
Ministerial Policy Guideline

Assessment of Applications
for the Granting, Renewal or
Transfer of Fishing Tour
Operators Licences
and
Aquatic Eco-tourism Operators
Licences

Issued pursuant to section 246
of the *Fish Resources Management Act 1994*.

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1. INTRODUCTION

The Executive Director of Fisheries Western Australia performs many functions under the provisions of the *Fish Resources Management Act 1994* ('the Act'). These functions include discretionary decisions about whether to grant an authorisation in a particular case. In assessing an application for an authorisation, the Executive Director may require the applicant to provide any additional information he sees fit.

It is my function, as Minister, to provide policy Guidelines as to the aspects of the matter which I believe are important and which should be considered when dealing with such matters. The publication of these Guidelines will provide direction to the Executive Director and will be indicative to, and provide a level of certainty for, the public and industry about the formal processes that are followed to arrive at a decision in these matters.

The Act establishes the principal that - after consultation with the fishing industry, special interest groups and members of the general public - it is the Minister who sets policy Guidelines for the general regulation of fishing, aquaculture and aquatic eco-tourism in Western Australia. Industry and the community have been consulted during the process of determining these Guidelines with the intention of providing the opportunity for them to have input into identifying the relevant factors for the Executive Director's consideration and which affect their interests.

Following consultation, settled Guidelines are duly published. To ensure that the Guidelines are readily accessible, copies of the Guidelines are made available free of charge at the Offices of Fisheries Western Australia. Notice of the publication and availability of the Guidelines appears - typically - in the *Government Gazette*, but may also appear in *The West Australian* or other newspapers or fishing journals.

While guidelines are intended to provide guidance and help ensure consistency in decision making, they will also ensure that Ministerial policies are clear and accessible.

Policy stated in Guidelines is not intended to limit the statutory discretion exercised by the Executive Director in considering an application in a particular case. The Guidelines provide general principles. The Executive Director will exercise his discretion based on the merits of each individual case and may take into account matters not set out in the Guidelines. Furthermore, if it transpires that the policy contained in the Guidelines is inconsistent with a provision of the Act, the Act prevails.

This Guideline has been issued to assist the Executive Director in deciding applications for the granting, renewal, and transfer of Fishing Tour Operators Licences and Aquatic Eco-tourism Operators Licences and for the guidance of the industry and the public. It sets out the factors that are relevant in assessing whether the applicant or the proposed transferee will be granted an authorisation to carry out fishing tour or aquatic eco-tourism activities.

2. OBJECTIVES

This guideline is intended to assist the Executive Director in his consideration of applications for the granting, renewal or transfer of Fishing Tour Operators Licences and Aquatic Eco-tourism Operators Licences.

This Guideline indicates to the Executive Director, aquatic charter industry and the community, those matters that I as Minister consider to be of importance when assessing applications for the grant, renewal or transfer of Fishing Tour and Aquatic Eco-tourism Operators Licences.

3. POLICY

The Government recognises that unregulated growth of the fishing tour and aquatic charter industry may ultimately lead to an over-capitalised industry together with over exploited fish resources. The expansion of the industry combined with a lack of knowledge of its impact on fish resources calls for a conservative response. In keeping with the objects of the *Fish Resources Management Act 1994* a precautionary approach of 'capping' activity at current levels is justified until the relative impact of fishing tour activities on fish resources and fish habitat has been established.

Given the evolving nature of the fishing tour industry and in line with the above statement of policy it is recognised that under certain exceptional circumstances the Executive Director may decide to grant a Fishing Tour Operators Licence in spite of the above.

Aquatic eco-tourism by its nature is believed to have less of an impact on fish and fish habitats than fishing tours. In recognition of this, unlike Fishing Tour Operators Licences, the number of Aquatic Eco-tourism Operators Licences will not be capped at current levels.

3.1 Definitions

In this Guideline the following words shall have the following meaning:

'Fishing Tour' means a tour a central purpose of which is to provide an opportunity for recreational fishing and may include the provision of fishing guidance, fishing gear, accommodation, or transport.

