - (b) within such further period as the Director may allow.

Maximum penalty: 10 penalty units.

### **33 Offer of aquaculture lease by auction, public tender or ballot**

- (1) If the Minister decides that an area should be offered for lease by auction, public tender or ballot, the Minister must publish, in the Gazette and in a newspaper circulating in the district in which the area is located, a notice:
  - (a) describing the area to be leased sufficiently to identify it, and
  - (b) specifying the method by which the lease is to be offered, and
  - (c) specifying a deadline for persons to lodge with the Minister objections to the leasing of the area, and
  - (d) specifying any covenants or conditions to which the disposal of the lease will be subject.

The deadline must be not less than 30 days after the date of publication of the notice or, if the publications in the Gazette and in the newspaper are on different dates, from the later of those dates.

- (2) The Minister must also send a copy of any such notice published in the Gazette to any association representing aquaculture farmers that has notified the Minister of its interest in being notified of any such area being considered for leasing.
- (3) The Minister may decide that an area should be offered for lease by auction, public tender or public ballot even though the Minister has received an application to lease the area.
- (4) If the Minister, after considering objections to the leasing of an area, decides to proceed with the leasing of the area by auction, public tender or ballot, the Minister must publish, in the Gazette and in a newspaper circulating in the district in which the

area is located, a notice containing the following information:

- (a) a description sufficient to identify the area to be leased,
- (b) the term for which the area is to be leased,
- (c) how details of the proposed covenants and conditions can be obtained,
- (d) the proposed annual rent,
- (e) the value of any improvements to the area,
- (f) the time and place of the auction, or the time and place for receipt of tenders or ballot applications,
- (g) if the lease is to be offered by public ballot—the amount of any premium that is required to be paid by the successful applicant,
- (h) any special particulars that are to be provided by bidders, tenderers or applicants for the lease.

#### **34 Offer of aquaculture lease by auction**

- (1) If an aquaculture lease is offered at an auction, the bid of the person who offers the highest premium is to be accepted, subject to the bidder being approved by the Minister.
- (2) Immediately after the auction has taken place, the successful bidder must pay to the auctioneer the premium offered for the lease at the auction. If that premium is not paid at that time, the auctioneer must offer the lease again until a successful bidder pays the premium offered or the offer of the lease is withdrawn from the auction.
- (3) Immediately after the auction has taken place, the successful bidder must lodge with the Minister an application for the lease in accordance with clause 31 (1), together with the appropriate processing fee prescribed by clause 31 (2).
- (4) If the Minister does not approve the highest bidder, the Minister may approve the person who has made the next highest bid and so on until the Minister approves a bidder.
- (5) The Minister may refuse to approve a bidder only on the ground that:
  - (a) the bidder has not complied with subclause (3), or
  - (b) in the case of a bidder who is not a corporation—the bidder is disqualified under section 161 of the Act from holding an aquaculture permit, or
  - (c) in the case of a bidder that is a corporation—the bidder, or any of the directors or other persons concerned in the management of the bidder, is disqualified under

section 161 of the Act from holding an aquaculture permit, or

- (d) the bidder has rent, contributions or other amounts payable to the Minister that are outstanding in respect of other aquaculture leases, or
  - (e) the bidder has, in the Minister's opinion, a poor record of managing one or more other leased areas, or
  - (f) in the Minister's opinion, it would otherwise not be in the public interest to grant the lease to the bidder.
- (6) The term of an aquaculture lease offered at an auction is to begin on and from the date decided by the Minister and specified in the lease. That date must not be earlier than the date of approval of the successful bidder by the Minister.

### **35 Offer of aquaculture lease for public tender**

- (1) A person who wishes to tender for an aquaculture lease that is being offered for public tender must lodge with the Minister a tender in writing containing the following:
  - (a) an application for the lease in accordance with clause 31 (1), together with the appropriate processing fee prescribed by clause 31 (2),
  - (b) a statement of the amount of the premium tendered.
- (2) The tender of the person who offers the highest premium is to be accepted, subject to the tenderer being approved by the Minister.
- (3) If the Minister does not approve the tenderer who offers the highest premium, the Minister may approve the tenderer who has offered the next highest premium and so on until the Minister approves a tenderer.
- (4) The Minister may refuse to approve a tenderer only on the ground that:
  - (a) the tenderer's tender does not comply with subclause (1), or
  - (b) in the case of a tenderer who is not a corporation—the tenderer is disqualified under section 161 of the Act from holding an aquaculture permit, or
  - (c) in the case of a tenderer that is a corporation—the tenderer, or any of the directors or other persons concerned in the management of the tenderer, is disqualified under section 161 of the Act from holding an aquaculture permit, or
  - (d) the tenderer has rent, contributions or other amounts payable to the Minister that are outstanding in respect of other aquaculture leases, or
  - (e) the tenderer has, in the Minister's opinion, a poor record of managing one or more other leased areas, or

- (f) the tenderer's tender contains conditions that are unacceptable to the Minister, or
  - (g) in the Minister's opinion, it would otherwise not be in the public interest to grant the lease to the tenderer.
- (5) The successful tenderer must pay the amount of the premium tendered to the Minister within 14 days after being notified in writing of the Minister's approval under this clause.
- (6) If the premium tendered is not paid within that period or the successful tenderer withdraws the tender, the Minister may offer the lease to the next highest tenderer and so on until the Minister approves a tenderer who pays the premium tendered.
- (7) The term of an aquaculture lease offered for tender is to begin on the date decided by the Minister and specified in the lease. That date must not be earlier than the date on which the successful tenderer is approved by the Minister.

