

## STATEMENT OF DECISION

### APPLICATION TO VARY AN AQUACULTURE LICENCE

**File Number:** L1342/13-02  
**Applicant:** Harvest Road Oceans Pty Ltd  
**Application Date:** 3 July 2020  
**Application Type:** Variation of an Authorisation

This Statement of Decision should be read in conjunction with the document entitled *Assessment Criteria for the Grant or Variation of an Aquaculture Licence – Explanatory Notes*, which provides explanations, comments and additional information relating to Statements of Decision made in respect of applications for grant or variation of aquaculture licences. The document is available at:

[http://www.fish.wa.gov.au/Documents/Aquaculture/sod\\_assessment\\_criteria\\_explanatory\\_notes.pdf](http://www.fish.wa.gov.au/Documents/Aquaculture/sod_assessment_criteria_explanatory_notes.pdf)

#### 1. DETAILS OF THE APPLICATION

##### Background facts

Harvest Road Oceans Pty Ltd (“Harvest Road”) (ACN 165 170 445) is the holder of Aquaculture Licence No. 1641 (“the Licence”)

The Licence authorises the culture of blue mussels (*Mytilus galloprovincialis*).<sup>1</sup>

Under the Licence the authorised site comprises an area of water of 5.5 hectares in Warnbro Sound (**Attachment 1**).

##### Details of the Licence variation application

On 3 July 2020, Harvest Road made an application to the CEO of the Department of Primary Industries and Regional Development (“Department”) under s.142 of the *Fish Resources Management Act 1994* (“the Act”), for the variation of its aquaculture licence. The application fee, an updated Management and Environmental Monitoring Plan (“MEMP”) and additional information were submitted with the application.

In its application, Harvest Road seeks to vary the list of species authorised to be cultured (in Schedule 1 of the Licence) to include the following species:

- Akoya pearl oyster (*Pinctada fucata*);
- Rock oyster (*Saccostrea* spp.)
- Flat oyster (*Ostrea angasi*)
- Doughboy scallop (*Mimachlamys asperrima*)
- Red seaweed (*Asparagopsis* sp.)

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<sup>1</sup> Note the updated scientific name for blue mussel is *Mytilus edulis*. That scientific name will be used in the varied licence.

In its application, Harvest Road also proposes the amalgamation of sites authorised in IDCA 1641 and 1522, shown in Attachment 1 as, respectively, Aquaculture Licence Site (coloured green) and Existing Aquaculture Licence Site. Noting there is no provision in the Act for the amalgamation of aquaculture licences, that outcome would be undertaken after this current variation.

## 2. RELEVANT CRITERIA TO BE SATISFIED

Consultation was undertaken according to the process set out in AG1; that is, with relevant Government agencies and representative community and industry groups and included the opportunity for public comment. **Attachment 2** provides a summary of the consultation process that was undertaken.

I have read and considered **Attachment 2**. Where relevant, those matters arising out of the consultation process that are of greater significance are referred to below.

The matters arising by reason of s 92 and 92A of the Act are twofold:

1. The criteria specified in s 92(1); and
2. The Management and Environmental Monitoring Plan ("MEMP").

### 2.1 Criteria in s.92(1)

#### (a) *"Fit and proper person"*

Considerations relevant to the "fit and proper person" criterion by reference to the key concepts of knowledge, honesty and ability are set out below.

- Knowledge

From the information submitted with the application, I have noted that Harvest Road and its employees have a proven history of success within the aquaculture industry. Harvest Road has sufficient capital to ensure the project's operational and environmental practices are conducted to the highest standard. Based on the information provided I am of the view that Harvest Road has the knowledge required to undertake the proposed aquaculture activity.

- Honesty

I have no reason to believe Harvest Road does not meet the concept of honesty.

- Ability

The business plan, which Harvest Road was required to produce as part of its application, provided financial information on assets and liabilities and cash flows based upon future production. Based on the information provided, I have no reason

to believe that Harvest Road would not have the capacity to provide the finance needed for the establishment and operation of the project.

From the information provided, it is evident that Harvest Road understands the level of infrastructure and aquaculture equipment needed for the successful implementation of the proposed project. Harvest Road has a history of keeping records and paying relevant fees; I have therefore no reason to doubt the ability of the company in this regard.