'Fishing Tour Operator' means a person who, on a commercial basis, provides expertise and guided service by land, air or sea to a paying client in connection with a recreational fishing activity.

'Spent Conviction' has the same meaning as defined in the *Spent Convictions Act 1988*.

For interpretation of other terms and words used in this Guideline, reference should be made to Section 4 of the *Fish Resources Management Act 1994* (the Act) and/or any orders and management plans made or determined under the Act.

3.2 Relevant Interest in the Licence

When determining whether the Applicant or Transferee is a fit and proper person to hold a Licence, the Executive Director should also consider whether any person who holds (or upon grant, renewal or transfer) a relevant interest in the Licence is a fit and proper person to hold that Licence.

The Executive Director should not grant, renew or transfer the Licence, if that grant, renewal or transfer will have the effect of giving a person who is not a fit and proper person a relevant interest in the Licence.

3.3 Determining Relevant Interest in the Licence

(a) If upon grant, renewal or transfer the Licence will be held by a corporation, then any person who:

- (i) has a relevant interest in the shares or securities of that corporation.
- (ii) is entitled to participate in the management of that corporation

holds a relevant interest in the Licence.

For the purpose of this Guideline, the question of whether a person has a relevant interest in the shares or securities of a corporation is to be determined by reference to The Corporations Law, Part 1.2, Division 5: 'Relevant interests in shares and securities'.

(b) Where the corporation that holds (or upon grant, renewal or transfer would hold) the Licence is a subsidiary of another corporation then that other corporation (the holding company) holds a relevant interest in the Licence. A corporation is a subsidiary of another corporation if that other corporation:

- (i) controls the composition of the board of directors.
- (ii) has more than 50 per cent of the voting power in a general meeting.
- (iii) holds more than 50 per cent of the issued shares.

(c) Where another entity (corporation, unincorporated body, individual or trust) has the capacity to dominate decision-making of the corporation that holds (or upon grant, renewal or transfer would hold) the Licence, then that other entity holds a relevant interest in the Licence.

(d) If upon grant, renewal or transfer the Licence will be held by a partnership, any person with an interest in the partnership holds a relevant interest in the Licence. Accordingly the Executive Director should consider the terms of the partnership agreement in order to determine the identity of any person with a partnership interest. The Executive Director may request that the person applying for the Licence provide any relevant partnership agreement for the purpose of assisting the Executive Director with an investigation.

(e) If upon grant, renewal or transfer the licence will be held on trust for any other person the trustee and the beneficiaries of the trust hold a relevant interest in the Licence. Accordingly, the Executive Director should consider the terms of the trust, the rights and obligations of the trustee and beneficiaries and the purpose of the trust, in order to determine the identity of any person with an interest in the

property of the trust. The Executive Director may request that the person applying for the licence provides any relevant trust instruments for the purpose of assisting the Executive Director with an investigation.

3.4 Evidence of Relevant Interest

In order to determine who holds (or upon grant, renewal or transfer would hold) a relevant interest in the Licence, the Executive Director should:

- (a) require the Applicant, the Transferor or the Transferee to provide information in the usual form or where in the Executive Director's opinion further verification is required by a statutory declaration in the appropriate form; and/or in a serious case.
- (b) conduct an inquiry under section 249 of the Act.

3.5 Onus to Establish a 'Fit and Proper Person'

While nothing in this Guideline derogates from the Executive Director's discretion to determine who is a fit and proper person to hold a Licence, the Executive Director must be satisfied that the Applicant or a Transferee is a fit and proper person to hold a Licence.

Accordingly when considering a relevant application, the Executive Director should satisfy himself about the prevailing standards of honesty and good character generally applying to persons seeking licences and in particular licences to undertake activities in which the safety of persons, the sustainability of fish stocks and the protection of the marine environment are an issue.