### **36 Offer of aquaculture lease by ballot**

- (1) A person who wishes to apply for an aquaculture lease that is being offered by ballot must lodge with the Minister in writing an application for the lease in accordance with clause 31 (1), together with the appropriate processing fee prescribed by clause 31 (2).
- (2) The ballot application that is drawn first is to be accepted, subject to the successful applicant being approved by the Minister.
- (3) If the Minister does not approve the successful applicant, the Minister may approve:
- (a) the applicant whose name was next drawn at the ballot in case the previously successful applicant's application should not be approved under this clause or is withdrawn, or
  - (b) the successful applicant at a later ballot.
- (4) The Minister may refuse to approve an application only on the ground that:
- (a) the application does not comply with subclause (1), or
  - (b) in the case of an applicant who is not a corporation—the applicant is disqualified under section 161 of the Act from holding an aquaculture permit, or
  - (c) in the case of an applicant that is a corporation—the applicant, or any of the directors or other persons concerned in the management of the applicant, is disqualified under section 161 of the Act from holding an aquaculture permit, or
  - (d) the applicant has rent, contributions or other amounts payable to the Minister that are outstanding in respect of other aquaculture leases, or



- (e) the applicant has, in the Minister's opinion, a poor record of managing one or more other leased areas, or
  - (f) in the Minister's opinion, it would otherwise not be in the public interest to grant the lease to the applicant.
- (5) The successful applicant must pay to the Minister within 14 days after being notified of the Minister's approval of the applicant's application the premium (if any) specified in the notice published under clause 33 (4).
- (6) If the premium is not paid within that period, the Minister may offer the lease either:
- (a) to the applicant whose name was next drawn at the ballot in case the successful applicant should default in complying with subclause (5) or withdraw the application, or
  - (b) to the successful applicant at a later ballot,
- and so on until the Minister approves a successful applicant who pays the requisite premium.
- (7) The term of an aquaculture lease offered by ballot is to begin on the date decided by the Minister and specified in the lease. That date must not be earlier than the date on which the successful applicant was approved by the Minister.

### **37 Minister's obligations when granting an aquaculture lease**

- (1) If the Minister decides to grant an aquaculture lease, the Minister must provide the proposed lessee with the following documents:
- (a) a copy of the plan of the area,
  - (b) a draft lease document that is in accordance with Form 1 in Schedule 2,
  - (c) a statement of the fees, rent or other amounts payable by the lessee in connection with the grant of the lease.
- (2) The Minister must not grant an aquaculture lease unless, before the deadline, the proposed lessee lodges with the Minister:
- (a) the draft lease document (signed by the proposed lessee), and
  - (b) all amounts (including rent) payable by the proposed lessee in connection with the grant of the lease.

The deadline is the end of the period of 90 days (or such further period as the Minister may allow) after the proposed lessee is provided with the documents referred to in subclause (1).

- (3) After granting an aquaculture lease, the Minister must publish in the Gazette notice of the granting of the lease and the person to whom it is granted.

### **38 Application for renewal of an aquaculture lease**

- (1) An application for renewal of an aquaculture lease is to be made to the Minister and must:
  - (a) be accompanied by the lease document and the appropriate processing fee prescribed by subclause (2), and
  - (b) be in accordance with a form provided or approved by the Director.
- (2) The fee to accompany an application under this clause is as follows:
  - (a) in the case of a class 1 lease—\$443,
  - (b) in the case of a class 2 lease—\$332,
  - (c) in the case of a class 3 lease—\$553,
  - (d) in the case of a class 4 lease—\$332.

#### **Note—**

See section 167 of the Act (Renewal of lease).

- (3) The Minister may refuse to accept an application under this clause that is made earlier than 12 months before the term of the lease is due to expire.

### **39 Process for renewing an aquaculture lease**

- (1) If the Minister decides to renew an aquaculture lease, the Minister must provide the applicant with the following documents:
  - (a) a copy of the plan of the area,
  - (b) a draft lease document that is in accordance with Form 1 in Schedule 2,
  - (c) a statement of the fees, rent or other amounts payable by the lessee in connection with the renewal of the lease.
- (2) The Minister must not renew an aquaculture lease unless, before the deadline, the applicant for renewal lodges with the Minister:
  - (a) the draft lease document (signed by that applicant), and
  - (b) all amounts (including rent) payable by that applicant in connection with the renewal of the lease.

The deadline is the end of 90 days (or such further period as the Minister may allow)

after that applicant is provided with the documents referred to in subclause (1).

- (3) Subject to section 167 of the Act, the Minister may refuse an application for the renewal of an aquaculture lease on the ground that:
- (a) in the case of an applicant who is an individual—the applicant is disqualified under section 161 of the Act from holding an aquaculture permit, or
  - (b) in the case of an applicant that is a corporation—the applicant, or any of the directors or other persons concerned in the management of the applicant, is disqualified under section 161 of the Act from holding an aquaculture permit, or
  - (c) the applicant has rent, contributions or other amounts payable to the Minister that are outstanding in respect of that or other leases, or
  - (d) the applicant has, in the Minister’s opinion, a poor record of managing one or more other leased areas, or
  - (e) in the Minister’s opinion, it would otherwise not be in the public interest to renew the lease.
- (4) After renewing an aquaculture lease, the Minister must publish in the Gazette notice of the renewal of the lease.

