



**Regulation Review Committee
Parliament of New South Wales**

**Report on the
Fisheries Management (Aquaculture)
Regulation 1995 and the Fisheries
Management (Aquaculture) Amendment
(Administration) Regulation 1999**

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Regulation Review Committee

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Functions of Regulation Review Committee

The Regulation Review Committee was established under the *Regulation Review Act 1987*. A principal function of the Committee is to consider all regulations while they are subject to disallowance by Parliament. In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following:

1. that the regulation trespasses unduly on personal rights and liberties;
2. that the regulation may have an adverse impact on the business community;
3. that the regulation may not have been within the general objects of the legislation under which it was made;
4. that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;
5. that the objective of the regulation could have been achieved by alternative and more effective means;
6. that the regulation duplicates, overlaps or conflicts with any other regulation or Act;
7. that the form or intention of the regulation calls for elucidation; or that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable, including reports setting out its opinion that a regulation ought to be disallowed.

Chairman's Foreword

This report examines and makes recommendations relating to the Fisheries Management (Aquaculture) Regulation 1995 and a recent amendment to it, the Fisheries Management (Aquaculture) Amendment (Administration) Regulation 1999. The Committee held hearings on the regulation in March and October and among other things the Committee recommends that the Minister for Agriculture ensure that adequate staff are retained by Safe Food Production NSW in order to enable it to expeditiously complete the sanitary surveys of the State's waterways.

The Committee recommends that funding be provided to sewer critical areas of the Hawkesbury River catchment and that the Hawkesbury be adopted as a pilot scheme for the classification of waters by reference to sanitary surveys in the light of its importance to the industry.

The Committee also recommends that Safe Food and the Waterways Authority incorporate world's best practice in the New South Wales Shellfish Quality Assurance Program and take such other action as will enable the export of New South Wales oysters to any nation.

The Committee believes that the principal regulation should make it an offence for large commercial and hire vessels to approach within 100 metres of an oyster lease and that these vessels should be fitted with adequate storage tanks for sewage and be provided with pump out facilities to prevent pollution of the waterways.

Peter R. Nagle MP
Chairman

FISHERIES MANAGEMENT (AQUACULTURE) REGULATION 1995 AND FISHERIES MANAGEMENT (AQUACULTURE) AMENDMENT (ADMINISTRATION) REGULATION 1999

The *Fisheries Management (Aquaculture) Regulation 1995*, the “principal regulation”, was due for staged repeal under the *Subordinate Legislation Act* this year but that repeal was postponed for a year.

Principal regulations have a five year life span under the *Subordinate Legislation Act*. Prior to their fifth anniversary they are subject to a full review and cost benefit analysis and are remade on the basis of the results of that process.

The principal aquaculture regulation was made in 1995 and was due for repeal and replacement in 2000. However the Governor, under the *Subordinate Legislation Act*, has postponed that repeal until 1st September 2001. This has the advantage that any recommendation made by the Regulation Review Committee will be taken into account when that regulation is subsequently remade.

The *Fisheries Management (Aquaculture) Amendment (Administration) Regulation 1999* “the amending regulation” makes changes to administrative arrangements relating to the New South Wales Shellfish Quality Assurance Program as part of the transfer of administrative responsibility for the program from the Minister for Fisheries and the Director of Fisheries, to the Minister for Agriculture and the Chief Executive Officer of Safe Food Production NSW.

Safe Food Production NSW, “Safe Food”, was established under the Food Production (Safety) Act 1998 with the intention of developing a single New South Wales agency responsible for food safety.

At its meetings of 18 and 25 November 1999, the Committee resolved that a briefing and view be held early in 2000 on Aquaculture to examine the principal regulation and to discuss how the dual administration under the regulation will work in practice.

INITIAL BRIEFING

The Committee received a preliminary briefing on these regulations on Thursday 9 March 2000 at Parliament House.

Those in attendance were Mr Steve Dunn, Director of NSW Fisheries, Mr David Howse, Policy Adviser to the Minister for Agriculture, Mr Andrew Derwent, Development Manager Seafood Division, Safe Food Production NSW and Mr Mika Malkki, Manager (Oysters), New South Wales Fisheries.

The discussions also concerned the decision in Ryan v Great Lakes Council [1999] FCA 177 (5 March 1999) where Judge Wilcox of the Federal Court said that depuration and meat testing prior to sale is not a sufficient guarantee of non-contamination and that all the international models rely on the classification of harvesting areas by reference to sanitary surveys.