With respect to the matter of persons acting on behalf of the licence holder, Harvest Road is a company and accordingly must act through natural person agents. These persons are the officers (such as directors) and employees of the company. The Licence does not authorise persons to act "on behalf of" Harvest Road, so Harvest Road cannot authorise independent contractors or "lessees" to carry out aquaculture. Harvest Road has been an established company for some years, so can be assumed to understand relevant principles of agency.

Based on my consideration of the matters set out above and the information that is before me, on balance, I consider Harvest Road is "fit and proper" to hold a licence to conduct aquaculture of the proposed species at the authorised site.

***(b) Tenure***

Harvest Road has submitted an aquaculture lease application under s.97 of the Act in respect of the existing aquaculture licenses.

Accordingly, I consider that Harvest Road will have appropriate tenure over the authorised sites.

***(c) Better interests***

Aquaculture in Warnbro Sound comprises a significant and sustainable sector of Western Australia's aquaculture industry and has the potential to expand. Aquaculture of the proposed species will facilitate this expansion. Adding the proposed species to Harvest Road's licence will further contribute to the State's economy and provide increased community benefits such as employment opportunities and economic diversification.

Another benefit is that the proposed activities will provide further experience and scientific information that can assist with future aquaculture proposals.

By reason of the above considerations, I am of the view that the grant of the application would be in the better interests of the State and community.

***(d) Whether the proposed activities are unlikely to adversely affect other fish or the aquatic environment***

The main considerations in respect of whether the proposed activities will adversely affect other fish or the aquatic environment are discussed below.

## 1. *Genetics, disease and pests*

Genetics is not an issue because the proposal does not contemplate introducing new genetic combinations.

In respect of diseases and pests, Harvest Road's aquaculture operation operates under controls imposed through licence conditions and a MEMP, which includes biosecurity protocols and procedures. These controls are based on the requirement to demonstrate low risk of disease and pest introduction and spread.

### *a. Disease introduction*

I have a high level of confidence in the ability of Harvest Road to detect known disease agents.

I am not aware of any reported introduction of disease pathogens caused by movement of fish to the site. I note that from time to time the DPIRD's Diagnostics and Laboratory Services may wish to undertake disease testing in the absence of a reported disease event and that these requirements may change from time to time, taking into account the diseases of interest, the characteristics of the tests available and the required confidence in the result as determined by a risk assessment. A licence condition will be imposed to enable DPIRD's Diagnostics and Laboratory Services to determine these requirements for disease testing.

Given the biosecurity protocols in place for the existing site and the controls imposed, or that may be imposed, over the movement of the proposed species, I consider the threat of disease being introduced into Warnbro Sound to be low.

I note that any movements to the site will require health certification, which would deal with disease risk.

Harvest Road will be sourcing broodstock from genetically similar populations from the wild and spat from the Albany Shellfish Hatchery or other authorised hatchery. Harvest Road will operate under biosecurity controls imposed through licence conditions and a MEMP. These controls are based on the requirement to demonstrate low risk of disease introduction and spread through conducting comprehensive health testing prior to movements being permitted.

I consider the threat of disease being introduced to Warnbro Sound and the surrounding areas generally to be low, given the biosecurity protocols in place and the controls imposed, or that may be imposed, over the movement of the fish to the site.

### *b. Disease development in situ*

I have noted that aquaculture has been carried out at the existing site in Warnbro Sound for a number of years. I am not aware of any reports of significant disease outbreaks during that period.

I am also mindful of the conditions to be imposed on the Licence in respect of disease reporting requirements and the biosecurity provisions set out in the MEMP.

Therefore, I consider the risk of disease outbreak at the site and the spreading of disease from the site to be generally low, given the biosecurity protocols in place and the controls imposed, or that may be imposed, over the species being grown at the site.

## *2. Aquaculture gear*

### *a. Impact of the aquaculture gear*

Harvest Road will be using longlines with dropper ropes and baskets attached for the culture of the proposed species. The longlines will be attached to helix, screw or disc anchors with no chains attached to minimise the footprint and impact on sensitive environments such as seagrass. The proposed mooring system will not have any parts above the seabed surface, which will minimise the risk of scouring the seabed.