**Note—**

Section 167 (2) of the Act provides that the Minister may renew a lease if satisfied that the area should continue to be available for aquaculture. However a lessee is entitled to the renewal of the lease if it is the first renewal of the lease after it was granted.

## **Division 3 Rent for aquaculture leases**

### **40 Minimum rent for leased area**

- (1) The minimum rent payable per year for a lease (of any class) is the greater of:
- (a) \$111, and
  - (b) \$41 for each hectare or part of a hectare of the area or areas leased.
- (2) When 2 or more leases of the same class are held by the same lessee, the leases are to be treated as if they were a single lease for the purpose of determining the minimum rent applicable to those leases.

**Note—**

See section 165 (5) of the Act.

### **41 How rent for an aquaculture lease is to be calculated**

- (1) The lessee under an aquaculture lease must pay the rent payable under the lease to

the Minister.

- (2) The first payment of rent for an aquaculture lease that is granted or renewed is to be calculated as follows:

$$AP = \frac{DR}{365} \times AR$$

where:

**AP** represents the amount to be paid.

**DR** represents the number of days during the period beginning on the date when the lease begins and ending with 31 December next following.

**AR** represents the amount of rent payable under the lease for a full year.

- (3) In the year in which an aquaculture lease expires, the amount of rent payable is to be calculated as follows:

$$AP = \frac{DR}{365} \times AR$$

where:

**AP** represents the amount to be paid.

**DR** represents the number of days during the period beginning on 1 January in the year concerned and ending with the date on which the lease ends.

**AR** represents the amount of rent payable under the lease for a full year.

- (4) If the rent payable under an aquaculture lease is redetermined by the Minister or otherwise altered, the Minister must make an appropriate adjustment to the rent payments.
- (5) If an aquaculture lease is terminated for any reason and rent, contributions or other amounts have been paid to the Minister for a period occurring after the date of termination, the Minister must refund the appropriate proportion of rent, contributions or other amounts paid in advance.

#### **42 When rent payable**

- (1) The first payment of rent under an aquaculture lease is payable before the lease is granted or renewed or within such period after the grant or renewal as the Minister allows.
- (2) After the first payment, the rent under an aquaculture lease is payable yearly in advance, either (at the lessee's option):

- (a) on or before 31 January in each year, or
  - (b) by instalments.
- (3) For the purpose of subclause (2) (b), the Minister is required:
- (a) to determine the amounts of the instalments that are payable, or the manner in which they are to be calculated, and
  - (b) to determine the dates on which the instalments are payable, and
  - (c) to notify the amounts (or the manner of the calculation) of the instalments, and the dates on which they are payable, to the lessee concerned.
- (4) If there is a failure to make a payment in accordance with such a notice, the Minister may treat the total unpaid balance as an overdue amount of rent even if payment by instalments has begun.

#### **43 Rent for leased area less than 1 hectare**

- (1) When calculating the rent for a leased area that is less than 1 hectare, the rent payable is a proportionate part of that rent per hectare.
- (2) However, when calculating the rent for a leased area of less than 0.1 hectare, the area is to be treated as if it were 0.1 hectare.

### **Division 4 Subletting, transferring and transmission of aquaculture leases**

#### **44 Fee payable for Minister's consent to subletting of leased area**

An application for the Minister's consent under section 172 of the Act to the subletting of a leased area must be accompanied by a processing fee of \$388.

**Note—**

Section 172 of the Act allows a lessee of a leased area to sublet the area or a part of it, but only with the consent of the Minister.

#### **45 Procedure for getting Minister's consent to transfer of aquaculture lease**

- (1) An application for the Minister's consent under section 173 of the Act to the transfer of an aquaculture lease must be in a form approved by the Minister.
- (2) Such an application must be accompanied by:
  - (a) a transfer duly stamped in accordance with the *Duties Act 1997*, and
  - (b) the lease document, and
  - (c) a processing fee of \$609.

- (3) Despite subclause (2) (c), if more than one such application is made by the same applicant and lodged on the same day, the processing fee that must accompany the second (and each further) such application is \$56.
- (4) The Minister may refuse such an application only on the ground that:
  - (a) the application does not comply with this clause, or
  - (b) if the transferee is an individual—the transferee is disqualified under section 161 of the Act from holding an aquaculture permit, or
  - (c) if the transferee is a corporation—the transferee, or any of the directors or other persons concerned in the management of the transferee, is disqualified under section 161 of the Act from holding an aquaculture permit, or
  - (d) the transferor or the transferee has rent, contributions or other amounts payable to the Minister that are outstanding in respect of that or another aquaculture lease, or
  - (e) the transferee has, in the Minister’s opinion, a poor record of managing one or more other leased areas, or
  - (f) in the Minister’s opinion, it would otherwise not be in the public interest to grant the application.

**Note—**

Section 173 of the Act allows the lessee under an aquaculture lease to transfer the lease, but only with the consent of the Minister.

**46 Transmission of aquaculture lease on lessee’s death**

- (1) An aquaculture lease is transmissible by operation of law on the death of the lessee, subject to there being lodged with the Minister:
  - (a) such evidence of the death and the entitlement of the person claiming the lease as the Minister requires, and
  - (b) a processing fee of \$388.
- (2) Despite subclause (1) (b), if more than one such claim is made by the same applicant and lodged on the same day, the processing fee that must accompany the second (and each further) such claim is \$56.