BROOKLYN HEARING

At Brooklyn on Wednesday 22 March 2000, the Committee conducted a site inspection of oyster processing and took evidence from Messrs Malkki and Derwent and the following persons:

Mr Stephen O'Doherty MP
Member for Hornsby

Mr David Howse, Policy Adviser
representing the Minister for Agriculture;

Ms Christine Pedder, Policy Adviser,
representing the Minister for Fisheries;
Dr Kerry Jackson, State Co-ordinator (Program Manager),
New South Wales Shellfish Quality Assurance Program;
Ms Stella Whittaker, Executive Manager, Environment Division and
Ms Jacqui Grove, Environmental Scientist, Hornsby Shire Council;
Mr Don Ince, Chairman
Hawkesbury River Local Quality Assurance Committee
Mr Roger Clarke, President and
Mr Stephen Verdich, member
Oyster Farmers Association of NSW Ltd;
Mr Peter Johnson, President
Hawkesbury River Oyster Farmers Association
Mr Glenn Browne, Chairman and
Mr Don Burgoyne, member
Executive Committee of the NSW Farmers Association, Oyster Committee.

PARLIAMENT HOUSE HEARING

The Committee held a hearing on Monday 30 October 2000 at Parliament House and took further evidence from the following persons:

Mr Andrew Derwent, who gave evidence at Brooklyn
Mr Roger Clarke, who gave evidence at Brooklyn
Mr Stephen Dunn, Director
New South Wales Fisheries
Dr Kerry Jackson, who gave evidence at Brooklyn
Mr Robert Everett, Regional Manager
Hawkesbury/Broken Bay, Waterways Authority

Mr John Hickey, Acting General Manager
Policy Planning And Research, Waterways Authority
Mr Ross McPherson, Manager
Water Catchment, Hornsby Shire Council
Damian Ogburn, Principal Manager
Aquaculture, New South Wales Fisheries
Ms Barbara Richardson, Director
Waters and Catchments Policy, Environment Protection Authority
Mr Paul Davico
Holidays-A-Float Houseboats Pty Ltd
Mr William Glover, Director
Luxury Afloat
Mr Malcolm McDowell
Consultant, Ripples Houseboat Holidays

THE POTENTIAL FOR EXPORT

The Oyster Farmers Association was mainly concerned that New South Wales has been slow in adopting world's best practice in developing the New South Wales Shellfish Quality Assurance Program [SQAP] and that this was inhibiting exports. They said that despite being two decades behind the United States and the European Union, and a decade behind Tasmania, New South Wales has been unable to quickly adopt existing overseas and Australian programs, and the benefits they carry.

They supported the transfer of functions in the *Fisheries Management (Aquaculture) Amendment Regulation 1999*, but questioned the effectiveness of retaining the New South Wales Shellfish Quality Assurance Committee [SQAC] system because of lack of resources to undertake sanitary surveys.

Safe Food said that the decision in Ryan v Great Lakes Council was no longer entirely relevant as it was handed down prior to the implementation of the New South Wales Shellfish Quality Assurance Program.

They said that the European Union had totally prohibited any importation of Australian shellfish product because it was not satisfied that Australia had implemented a procedure to guarantee that oysters were free of the “QX” and “Winter Mortality” diseases. These are protozoan parasite diseases of oysters which have no effect on humans but make the product look unsightly. The prohibition was not on the basis of any quality assurance arrangements.

Similarly, they said that in the United States, Australian product is prohibited from entry because Australia does not have the requisite laboratories accredited by the United States Food and Drug Administration. While such an accredited laboratory was in operation in Australia, in 1996 all member States of the Australian Shellfish Quality Assurance Program voted to cease that accreditation because no farmers were exporting their product and it was therefore not economical.

Safe Food said that in 1999 a joint workshop of the New South Wales Shellfish Quality Assurance Committee and the Oyster Management Advisory Committee was held to discuss what needed to be done for the New South Wales program in relation to the decision in Ryan v Great Lakes Council.

One of the recommendations of the workshop was that two reviews be conducted: a management review of the program and an operational review.

Dr Jackson confirmed that the European Commission was currently conducting an on-site audit in Australia relating to procedures to guarantee that export shellfish are free from the diseases QX and Winter Mortality. However she said they were only looking at the Tasmanian and Queensland industries as New South Wales had a long way to go before it could have an export industry. She said that the last meeting of the Australian Shellfish Quality Assurance Advisory Committee was on 13 October and that it was quite clear that there had been very little progress in moving towards uniform export and domestic standards for all shellfish and that part of the problem was the absence of funding or any parent body to deal with committee recommendations.