Therefore, I consider that there would be minimal environmental impact arising from the use of the described aquaculture gear.

### *b. Removal of the aquaculture gear*

In the event of aquaculture ceasing, any issues concerning the clean-up and rehabilitation of the sites would be covered by the relevant provisions of the Act.

## *3. Environmental impact*

I note that it is in the best commercial interest of Harvest Road to maintain a healthy environment and to ensure any ongoing environmental impact is adequately measured and managed. The monitoring and management of environmental factors is a separate issue dealt with in the MEMP section below.

I have noted that the proposed species will not require supplementary feeding; consequently, there will be no increase in nutrient levels arising from the introduction of manufactured feeds. I therefore consider the proposed species will have minimal impact on the surrounding environment. Harvest Road will be conducting chlorophyll-a monitoring, to assess any potential impacts on primary productivity caused by the aquaculture venture.

Therefore, I consider that the matter of environmental impact has been fully addressed and sufficient environmental monitoring and management controls provided in the MEMP and conditions of the Licence.

## *4. Visual amenity and noise pollution*

The proposed project will not have any negative impact on visual amenity and will not result in any noise pollution.

After considering the relevant issues regarding s.92(1)(c), I am satisfied the proposed activities are unlikely to affect other fish or the aquatic environment and can be managed through the MEMP and conditions imposed on the licence under s.95 of the Act.

**(e) Whether the proposed activities have been approved by other relevant authorities**

S.92(1)(d) requires the CEO to be satisfied that the proposed activities have been approved by relevant authorities. I have not identified any other relevant authority that needs to provide approval.

**(f) Other matters prescribed**

S.92(1)(e) requires the CEO to be satisfied of any other matters prescribed for the purposes of s.92(1). There are no other prescribed matters.

Therefore, I am satisfied of the criteria in s.92(1) of the Act, in respect of the variation application.

## **2.2 The MEMP**

Harvest Road has an approved, existing MEMP in respect of its Licence. That MEMP has been amended to apply to the activities proposed under the variation to the Licence.

As such, I approve the MEMP provided by Harvest Road (**Attachment 3**).

In respect of the public availability of the MEMP, I note that under s.250(1)(c) of the Act, a MEMP lodged under the Act is “confidential information” and cannot be divulged by the Department.

## **3. DISCRETION TO VARY – MERITS OF THE APPLICATION**

In considering the exercise of discretion I give regard to the merits of the application. That requires balancing the opposing considerations against the supporting considerations. For any detrimental factors, I give regard to how detriments may be minimised and controlled.

### **Potential disadvantages of variation**

**(a) Genetics, diseases and pests**

I have considered the issue of genetics earlier at part 2.1(d)(1) of this decision, including interbreeding, and concluded genetic issues will be unlikely to have any detrimental impact.

I have considered the issue of disease introduction earlier at part 2.1(d)(1) of this decision and concluded sufficient controls will be in place and that this issue will be unlikely to have any detrimental impact.

To address the risk of disease development *in situ*, additional testing of the proposed species at the farm sites in Warnbro Sound can be required through licence conditions.

I have noted the issue cannot be about eliminating all risk; otherwise, aquaculture operations in the marine environment would not be able to proceed. That is contrary to the object and operation of the Act. The task, therefore, is to reduce the risk of disease outbreak to an appropriately low level by identifying and assessing biosecurity, environmental and other risks and implementing management strategies and controls to reduce the risks. This is addressed primarily through biosecurity controls imposed through the MEMP and licence conditions.

***(b) Environmental impact***

The MEMP provides an environmental monitoring program developed to ensure the proposed aquaculture activity will be unlikely to have any significant impact on the environment and that any impacts that may occur will be managed effectively.

In respect of comments made by the Department of Biodiversity, Conservation and Attractions (DBCA), in relation to Shoalwater Islands Marine Park recommending that potential risks and impacts of interactions between aquaculture facilities and activities are appropriately identified and managed, I have noted that Harvest Road conducted an internal assessment of the potential risks and impact its operations may have on the uses and values of the Shoalwater Islands Marine Park, along with marine fauna entanglement and provisioning of wildlife mitigation practices. Harvest Road has addressed these matters and identified how these operations can be managed in its MEMP.