3.6 Knowledge, Ability and Capacity

The applicant or transferee should be prepared to satisfy the Executive Director about:

- (a) the degree of knowledge and ability relevant to the proposed activity which the applicant or transferee possesses including whether he has, or has access to, the capital and business expertise necessary to finance and carry out an operation of the type and scale proposed.
- (b) his capacity to satisfy any relevant safety or other standards or codes of conduct.

3.7 Evidence relating to Knowledge, Ability and Capacity

When considering knowledge and ability under 3.6 of this Guideline, the Executive Director should require the Applicant or the Transferee to provide an operational plan covering the matters detailed in this guideline at 3.9(a) and if applicable 3.9(b) (for a Fishing Tour Operators Licence) and 3.9(c) (for an Aquatic Eco-tourism Operators Licence).

3.8 Change in Fit and Proper Status of Licence

If, at any time after the Licence has been granted, the Executive Director forms the view that the Licensee is no longer a fit and proper person to hold a Licence, then the Executive Director should exercise his powers in the public interest. This may include the Executive Director exercising the power to cancel the Licence or suspend the

Licence for any period, under section 143(1) of the Act.

In circumstances where the Executive Director is provided with information that suggests that the Licensee is no longer a fit and proper person to hold a Licence, then the Executive Director should investigate in order to be satisfied that the relevant person is a fit and proper person. An investigation may include an inquiry under section 249 of the Act, but the Executive Director should not be obliged to undertake a formal inquiry.

The circumstances which result in the Executive Director forming the view that the Licensee is no longer a fit and proper person may include, but are not limited to, a situation where a person holding a relevant interest in the licence is not a fit and proper person because that person no longer has the that status or has been otherwise disqualified by criminal convictions, offences under fisheries legislation or insolvency.

3.9 Granting of Licences - Criteria

(a) Fishing Tour Operators Licence

When considering an application for the granting of a Fishing Tour Operators Licence the Executive Director should consider the following matters of importance:

- (i) the content and nature of the five-year operational plan submitted by the applicant.
- (ii) the nature, pattern, consistency and seasonality of the tour operation and where applicable its demonstrated operational history.
- (iii) demonstrated capital resources sufficient to enable the applicant to operate in the industry at the capacity indicated by the plan.
- (iv) the operational and business growth intentions of the applicant as they may relate to increased effort and impact on the resource during the five-year life of the plan.
- (v) the compatibility of the proposed operation with management objectives for the area or fisheries impacted by the proposal.
- (vi) the impact of the proposed operation on other resource users.
- (vii) the compliance of the proposed operation with minimum environmental standards where they exist for the area, fishery or activity proposed.
- (viii) the level of threat posed by the proposed operation to the sustainability of fish stocks or the health of fish habitats.
- (ix) the Applicant's demonstrated involvement with or investment in the fishing tour industry prior to 12 September 1997.

(b) Demonstrating Involvement

Where an Applicant for a Fishing Tour Operators Licence cannot demonstrate involvement with or investment in the fishing tour industry prior to 12 September 1997, the Executive Director should also consider the following:

- (i) that the proposed fishing tour operation will be carried out in an area which is not currently serviced by an existing fishing tour operator or for a stock or species which is not currently fully exploited.

- (ii) that the proposed fishing tour operation will not significantly increase fishing pressure on stocks, areas or species identified by Fisheries WA in published material as fully exploited or vulnerable.

The onus should be on the Applicant to demonstrate the above to the satisfaction of the Executive Director.

(c) Aquatic Eco-tourism Operators Licence

When considering an application for the grant, of an Aquatic Eco-tourism Operators Licence the Executive Director should consider the following matters of importance:

- (i) the content and nature of the five year operational plan submitted by the applicant.
- (ii) the nature, pattern, consistency and seasonality of the tour operation and where applicable its demonstrated operational history.
- (iii) demonstrated capital resources sufficient to enable the applicant to operate in the industry at the capacity indicated by the plan.
- (iv) the operational and business growth intentions of the applicant as they may relate to increased effort and impact on the resource during the five year life of the plan.
- (v) the compatibility of the proposed operation with management objectives for the area or fisheries impacted by the proposal.
- (vi) the compliance of the operation with minimum environmental standards where they exist for the area, fishery or activity proposed.
- (vii) the level of threat posed by the proposed operation to the sustainability of fish stocks or the health of fish habitats.