Dr Jackson said that Tasmania and South Australia have uniform arrangements in place for domestic and export shellfish and that two of the Queensland

harvest areas are export certified and the other two are not. There are varying degrees of quality control, depending on whether it is an export or domestic market. While New South Wales has a long way to go before it has uniform arrangements for shellfish, she said that it is are working hard towards achieving that.

Dr Jackson said that the issue of the potential for export to the United States was also raised at the meeting on 13 October and that the agreement at that meeting was that any processor wishing to export would have to pay the costs of what would be required. She said that these would include, but may not be limited to:

- Food and Drug Administration, FDA-(re)accreditation of a laboratory evaluation officer;
- audits of laboratories wishing to provide relevant services against FDA criteria;
- FDA-(re)accreditation of standardised inspection officers;
- inspection of the firm(s) processing export shellfish for compliance with NSSP controls;
- certifying the “dealer(s)” wishing to export shellfish to the US and submitting appropriate details to the FDA for inclusion in the “Interstate Certified Shellfish Shippers List”;
- audits of State programs sourcing export product against NSSP criteria;
- developing a specific inter-agency agreement between AQIS and the State program/agency concerned if one does not already exist; and
- report to the FDA “significant proposed and final changes in program operations and procedures”.

She said all States agreed that if someone wants to do that they can fund it and that even the Tasmanian Government agency did not wish to fund the re-entry of product into the USA. She said that since 1996-97, when the Australian States agreed they did not think it was an economic alternative for export, the Australian program has changed to adopt a different microbiological testing criteria. She said that this is unacceptable to the US, not because it is a bad test but because the USA has an old program and it is difficult to get things changed.

She said that the European Union has a different shellfish quality assurance philosophy, as it sets end product standards in its directives. Directive No. 91/412 sets end product standards and broad criteria. Individual countries attain that end product standard in their own way and in accordance with their own country's legislation. She does not believe it is thorough in its sanitary survey requirements.

While the Committee notes that New South Wales has a long way to go before we have uniform arrangements for our shellfish, it is pleased to note Dr Jackson's statement that we are working very hard towards achieving that. The Committee believes that Safe Food and the Waterways Authority should incorporate world's best practice in the New South Wales Shellfish Quality Assurance Program and take such other action as will enable the export of New South Wales oysters to any nation.

THE OPERATIONAL REVIEW

Mr Derwent indicated that the NSW SQAP operational review was being undertaken by Dr. C.J. Rodgers who was based in Spain. Mr Derwent said that Dr Rodgers had submitted an initial draft containing some factual errors on 20 October 2000. That draft is currently being revised.

The Committee believes that this draft should be completed by the end of December 2000 and circulated to all concerned parties for comment by the end of February 2001. Furthermore Safe Food should inform the Committee of the action it intends to take as a consequence of the Operational Review by the end of March 2001.

SANITARY SURVEYS

Safe Food said that arising out of the decision in Ryan v Great Lakes Council there was also an urgent need to upgrade the New South Wales sanitary surveys and Dr Jackson indicated what this entailed:

A sanitary survey is a process that encompasses a risk assessment of a growing area. It has three main parts. Firstly, we conduct a shoreline survey to identify and record the location of potential and actual pollution sources. It is an eyeballing, a walk in the catchment, and noting where every farm is, where every septic tank is, anything that is a potential source of pollution. Secondly, we assess the pollution source and try to establish what impact that may have on the shellfish growing area downstream. That would involve hydrological surveys, tide information, weather information and putting all that together to try to come to terms with the risk that source represents.

It is all about classifying the risk. The third part of the process is a monitoring program which should confirm what we already know. The numbers are not really the important part; the important part is assessing the pollution sources. We have not done that in New South Wales because we have not had the money. It needs to be done desperately. The work that has been done included a quick shoreline survey conducted by the industry and verified by a couple of scientific officers and funded by \$50,000 from the Department of State and Regional Development.

The terms “shoreline survey” and “sanitary survey” are often interchanged but they are quite different. Some States have done no more than a shoreline survey but call them sanitary surveys. Often oysters are grown in isolated places, if not oceanic, so they can get away with it. But where you have a complicated, highly populated catchment with difficult dynamics to predict, as we tend to have in the oyster growing areas of New South Wales, it will cost a little more.”

Dr Jackson said that shoreline surveys, which are the first step in sanitary surveys, were currently under way in Brisbane Water and Wallis Lake and that this required the employment of one senior officer by Safe Food since August 2000. Further funding was necessary to complete the project.