I have also noted that Harvest Road has conducted internal assessment of the potential impact its operations may have on the little penguin colonies from Garden Island and Penguin Island as recommended by DBCA.

Given the information provided in the MEMP, I am of the view that the proposed aquaculture activity could be implemented without significant deleterious impacts on the environment. Existing aquaculture legislation and adaptive management mechanisms provide further confidence that the aquaculture industry can be developed sustainably.

Given the information set out above, I am of the view there are sufficient controls in place to manage any environmental impact

***(c) Impact on compliance and resourcing***

I do not consider that compliance activities undertaken to enforce the varied licence conditions in this case will be unduly onerous, as they should fall within the usual activities of the Department.

***(d) Whether the proposal involves limitation on access to the proposed waters.***

The variation to the Licence is for the addition of species, so the variation will not limit access to waters.

***(e) The possible impact on navigation***

The Department referred the proposal to the Department of Transport, which considered the site to be a Category 1 as defined in the document "Guidance Statement for Evaluating & Determining Categories of Marking and Lighting for Aquaculture and Pearling Leases/Licences 2019".

***(f) The possible impact on recreational fishing***

The variation to the Licence is for the addition of species, so the variation will not have any impact on recreational fishing.

***(g) The possible impact on commercial fishing and other commercial activities including tourism***

The variation to the Licence is for the addition of species, so, as with recreational fishing, the variation will not have any impact on commercial fishing.

**Potential advantages of variation**

***(a) Suitability of the location for aquaculture and proximity to existing operation***

There are numerous reasons why the site location is suitable for the proposed activity, including that the natural features of the sites satisfy the biological requirements for growing the proposed species. I am of the view that, for the reasons set out above, the location is suitable for the aquaculture of the proposed species.

***(b) Very low impact on other users of the resource (providing disease issues are dealt with)***

For the reasons set out above, the granting of the variation to the Licence would not have any impact on other users of the resource.

The proposal has no impact on visual amenity and noise pollution.

I have noted that the proposal was developed in consultation with a range of stakeholders.

Providing that disease issues are dealt with, I have formed the view that the proposal will have little to no impact on other users of the resource.

***(c) Potential economic benefits for the State***

The establishment of aquaculture operations in regional areas has the potential to add to the economic growth of the region and increase local employment. Existing aquaculture farms around the State are already providing employment opportunities.

I have considered the issue of economic benefits for the State earlier at part 2.1(c) of this decision.



**(d) Contribution to ongoing development of science and knowledge of aquaculture**

Information generated from the expansion of aquaculture activities at the site would contribute to the ongoing development of the science and knowledge about aquaculture, in part by providing data pertaining to environmental impact of activities of this nature on the key identified environmental factors at this type of site; namely, benthic communities and habitat, marine environmental quality and marine fauna.

The science developed from the proposal would not only increase the efficiency of the commercial activity, but also provide a basis for adaptive management by the Department.

**(e) No impact on native title**

There is no impact on Native Title.

In respect of the various issues opposing and in favour of the proposal, I am satisfied the benefits outweigh the disadvantages and that the risks, possible detriments and other issues associated with the proposed licence variation can be managed by licence conditions and the MEMP.

#### **4. LICENCE CONDITIONS**

The conditions on the Licence being varied are outdated and will be replaced as set out below.

The Department has liaised with Harvest Road over the licence conditions. The indicative (intended) substance of the licence conditions is as follows.

#### **SITE**

Warnbro Sound

#### **SPECIES**

Blue Mussels – *Mytilus edulis*

Akoya pearl oyster – *Pinctada fucata*

Western rock oyster – *Saccostrea glomerata*

Flat oyster – *Ostrea angasi*

Doughboy scallop – *Mimachlamys asperrima*

Red seaweed – *Asparagopsis* spp.