**Division 5 Surrender, consolidation and subdivision of aquaculture**

## leases

### 47 Aquaculture lease may be surrendered

- (1) An application to surrender an aquaculture lease must be in a form approved by the Minister, be lodged with the Minister and be accompanied by:
  - (a) the lease document, and
  - (b) a processing fee of \$277.
- (2) Despite subclause (1) (b), if more than one such application is made by the same applicant and lodged on the same day, the processing fee that must accompany the second (and each further) such application is \$56.
- (3) An application to surrender part of a leased area must be in writing, be lodged with the Minister and be accompanied by:
  - (a) a description of the part that is affected sufficient to identify it, and
  - (b) a survey diagram or plan depicting that part, and
  - (c) the lease document, and
  - (d) a processing fee of \$388.
- (4) The surrender of a lease or of part of a leased area does not have effect unless the Minister has consented to it and the lessee has complied with any conditions that the Minister has imposed in giving the consent.
- (5) If, when giving consent to the surrender of part of a leased area, the Minister redetermines the rental of the lease, the Minister must provide the lessee with:
  - (a) an amended lease, and
  - (b) a certified copy of an amended plan of the leased area which excludes the part surrendered.
- (6) The Minister may, in a particular case, waive the fee required under subclause (1), (2) or (3).
- (7) The fee for the surrender of an aquaculture lease is not payable if the surrender is for the purpose of consolidating leases into a single lease.
- (8) The Minister may suspend or refund rent, contributions or other amounts payable or paid in respect of a leased area, or part of a leased area, that is the subject of an application under this clause if the rent, contributions or amounts relate to a period after the application was made and the Minister is satisfied that the lessee was not using the leased area or part as an aquaculture farm during that period.

**Note—**

Section 174 of the Act enables a lessee to surrender the lease with the approval of the Minister.

**48 Aquaculture leases may be consolidated**

- (1) A lessee of 2 or more adjoining leased areas may apply for the consolidation of the leases into a single lease.
- (2) An application must:
  - (a) be in a form approved by the Minister, and
  - (b) be lodged with the Minister, and
  - (c) be accompanied by the lease documents and a processing fee of \$443.
- (3) The Minister may grant, or refuse to grant, an application.
- (4) If an application is granted, the Minister may decide any matters relating to:
  - (a) the term of the consolidated lease, and
  - (b) the covenants and conditions of the lease, and
  - (c) the rent payable for the lease, and
  - (d) any other matters necessary for the preparation of the lease document.
- (5) A lessee is entitled to a consolidated lease only if the lease document for each of the leases that is to be consolidated is first lodged with the Minister for replacement.
- (6) The Minister must, when an application for consolidation has been granted, provide the lessee with a certified copy of the plan of the leased area comprised in the consolidated lease.
- (7) The Minister must publish in the Gazette notice of the consolidation of the lease.

**49 Aquaculture leases may be subdivided**

- (1) A lessee may apply for the subdivision of a lease (***the original lease***) into 2 or more leases.
- (2) An application for subdivision must:
  - (a) be in a form approved by the Minister, and
  - (b) be lodged with the Minister, and
  - (c) be accompanied by the lease document for the original lease and a processing fee of \$443.



- (3) The Minister may grant, or refuse to grant, an application.
- (4) If an application is granted, the terms of the leases that result from the subdivision are to be the same as the remainder of the term of the original lease.
- (5) The Minister may decide any matters relating to:
  - (a) the covenants and conditions of the leases that result from the subdivision, and
  - (b) the rent payable for the leases, and
  - (c) any other matters necessary for the preparation of the lease documents.
- (6) A lessee is entitled to the leases that result from a subdivision only if the lease document for the original lease is lodged with the Minister for replacement.
- (7) The Minister must, when an application for subdivision has been granted, provide the lessee with a certified copy of the plan of the leased area comprised in each lease.
- (8) The Minister must publish notice of the subdivision of the lease in the Gazette.
- (9) The subdivision of an original lease into 2 or more leases does not affect the application of section 167 (3) of the Act to the first renewal of those leases after the grant of the original lease.

## **Division 6 Aquaculture lease plans and documents**

### **50 Certified copy of lease or plan**

- (1) If an aquaculture lease document or a plan annexed to such a document is lost or destroyed, the Minister may issue to the lessee a certified copy of the document or plan subject to:
  - (a) payment of a fee of \$56, and
  - (b) provision of a statutory declaration setting out the circumstances in which the original document or plan was lost or destroyed.
- (2) A certified copy of an aquaculture lease document may be lodged with the Minister instead of the original if at any time the document is required to be lodged with the Minister under this Regulation or with any other person for any other lawful purpose.
- (3) The Minister may:
  - (a) provide any person with a copy of a survey plan or map relating to an aquaculture lease, and
  - (b) certify the copy as being a true copy of the original, and
  - (c) charge a fee for the copy not exceeding \$56.