Dr Jackson said that Safe Food has employed a senior officer who has been trained to start conducting the shoreline surveys to the detail required by the Australian program. The surveys have been conducted in the Hawkesbury River, with the exception of Peat Island, Brisbane Waters in its entirety, the Clarence River and the Brunswick River.

A survey of approximately 30 per cent of Port Stephens has been conducted and approximately 30 per cent of Wallis Lake is to be completed. Surveys have also been conducted of Nelson Lagoon and Eden. The Senior Officer was employed on 10 August and there are about 23 estuaries outstanding where oysters are grown.

Dr Jackson said that they may only have the officer until November and that they had therefore prioritised areas that have had a food poisoning outbreak in the past, as immediate priority.

In this classification they have also had a supplementary group of estuaries where they are concerned about pollution, either pollution that they know about or pollution that they are unsure of.

They have targeted areas where production is occurring as high priority.

She said that the shoreline survey and then progression towards formal classification will usually take up to three years. It can be reduced, depending on the resources. It can be done in as little as 12 months, but that is the minimum period.

The Committee recommends that the Minister for Agriculture ensure that adequate staff are retained by Safe Food in order to enable it to expeditiously complete the Sanitary Surveys of the State's waterways.

POLLUTION OF THE HAWKESBURY RIVER

Several agencies have responsibility for the waters of the Hawkesbury River. Hornsby Shire Council has a responsibility under the quality assurance program to inspect, repair and maintain on-site sewage management systems in the Berowra catchment area. There is a duty to notify any leaks, plant failures or any works being undertaken.

In 1993 Council entered into the statement of joint intent [SOJI] with the Environment Protection Authority, Sydney Water and Hawkesbury-Nepean Catchment Management Trust to improve water quality in the Berowra catchment area. A total of approximately \$1.9 million annually is spent as part of the Catchment remediation program. Recently Council applied to the Department of Land and Water Conservation for a boat pump-out facility on the Hawkesbury estuary and this was approved.

Council was unclear whether it had jurisdiction over recreational use of the waters and was taking legal advice about its powers under the Protection of the Environment (Operations) Act to be able to serve clean-up notices on boat operators.

Council subsequently advised at the hearing in Parliament House on 30 October 2000 that it had such powers. As an interim measure, it had decided to provide pump-out facilities in the hope that commercial and recreational users would use them. However the Council believed that the level of protection afforded to the waters of Sydney Harbour should be extended to the Hawkesbury. This would make mandatory the fitting of storage tanks for sewage and the use of pump out facilities.

Council indicated that recently the Department of Land and Water Conservation had been gathering water quality information from throughout the Hawkesbury-Nepean catchment and giving it a rating so that the Department will have a database of all the water quality information and will provide a holistic picture of that catchment.

Prior to this there had been limited discussion on water quality with the adjoining Gosford City Council, the Council of the Shire of Baulkham Hills and in Windsor further upstream.

Council indicated that a major problem that remained to be resolved was the fact that most of the catchment was unsewered. It said that it had been working with the other agencies and also with community groups to get an answer from the State Government in terms of its priority sewerage action program, but that it was still waiting.

The Member for Hornsby asked the Committee to consider a recommendation that funding be provided to sewer critical areas of the catchment and that the Hawkesbury be adopted as a pilot scheme for the classification of waters in the light of its importance to the industry.

Messrs Everett and Hickey of the Waterways Authority indicated that dumping of sewage by houseboats and other vessels near oyster leases was a major problem. A discussion paper on the subject was released in March 2000 and its key findings were that the vessels which pose the greatest risk in terms of their potential to discharge sewage into the water are Class 1 commercial vessels (passenger carrying vessels), and Class 4 commercial vessels 6 metres or more in length that are likely to be hired for extended periods of time (eg hire and drive vessels such as house boats). The most extreme risk consequences were identified as being pollution of waterways used for aquaculture activities or drinking water supplies. The paper said "the potential risks associated with discharging untreated sewage into any waterway can only be eliminated by total prohibition".

One of the major proposed courses of action in the discussion paper at page 23 was that “*the discharge of untreated sewage from vessels be prohibited in all NSW waters*”. Although this is already an offence under the disposal of waste provisions of s.115 of the *Protection of the Environment Operations Act 1997* Waterways considered that a more specific ban was required.

In their submission on the discussion paper, Safe Foods said that the introduction of No Discharge Zones in waterways where aquaculture and commercial or recreational harvesting occurs is both an essential and immediate priority.