#### **LICENCE CONDITIONS**

##### **1. Interpretation**

(1) In the conditions on this licence –

**DPIRD** means the Department of Primary Industries and Regional Development;

**Pathologist** means an employee of, or contractor to, a laboratory facility that is accredited for Anatomical Pathology testing by the National Association of Testing Authorities, Australia, and who is a registered veterinarian with relevant post graduate qualifications in diagnostic procedures;

**DPIRD Pathologist** means the officer(s) occupying a Veterinary Pathologist or Aquatic Veterinary Pathologist position in the DPIRD's Diagnostics and Laboratory Services (DDLs); and

**site** means the area specified in Schedule 2 of this licence.

1. The following terms used in the conditions on this licence have the same meaning as in the *Fish Resources Management Act 1994* –
  - aquaculture lease;
  - CEO;
  - Department;
  - record.

## 2. Requirement for legal right to authorise activity.

The holder of this licence must always maintain in force, the legal right to use the site. The legal right to use the site must be a lease or licence granted in accordance with the power conferred under the *Land Administration Act 1997*, or under section 92 or 97 of the *Fish Resources Management Act 1994*.

## 3. Movement of fish to and from the site – Disease Testing

- (1) The licence holder must not move fish to and from the site unless –
  - (a) the licence holder has received a health certificate from a Pathologist in respect of all fish being moved from the site; and
  - (b) where the health certificate has been provided by a Pathologist that is not a DPIRD Pathologist, the licence holder has received written confirmation from a DPIRD Pathologist that the health certificate is satisfactory.
- (2) The licence holder must ensure:
  - (a) that any fish moved to and from the site are only moved during the period for which the health certificate received under condition (1) (a) and (b) is valid and always accompanied by a copy of the health certificate; and
  - (b) Advance notification of the movements is given to DPIRD by calling 1300 278 292 (all hours).
- (3) The cost of testing carried out under condition (1) (a) and (b) will be borne by the licence holder.
- (4) Conditions (1) (a) and (b) do not apply to fish being moved to the aquaculture licensed site if originating from the same location as defined in Schedule 2 of this licence.
- (5) Condition (1) does not apply to fish being moved from the site -
  - (a) for the purposes of processing or sale for consumption; or

- (b) for the purpose of approved research if the fish are being moved to a land-based facility that does not discharge untreated wastewater directly to surface waters; or
  - (c) if they are broodstock being moved to a licensed land-based aquaculture facility in accordance with the destination facility's MEMP; or
  - (d) if the movement of fish has the prior written approval of the CEO; or
  - (e) for the purpose of testing for quality assurance programs.
- (6) In addition to condition (1) (a) and (b), the licence holder must ensure that additional samples of fish are submitted to the DPIRD Diagnostics and Laboratory Services for disease testing, if required in writing by a DPIRD Pathologist. The cost of the testing undertaken will be borne by the licence holder.

#### **4. Disease, mortality and pest reporting**

Where the licence holder –

- (1) suspects that any fish at the site are affected by disease (including any suspicion or detection of a declared pest, or suspicion or knowledge that fish are infected with a declared pest, (as defined under the *Biosecurity and Agriculture Management Act 2007*); or
- (2) becomes aware of any significant or unusually high levels of fish mortality, caused by disease or otherwise, the licence holder must -
  - (a) Report to DPIRD as soon as practicable (and within 24 hours) by calling 1300 278 292 (all hours) the level of mortality, signs of disease or reason for suspecting the presence of a disease or declared pest; and
  - (b) follow the directions of the DPIRD's Diagnostics and Laboratory Services in relation to providing reports, samples of fish, or any other relevant item; and
  - (c) Collect, retain, and provide suitable samples of the fish for confirmatory testing as instructed by the DPIRD Diagnostics and Laboratory Services.

#### **5. Management and Environmental Monitoring Plan (MEMP) Compliance Audit**

An independent audit of compliance with the MEMP must be commissioned and carried out by the licence holder, at the expense of the licence holder, within four months of being directed in writing by the CEO to commission the audit. A copy of any interim and final audit report must be delivered to the CEO within seven days of being received by the licence holder.