### **51 Minister's duties with respect to endorsing lease documents**

- (1) The Minister must make any endorsement on an aquaculture lease document necessary to record:
  - (a) any transfer, subletting, partial surrender, withdrawal or access way affecting the lease, or
  - (b) if the lease is cancelled, the cancellation of the lease.
- (2) The Minister may make any endorsement on an aquaculture lease document necessary to record any consent or other matter affecting the lease.
- (3) The Minister must, at the request of the lessee and the other party to the dealing, endorse on an aquaculture lease document the particulars of any mortgage, charge or other interest to which the document is subject.
- (4) If a mortgage, charge or other interest affecting an aquaculture lease is discharged, the Minister must, at the request of the lessee and the other party to the dealing, endorse on the lease document particulars of the discharge.
- (5) The Minister may refuse to consent to a dealing relating to an aquaculture lease, and the Minister may refuse to make an endorsement on an aquaculture lease document under subclause (1), if an undischarged mortgage, charge or other interest is endorsed on the lease document and the mortgagee, chargee or holder of the interest concerned has not consented to the dealing.

### **52 When Minister can require aquaculture lessee to lodge lease document**

- (1) The Minister may, by notice in writing, direct a lessee or other person in possession of an aquaculture lease document to lodge the lease document with the Minister, within such period as is specified in the notice, in order to enable the Minister to endorse the lease document or for any other lawful purpose.
- (2) The Minister must return an aquaculture lease document lodged under this clause as soon as practicable after it has been endorsed or the purpose for which the document was lodged has been achieved. This subclause does not apply when the endorsement relates to a cancellation of the lease.
- (3) A person who fails, without reasonable excuse, to comply with a direction under this clause is guilty of an offence.

Maximum penalty: 10 penalty units.

### **53 Minister can correct errors in aquaculture leases and other documents**

The Minister may correct an error in an aquaculture lease document or in any map, plan or other document relating to an aquaculture lease.

## **Division 7 Marking of leased areas, boat channels and access ways**

### **54 Obligations of aquaculture lessee to mark out leased area**

(1) A lessee must mark out in accordance with this clause the boundaries of the area leased:

- (a) within 30 days after the beginning of the lease, or
- (b) within such further period as the Minister may allow.

Maximum penalty: 10 penalty units.

(2) The boundaries of an area must be marked out by erecting a post at each corner of the leased area. Each of the posts must:

- (a) have at least 1.25 metres showing above high-water mark (spring tides), and
- (b) have fixed to it at or near the top a sign identifying the leased area in a form approved by the Minister, and
- (c) have a minimum diameter of 150 millimetres or a square cross-section with sides of not less than 150 millimetres.

(3) If the Minister or a fisheries officer directs the lessee by notice in writing that he or she is satisfied that the method of marking out prescribed by subclause (2) is impracticable or unsuitable in a particular case and directs the lessee to mark out the boundaries of the area in some other way, those boundaries must be marked out in that way.

(4) Such a direction may require the boundaries of an area to be marked out in accordance with any relevant aquaculture industry development plan.

(5) The Minister may charge a fee of \$56 for each additional lease sign supplied after the initial issue of a sign.

(6) A lessee must ensure that the boundaries of the leased area continue to be marked as required by this clause for the duration of the lease.

Maximum penalty: 10 penalty units.

(7) A person must not mark out an area of public water land as an aquaculture farm, or in a way that is likely to lead persons to believe that the area is an aquaculture farm, unless the person is the lessee of the area or is authorised by the lessee to mark out the area.

Maximum penalty: 10 penalty units.

(8) This clause applies to:

- (a) a lease that consolidates 2 more leases that have been surrendered, and
  - (b) a lease part of the area of which has been surrendered, and
  - (c) a renewed lease,
- in the same way as it applies to a new lease.

#### **55 Obligations of aquaculture lessee to mark out boat channel**

- (1) A lessee of an area that adjoins a boat channel must, before the deadline, mark out the boat channel in accordance with this clause. The deadline is the end of 30 days after the date of service on the lessee of a direction in writing by the Minister or a fisheries officer directing the lessee to comply with this clause.
- (2) A boat channel must be marked out by erecting posts along the boundary of the leased area which adjoins the boat channel. Each of the posts must:
  - (a) have at least 1.25 metres showing above high-water mark (spring tides), and
  - (b) have a minimum diameter of 100 millimetres or a square cross-section with sides of not less than 100 millimetres, and
  - (c) be located at intervals not exceeding 2 metres or at such other intervals as may be specified in the direction to the lessee.
- (3) If the Minister or a fisheries officer directs the lessee by notice in writing that he or she is satisfied that the method of marking out prescribed by subclause (2) is impracticable or unsuitable in a particular case and directs the lessee to mark out the area in some other way, the boat channel must be marked out in that way.
- (4) Such a direction may require a boat channel to be marked out in accordance with any relevant aquaculture industry development plan.
- (5) A lessee must ensure that, while a direction under this clause remains in force in relation to a boat channel, the channel continues to be marked as required by this clause for the duration of the aquaculture lease concerned.

Maximum penalty: 10 penalty units.

#### **56 Obligations of aquaculture lessee to mark out an access way**

- (1) An application under section 175 (1) of the Act must be accompanied by a certified copy of the map of the leased area marked with the proposed access way.
- (2) If the Minister has determined an access way under section 175 (2) of the Act, the lessee must, before the deadline, mark out the access way in accordance with this clause. The deadline is the end of 30 days after the date of service on the lessee of a direction given in writing by the Minister or a fisheries officer requiring the access way

to be marked out or such further period as the Minister may allow.