Ms Barbara Richardson of the Environment Protection Authority said that the Protection of the Environment Operations Act 1997 commenced only recently and for that reason there had been no prosecutions under it in relation to sewage dumping in the Hawkesbury River. She said that the Waterways Authority will be the regulatory authority under that legislation.

Messrs McDowell, Davico and Glover who are involved in the houseboat hire business on the Hawkesbury river, indicated that they prohibit persons who hire their boats from entering oyster growing areas. They believe that the major problem they face is the lack of pump-out facilities on the river.

Mr Davico considered that the 56 Sewage Treatment Plants that discharge into the Hawkesbury posed a greater threat to the oyster industry than the 100 to 120 Houseboats in the river.

Dr Jackson indicated that there were 564 moored vessels alone in the Sandbrook Inlet of the river, and this excluded houseboats. She said that discharges from Sewage Treatment Plants were easily predictable as they occurred at times of heavy rainfall and that for so long as such discharges affected the river, the harvesting of oysters was prohibited. She said there was no such predictability with respect to discharges from boats.

The Committee believes that the principal regulation should make it an offence for large commercial and hire vessels to approach within 100 metres or such other prescribed distance of an oyster lease and that these vessels should be fitted with adequate storage tanks for sewage and be provided with pump-out facilities to prevent pollution of the waterways.

The Committee recommends that funding should also be provided to sewer critical areas of the Hawkesbury River catchment and that the Hawkesbury be adopted as a pilot scheme for the classification of waters by reference to sanitary surveys in the light of its importance to the industry.

RECOMMENDATIONS

It is clear from the evidence presented to the Regulation Review Committee that action should be taken to implement an integrated program, accompanied by specific costings, to carry out the following recommendations:

1. The Committee recommends that Safe Food ensure that the Operational Review being prepared by Dr Rodgers be completed by the end of December 2000 and circulated to all concerned parties for comment by the end of February 2001. Furthermore that Safe Food inform the Committee of the action it intends to take as a consequence of the Operational Review by the end of March 2001.
2. The Committee recommends that Safe Food inform the Committee of the action it intends to take with respect to the Management Review by the end of March 2001.
3. The Committee recommends that the Minister for Agriculture ensure that adequate staff are retained by Safe Food in order to enable it to expeditiously complete the Sanitary Surveys of the States waterways.
4. The Committee recommends that funding be provided to sewer critical areas of the Hawkesbury River catchment and that the Hawkesbury be adopted as a pilot scheme for the classification of waters by reference to sanitary surveys in the light of its importance to the industry.
5. The Committee recommends that Safe Food and the Waterways Authority incorporate worlds best practice in the New South Wales Shellfish Quality Assurance Program and take such other action as will enable the export of New South Wales oysters to any nation.
6. The Committee recommends that Safe Food and the Waterways Authority undertake education campaigns over the next 10 years promoting the export of Sydney Rock Oysters.
7. The Committee recommends that the principal regulation be amended to provide that in any waterway of the State it is an offence for an owner or for a hirer of:

(a) a Class 1 commercial vessel, or

(b) a Class 4 commercial vessel which is intended for residence or recreation,

if the owner or hirer permits the vessel to approach within 100 metres of an oyster lease, or within such other distance as may be prescribed in a particular case.

The penalty for this offence should be \$750 for a first offence, \$1500 for a second offence and \$3000 for a third or subsequent offence.

8. The Committee recommends that the principal regulation be amended to provide that in any waterway of the State the owner of:

a) a Class 1 commercial vessel, or

b) a Class 4 commercial vessel which is intended for residence or recreation,

must ensure that adequate storage tanks for sewage are fitted and that the tanks are pumped out at necessary intervals without polluting the waterways.

9. The Committee recommends that the Government facilitate such loans at bank interest to the owners of vessels referred to in recommendation 8 as are necessary to ensure compliance with that recommendation.

10. The Committee recommends that the Waterways Authority establish such pumpout facilities in the waterways of the State as are necessary to enable compliance with recommendation 8 and that the on shore removal of sewage from the pumpout facilities be provided free of charge for the initial 10 years of their operation.

11. The Committee recommends that each owner of a class 4 commercial vessel which is hired for residence or recreation, be required to prepare an instructional video on the use of the vessel, showing in particular the areas in which the vessel is prohibited and that each owner be required to show the video to the person hiring the vessel prior to its operation.

12. That the Waterways Authority give urgent consideration to the provision of plain English or other explicit signage in the proximity of oyster leases to warn boat users of the problems associated with the discharge of sewage.