The onus should be on the Applicant to demonstrate the above to the satisfaction of the Executive Director.

3.10 Licence Duration

The Executive Director shall initially grant a licence for a period of twelve months. Before the expiry of the initial licence the Executive Director shall consider its renewal for a period of up to five years.

3.11 Minimum Performance Criteria

As a condition of the licence the Executive Director should establish minimum performance criteria which the Licensee must meet for the licence to be renewed.

3.12 Further Investigations

- (a) The Executive Director should proceed with further investigations if:
 - (i) the Applicant, the Transferor or the Transferee has not provided sufficient or appropriate information.

- (ii) it is likely that more exhaustive or extensive investigations may find that the Applicant, Transferee or Transferor or the person who holds (or upon grant, renewal or transfer would hold) a relevant interest should not hold the Licence.
- (b) When determining what further investigations are justified, the Executive Director should consider:
 - (i) the extent to which the information before the Executive Director suggests there is a reasonable likelihood of a person who should not hold a Licence gaining a relevant interest in the Licence.
 - (ii) it is likely that more exhaustive or extensive investigations may find that the Applicant, Transferee or Transferor or the person who holds (or upon grant, renewal or transfer would hold) a relevant interest should not hold the Licence.
 - (iii) the extent to which the Applicant, Transferee, or Transferor has acted honestly and in good faith and has willingly provided any information requested.
 - (iv) the cost of further investigations and any readily apparent economic costs or benefits to the community of any delays in a decision.

3.13 Failure to Provide Information

If the Executive Director has reasonable grounds to believe that the Applicant has not provided information or further information (or has refused to verify such information by declaration) as requested by the Executive Director, then the Executive Director should exercise the power to refuse to consider the application under section 135(4) of the Act.

If the Executive Director has reasonable grounds to believe that the Transferor or the Transferee has not provided information or further information (or has refused to verify such information by declaration) as requested by the Executive Director, then the Executive Director should exercise his powers of refusal under regulation 131(a) of the Regulations.

3.14 Requirement to Act in Good Faith

- (a) If the Executive Director has reasonable grounds to believe that the Applicant for renewal:
 - (i) has not acted in good faith when making the application or when supplying evidence or information.
 - (ii) has wilfully misled the Executive Director, or another Government officer, about who holds (or upon renewal would hold) a relevant interest in the licence or, about the fit and proper character of any person who holds (or upon renewal would hold) a relevant interest in the Licence.

then the Executive Director should exercise the power to cancel, suspend for any period or refuse to renew under section 143(1)(c) of the Act.

If the Executive Director has reasonable cause to believe that the Transferor or Transferee:

- (i) has not acted in good faith when making the application or when supplying evidence or information.
- (ii) has wilfully misled the Executive Director, or another Government officer, about who holds (or upon renewal would hold) a relevant interest in the licence or, about the fit and proper character of any person who holds (or upon renewal would hold) a relevant interest in the Licence.

then the Executive Director should exercise the power of refusal under regulation 131(f) of the Regulations.

3.15 Summary Statement of All Decisions

A summary statement should be kept for all decisions affected by this Guideline.

3.16 Life of Guidelines

- (a) This Guideline will continue to apply unless revoked or amended.
- (b) The Executive Director should provide a report on this Guideline no later than 1 July 2005. This report should cover:
 - (i) decisions affected by this Guideline.
 - (ii) decisions taken outside of this Guideline.
 - (iii) the usefulness of this Guideline for decision making.

and may also include recommendations for the amendment or replacement of this Guideline.



Monty House MLA

MINISTER FOR PRIMARY INDUSTRY; FISHERIES.