- (3) In the case of an access way determined in respect of a class 1 or class 4 lease, the access way must be marked out by erecting posts along the boundaries of the way. Each of the posts must:
- (a) show at least 1.25 metres above high-water mark (spring tides), and
  - (b) have a minimum diameter of 100 millimetres or a square cross-section with sides of not less than 100 millimetres, and
  - (c) be located at intervals not exceeding 2 metres or at such other intervals as may be specified in the direction to the lessee.

Each of the posts, or such of the posts as may be specified in the direction, must have fixed to it at or near the top a white sign or a batten that complies with subclause (4).

- (4) A sign or batten complies with this subclause if:
- (a) it has the words "ACCESS WAY" depicted on it, and
  - (b) those words are in black letters that are not less than 75 millimetres high.
- (5) Marking out as prescribed by subclause (3) must, if the Minister so requires, be carried out in accordance with the Minister's directions.
- (6) In the case of an access way determined in respect of a class 2 lease or a class 3 lease, the lessee must mark out the access way in the manner prescribed by the determination.
- (7) A lessee must ensure that the markings required by this clause are maintained for the duration of the term of the aquaculture lease concerned, unless the access way is terminated before that lease is terminated.

Maximum penalty: 10 penalty units.

**Note—**

Section 175 of the Act allows the Minister to determine an access way for a leased area.

**57 Notice to maintain markings**

- (1) If at any time during the term of an aquaculture lease it appears to the Minister that the markings required by this Division are not being properly maintained, the Minister may, by notice in writing served on the lessee, require the lessee, within a period specified in the notice, to ensure that the markings comply with this Division. The period specified must be not less than 7 days after the service of the notice.
- (2) If, on being served with such a notice, the lessee fails to comply with the notice within the specified period, any fisheries officer may, with or without assistants, enter the

lessee's area and undertake such work (including the installation of posts, signs and other structures) as may be necessary to ensure that the markings comply with this Division.

- (3) The Minister may, by proceedings brought in a court of competent jurisdiction, recover as a debt due to the Crown the cost of carrying out work under this clause.

#### **58 Minister may modify boundaries of leased area**

- (1) The Minister may, at any time, modify the boundaries of a leased area for the purpose of rectifying errors of measurement.
- (2) If such a modification increases or reduces the area of a leased area, the Minister may make a proportionate increase or reduction, as appropriate, to the rent, contributions and other amounts that the lessee is required to pay for the area.

### **Division 8 Public rights**

#### **59 Additional public right to which aquaculture lease is subject**

- (1) The right of the owner or the lawful occupier of any land adjoining a leased area to drain the surface water off the land on to the area is a recognised right for the purposes of section 164 (3) of the Act. This subclause does not apply to water accumulated by an act of that owner or occupier, or an agent of either of them, or as a result of works on the land carried out by or with the approval of that owner or occupier.
- (2) A lessee is not entitled to compensation for any damage to the leased area or to the stock on the area caused by the reasonable exercise of the right referred to in subclause (1).

**Note—**

The right conferred by this clause is in addition to the right of fishing conferred by section 164 (3) of the Act.

### **Part 5 Diseased fish and marine vegetation**

#### **60 Diseases declared for purposes of Division 4 of Part 6 of the Act**

- (1) The diseases listed in this clause are declared to be diseases in respect of which Division 4 of Part 6 of the Act applies.
- (2) The following diseases are declared to be class A diseases:
  - (a) in relation to finfish:
    - (i) epizootic haematopoietic necrosis,
    - (ii) infectious haematopoietic necrosis,

- (iii) viral haemorrhagic septicaemia,
  - (iv) bacterial kidney disease,
  - (v) epizootic ulcerative syndrome,
  - (vi) infectious pancreatic necrosis,
  - (vii) *Aeromonas salmonicida* infection,
  - (viii) viral nervous necrosis,
  - (ix) yersiniosis,
  - (x) whirling disease,
- (b) in relation to molluscs:
- (i) bonamiosis,
  - (ii) haplosporidiosis,
  - (iii) marteiliosis,
  - (iv) mikrocytosis,
  - (v) perkinsosis,
  - (vi) iridoviroses,
- (c) in relation to crustaceans:
- (i) baculoviral midgut gland necrosis,
  - (ii) crayfish plague,
  - (iii) infectious hypodermal and haematopoietic necrosis,
  - (iv) baculovirus infection,
  - (v) yellowhead disease,
  - (vi) white tail disease,
  - (vii) white spot syndrome virus.
- (3) The following diseases are declared to be class B diseases:
- (a) Northern Pacific sea-star,
  - (b) toxic dinoflagellates.

## **61 Notification of diseases**

- (1) If the owner or occupier of any place to which this clause applies becomes aware that it is or may be infected with a class A or class B disease, the owner or occupier must notify a fisheries officer as soon as practicable of the infection or suspected infection.

Maximum penalty: 10 penalty units.

- (2) This clause applies to the following places:
  - (a) an area to which an aquaculture permit relates,
  - (b) a pet shop,
  - (c) an aquarium kept for commercial purposes,
  - (d) a research establishment,
  - (e) a farm containing a dam or other impounded waters.
- (3) A person is not required to notify a fisheries officer under this clause if the infection or suspected infection has already been notified to a fisheries officer.

