

Living Marine Resources Management Act 1995

Section 75 – Ministerial Guideline

**SUBJECT: REQUIREMENT TO HAVE A MARINE FARMING LICENCE
WHEN FEEDING FISH HELD UNDER THE AUTHORITY OF A FISH
PROCESSING LICENCE.**

OBJECTIVES

To advise of the circumstances when the holder of a fish processing licence may be regarded as being required to hold a marine farming licence when feeding fish held on a fish processing premises in accordance with the authority of the fish processing licence.

BACKGROUND:

The holders of fish processing licences regularly receive live fish. Holding fish live for the purpose of processing by any means is defined as processing by s3 of the *Living Marine Resources Management Act 1995* (the Act).

In holding such fish it may be necessary to preserve the life of the fish by feeding. Section 3 of the Act defines “marine farming” as including “the farming, culturing, enhancement, or breeding of fish for trade, business or research”.

Section 64 (1) of the Act states that;

- (1) A person without a marine farming licence must not –**
 - (a) carry out any marine farming in State waters; or**
 - (b) take live fish for the purpose of marine farming in State waters; or**
 - (c) operate a fish hatchery or breed, culture or farm fish –**
 - (i) in inland waters if the fish in the normal course of events would be transferred to State waters or waters sourced from State waters; or**
 - (ii) on land if State waters are used as a growing medium or the waters in which the fish are normally kept has characteristics similar to any State waters.**

RELEVANT CIRCUMSTANCES

The feeding of fish when done for the purpose of maintaining live fish in a state consistent with the state they were in when received by the holder of a fish processing licence is generally not considered to be the farming, culturing, enhancement, or breeding of the fish. Therefore feeding fish in such circumstances is unlikely to amount to marine farming, with no marine farming licence therefore being required.

If however, the feeding changes the consistency of the fish from the state in which they were received by growing or enhancing the fish, then it is likely that such feeding will amount to marine farming and a marine farming licence would be required.

Examples of activity involving the feeding of fish that would likely be considered to be marine farming include;

- Feeding fish over a period of time to “fatten” them up for market;
- Feeding fish that have been received in a poor condition so as to improve the condition prior to dispatch or sale.

The Minister issues this guideline in order to assure the holder of a fish processing licence who;

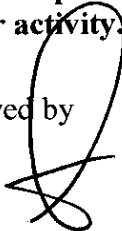
- processes fish at a fish processing premises, and
- feeds those fish and by doing so, does no more than sustain the life of the fish in the form they were in when they entered the immediate proximity of the processing premises,

that the processor is unlikely to be marine farming and thus not required to hold a marine farming licence under Section 64 of the Act.

The expression “immediate proximity” has the same meaning as that contained in Rule 3 of the *Fisheries (Processing and Handling) Rules 2001*.

Whether or not an act (or acts) amounts to marine farming will be entirely dependent on the circumstances of each case and the onus remains on the individual processor to ensure compliance with all provisions of the Act relevant to their activity.

Approved by



Date 15/05/2009

David Llewellyn MHA
Minister for Primary Industries and Water