#### **6. MEMP Report**

The licence holder must:

- (1) at all times comply with and implement the latest MEMP prepared by the licence holder, and delivered to the Department; and

- (2) before 31 July each year, submit to the CEO, a written annual report on its activities conducted under the MEMP during the year, which must include all results of management and monitoring activities to 1 July.
- (3) ensure that the MEMP is updated every two years at the time the licence is renewed and submitted to the CEO for approval.
- (4) ensure that a species listed in Schedule 1 of this licence is not present at the location listed in Schedule 2 unless:
  - (a) A risk assessment for that species has been included in the current MEMP; or
  - (b) The MEMP is updated with a risk assessment for that species and has been submitted to the CEO for approval.

## **7. Marking and Lighting**

- (1) Marking and lighting of the marine site must be installed and maintained in accordance with Category 1 as set out in the document "*Guidance Statement for Evaluating and Determining Categories of Marking and Lighting for Aquaculture and Pearling Leases/ Licences (2019)*".
- (2) The marking and lighting required under paragraph (1) must be installed before any aquaculture activity is undertaken at the site.
- (3) No marking is required if the site is only used for bottom culture where to top of the aquaculture gear is at least five metres below the surface at lowest tide.

## **8. Aquaculture gear**

- (1) Aquaculture gear must be used in such a way that it does not damage any reef, coral or seagrass bed.
- (2) The holder of the licence must ensure that all aquaculture gear is located within the boundaries of the site, and maintained in a safe, secure and seaworthy condition; and all floating aquaculture gear, including ropes and buoys, must be fastened securely.
- (3) Upon termination, non-renewal of the licence or cessation of the aquaculture activity, the licence holder must remove from the area all property, aquaculture gear, refuse and debris belonging to the licence holder and restore the area to a condition approved by the CEO.
- (4) Aquaculture gear that is to be moved from one location to another must be cleaned and completely air dried and biological waste disposed of on land prior to being installed in its new location. The licence holder can contact Aquatic Pest Biosecurity ([aquatic.biosecurity@dpird.wa.gov.au](mailto:aquatic.biosecurity@dpird.wa.gov.au)) for guidance.

## **9. Record keeping**

- (1) The licence holder must make accurate and timely records of –
  - (a) the aquaculture gear used at the site;
  - (b) the movement of fish to each type of aquaculture gear, including –
    - i. the estimated average weight and numbers of the fish moved;
    - ii. the time and date the movement took place; and

- iii. any mortalities of fish that occurred during the movement;
  - (c) the estimated weight and numbers of fish being kept on or in each type of gear at the site;
  - (d) the estimated weight and numbers of fish harvested from each type of aquaculture gear at the site;
  - (e) all mortalities at the site, both in total and as a percentage of total stock held at the site at the time; and
  - (f) all health certificates issued to the licence holder by a Pathologist.
- (2) The licence holder must keep the records made under paragraph (1) in a secure place at the licence holder's registered place of business for a period of seven years.
- (3) Records under paragraph (1) must be available to an authorised DPIRD Fisheries Officer at any time.

#### 10. Interaction with protected species

Any interactions between any aquaculture gear at the site and any protected species, including entangles or stranded animals must be immediately reported to the Department of Biodiversity, Conservation and Attraction's (DBCA) Wildcare Hotline on (08) 94749055 (24hr emergency number), the DBCA's Nature Protection Branch on (08) 9219 9837 and the local DBCA District Office.

### DECISION

On the basis of the above and subject to the amendment of the licence by imposing conditions referred to above, I have decided to vary the Aquaculture Licence No. 1641, submitted by Harvest Roads Oceans Pty Ltd to include species of oyster, scallop and seaweed

I have decided to delete the existing conditions on the Licence and impose new conditions on the Licence under s.95 of the Act. The new conditions to be imposed are as set out above at part 4 of this statement of decision.

I also approve the revised MEMP submitted by Harvest Road Oceans Pty Ltd.



Heather Brayford

**DEPUTY DIRECTOR GENERAL, Sustainability and Biosecurity**

As delegate of the CEO, Department of Primary Industries and Regional Development

Dated this 14<sup>th</sup> day of October 2021

I hereby give instruction for notice of the decision to vary the Licence under s.142 of the Act and impose conditions under s.95 of the Act to be advertised in the West Australian newspaper in accordance with s.148 of the *Fish Resources Management Act 1994*