## **62 Order declaring quarantine area**

An order under section 183 of the Act declaring a quarantine area is authorised to contain the following provisions:

- (a) provisions that require all or any specified classes of fish or marine vegetation taken in or from a quarantine area to be landed at a location or locations in or near the quarantine area determined by the Minister and notified to the occupier of the quarantine area concerned,
- (b) provisions that require all or any specified classes of fish or marine vegetation taken in or from a quarantine area to be inspected, tested or cooked, or otherwise treated or handled, in any other specified manner before the fish or marine vegetation are sold, removed from a location or locations referred to in paragraph (a), or removed from the vicinity of the quarantine area.

## **Part 6 Miscellaneous**

### **63 Withdrawal of application under this Regulation and refund of certain fees**

- (1) This clause applies to:
  - (a) an application for an aquaculture lease, and
  - (b) an application for the renewal of such a lease, and
  - (c) an application for consent to sublet such a lease, and



- (d) an application for consent to transfer such a lease, and
  - (e) an application to surrender such a lease or part of a leased area, and
  - (f) an application to consolidate 2 or more such leases.
- (2) The applicant in relation to an application to which this clause applies may withdraw the application by notice in writing served on the Minister.
- (3) The applicant in relation to an application to which this clause applies is not entitled to a refund of the processing fee payable to the Minister by the applicant in respect of the application if the application is withdrawn or refused.
- (4) However, the Minister may refund the whole or a part of that fee in such circumstances as the Minister considers appropriate.

#### **64 Information to be specified on containers of shellfish for sale**

- (1) The purpose of this clause is to prevent the spread of fish diseases and noxious fish.
- (2) A person must not consign or convey unopened shellfish for sale in a container that does not have marked legibly on the outside:
- (a) the name of the consignor or packer, and
  - (b) the name in full of the estuary, bay or other area where the shellfish were grown, and
  - (c) the species of shellfish that it contains.

Maximum penalty: 50 penalty units.

- (3) A person must not, without reasonable excuse, consign or convey for sale in the same container unopened shellfish of different species.

Maximum penalty: 50 penalty units.

- (4) This clause does not apply to the consignment of shellfish from one area to another area for further growth.
- (5) In this clause, **shellfish** means aquatic molluscs, crustaceans or echinoderms.

#### **65 Obligations of authorised deposit-taking institutions concerning trust accounts**

- (1) An authorised deposit-taking institution does not, in relation to a transaction on a trust account kept under this Regulation:
- (a) incur any obligation to make inquiries, or any liability, other than an obligation or liability to which it would be subject apart from this Regulation, or

(b) have imputed to it any knowledge of the right of a person to money credited to the account,

that it would not incur, or have imputed to it, if the account were kept by the authorised deposit-taking institution for a person absolutely entitled to the money credited to it.

- (2) An authorised deposit-taking institution at which the Minister keeps a trust account under this Regulation has no recourse against money at credit in the account in respect of a liability of the Minister to the authorised deposit-taking institution other than a liability in respect of the account.
- (3) In subclause (2), **recourse** includes any right by way of set off, counter-claim or charge or otherwise.

#### **66 Permit required to gather marine vegetation for commercial purposes**

- (1) A person must not gather marine vegetation for a commercial purpose from any area of public water land except under the authority of a permit issued by the Minister under this clause.

Maximum penalty: 50 penalty units.

- (2) A permit applies to the gathering of marine vegetation only in the area specified in the permit.
- (3) A permit is not required for the gathering of marine vegetation in accordance with an aquaculture permit or a permit under Part 7 of the Act.
- (4) A permit may apply to marine vegetation generally or to a particular class of marine vegetation specified in the permit.
- (5) An application for a permit is to be made in writing to the Minister in a form approved by the Minister.
- (6) If a person duly makes an application for a permit, the Minister may issue, or may refuse to issue, a permit.
- (7) A permit remains in force, unless sooner cancelled or suspended by the Minister, until the expiration of the period specified in the permit.
- (8) A permit is subject to the following conditions and such further conditions as are attached to the permit by the Minister:
  - (a) marine vegetation must not be gathered from any area if commercial fishing is taking place in the area unless, at the time the commercial fishing commenced in that area, marine vegetation was being gathered from the area in accordance with the permit,

- (b) marine vegetation must not be gathered from any land that is held under any title granted by the Crown,
  - (c) marine vegetation must not be gathered from any marked navigation channel,
  - (d) marine vegetation must not be gathered from any area in which a public work is being carried out.
- (9) The Minister may, from time to time, by notice given to the permit holder, vary the further conditions of a permit.
- (10) The fee for a permit under this clause, or for the renewal of such a permit, is \$111.
- (11) In this clause, **gather** includes collect.

#### **67 Fee for permit under section 37**

- (1) An application for a permit under section 37 (1) of the Act, being a permit that authorises a person to take and possess fish or marine vegetation for aquaculture purposes, is to be accompanied by a processing fee of \$166.
- (2) The Minister may waive all or part of the fee payable under this clause in such cases as the Minister considers appropriate.

#### **68 Saving**

Any act, matter or thing that, immediately before the repeal of the *Fisheries Management (Aquaculture) Regulation 1995*, had effect under that Regulation is taken to have effect under this Regulation.

#### **69 Transitional provision concerning security arrangements for class A permit holders of class 1 leases**

##### **Note—**

This clause remakes such of the provisions of clause 63 of the *Fisheries Management (Aquaculture) Regulation 1995* (as in force immediately before the repeal of that Regulation) as are of ongoing effect.

Despite clause 19, the amount payable by a class A permit holder of a class 1 lease under an arrangement referred to in clause 19 (1) (a) or (b) is as follows:

- (a) for any such arrangement entered into during the period of 12 months beginning on 31 January 2002—one half of the amount that would otherwise be payable under clause 19,
- (b) for any such arrangement entered into during the period of 12 months beginning on 31 January 2003—three quarters of the amount that would otherwise be payable under clause 19,
- (c) for any such arrangement entered into on or after 31 January 2004—the full amount

payable under clause 19.

## **Schedule 1 Provisions relating to members and procedure of committees**

(Clause 16)

### **1 Definitions**

(1) In this Schedule:

**committee** means a committee appointed by the Minister in respect of a trust account under section 157 (4) of the Act.

**member** means a member of a committee.

### **2 Appointment of members**

- (1) The Minister may convene a selection committee (including representatives of the aquaculture industry) for the purpose of recommending persons for appointment as members of a committee.
- (2) The chairperson of a committee is to be the member of the committee for the time being appointed by the Minister as chairperson.

#### **Note—**

Section 157 (4) of the Act provides that the Minister is to appoint members of a committee to advise the Minister as to the amount of contributions that are to be paid into a trust account established under section 157 (2) of the Act and of the money held in the trust account. Section 157 (7) of the Act requires the Minister to ensure that a majority of the members of the committee are representatives of the aquaculture industry.

### **3 Deputy members**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and may at any time revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is to be taken to be the member.
- (3) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

### **4 Terms of office of member**

Subject to this Schedule, a member holds office for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-

appointment.

## **5 Allowances for member**

A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

## **6 Vacancy in office of member**

The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under section 157 (9) of the Act, or
- (e) is absent from 3 consecutive meetings of the committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the committee for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

## **7 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person is, subject to the Act, required to be appointed to fill the vacancy.

## **8 Disclosure of pecuniary interests**

- (1) A member of a committee:
  - (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the committee, and
  - (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.

- (2) A disclosure by a member of a committee at a meeting of the committee that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.
- (3) Particulars of any disclosure made under this clause must be recorded by the members of the committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members of the committee.
- (4) After a member of the committee has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the other members of the committee otherwise determine:
  - (a) be present during any deliberation of the committee with respect to the matter, or
  - (b) take part in any decision of the committee with respect to the matter.
- (5) For the purposes of the making of a determination by the members of the committee under subclause (4), a member of the committee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the other members of the committee for the purpose of making the determination, or
  - (b) take part in the making by the other members of the committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the committee.
- (7) A member is taken not to have an interest in a matter for the purposes of this clause merely because the member is the holder of an aquaculture permit or aquaculture lease.

## **9 General procedure for calling and holding meetings of a committee**

The procedure for the calling and holding of meetings of a committee is, subject to any

direction by the Minister, to be determined by the committee.

**10 Quorum**

The quorum for a meeting of a committee is a majority of its members for the time being.

**11 Presiding member and voting rights**

- (1) The chairperson of a committee or, in the absence of the chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the committee.
- (2) The person presiding at a meeting of a committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**12 Voting**

A decision supported by a majority of the votes cast at a meeting of a committee at which a quorum is present is the decision of the committee.

**Schedule 2 Forms**

**Form 1**

(Clauses 37 (1) (b) and 39 (1) (b))

[Fisheries Management Act 1994](#)

AQUACULTURE LEASE/RENEWAL OF AQUACULTURE LEASE

I, the Minister for....., lease on behalf of the Crown the aquaculture farm described below to you, the lessee, for the term, at the rent and on the conditions (if any) specified below.

<b>Your name</b>	
<b>Your residential address</b>	
<b>The area of your lease permit</b>	
<b>The description of the leased area</b>	
<b>The date when the lease starts</b>	
<b>The rent payable for the lease (per year)</b>	
<b>Special conditions applicable to the lease</b>	1. 2. 3. 4. 5. 6.

**Note—**

The rent is subject to periodic redetermination as provided by section 165 (2) of the [Fisheries Management Act 1994](#).

**Lessee's covenants**

You, the lessee, agree that you will:

- (a) comply with the provisions of the *Fisheries Management Act 1994* (“the Act”) and the *Fisheries Management (Aquaculture) Regulation 2002* (“the Regulation”), and
- (b) pay rent for your farm yearly in advance or by instalments as required by the Act and the Regulation, and
- (c) ensure that your farm is used only for aquaculture and that the cultivation of fish or marine vegetation on the farm is carried out in accordance with any relevant aquaculture industry development plan notified from time to time by the Director of NSW Fisheries, and
- (d) ensure that your farm is kept in a neat and tidy condition to the satisfaction of the Director of NSW Fisheries.

You also agree to adjust the areas of cultivation on your farm so as to allow safe navigation if existing channels change or something else happens that requires those channels to be altered.

**Conditions of the lease**

It is a condition of this lease that I may cancel it if you fail to comply with a notice served on you in accordance with section 162 (2) or 213 (3) of the Act (in your capacity as the holder of an aquaculture permit) within the period specified in the notice.

**Note—**

This is a condition of the lease referred to in section 177 (1) (d) of the Act. Section 177 specifies other grounds on which the lease may be cancelled, including non-payment of rent.

Dated this..... day of..... 20.....

.....My or my delegate's signature	.....Witness to my or my delegate's signature
.....Your signature	.....Witness to your signature