



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

---

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

---

---

Report No 22/52  
February, 2002

This report was compiled using Microsoft Word 97  
and printed by Parliamentary Printing Services

*Copies of this report have been distributed to all  
legal deposit libraries in Australia*

New South Wales Parliamentary Library cataloguing-in-publication data:

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

Second report on the Fisheries Management (Aquaculture) Regulation 1995 and the Fisheries Management (Aquaculture) Amendment (Administration) Regulation 1999 / Regulation Review Committee, Parliament of New South Wales. [Sydney, N.S.W.] : The Committee, 2002. — 14 p. ; 30 cm. (Report no. 22/52, February 2002)

Chair: Gerard Martin.  
ISBN 0 7347 6868 0

1. New South Wales. Fisheries Management (Aquaculture) Regulation 1995
2. New South Wales. Fisheries Management (Aquaculture) Amendment (Administration) Regulation 1999.
3. Fisheries—New South Wales—Law and legislation.
  - I Martin, Gerard.
  - II. Title
  - III. Series: New South Wales. Parliament. Regulation Review Committee. Report ; 52/22

343.94407692 (DDC21)

## Table of Contents

Regulation Review Committee .....	3
Functions of Regulation Review Committee .....	4
Chairman's Foreword.....	5
Fisheries Management (Aquaculture) Regulation 1995 and Fisheries Management (Aquaculture) Amendment (Administration) Regulation 1999 .....	6
Appendix 1: Letter dated 18 July 2001 Mr Paul Davico Manager of Holidays-A-Float Houseboats Pty Ltd. ....	12
Appendix 2: Letter dated 7 November, 2001 from the Minister for Agriculture. ....	15

## **Regulation Review Committee**

### **Members:**

Mr Gerard Martin MP, Chairman  
Hon J. A. Saffin MLC, Vice Chairman  
Hon D. T. Harwin MLC  
Hon M. I. Jones MLC  
Dr E. A. Kernohan MP  
Mr G.F. Martin MP  
Ms M. F. Saliba MP  
Mr R. W. Turner MP  
Mr G. West MP

### **Secretariat:**

Mr J. Jefferis, Manager  
Mr G. Hogg, Project Officer  
Mr D. Beattie, Committee Officer  
Ms R. Dart, Assistant Committee Officer

## 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 is a follow-up to the Committee's previous report, Report No. 13/52 on the Fisheries Management (Aquaculture) Regulation 1995 and the Fisheries Management (Aquaculture) Amendment (Administration) Regulation 1999.

The Committee made 12 recommendations. The first six recommendations chiefly concerned the need for sanitary surveys of the State's oyster producing areas and other action to enable the export of New South Wales oysters to any nation. These recommendations are being implemented.

The Committee also recommended that funding should be provided to sewer critical areas of the Hawkesbury River catchment and 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.

These recommendations have not been answered although the Committee expects that they are being explored with NSW Fisheries in the current revision of the principal regulation which is due for staged repeal on 1 September 2002.

The Committee thanks the Minister for his attention to the recommendations 1 to 6 and awaits the consideration of recommendations 7 to 12 by the responsible agencies in the current review of the principal regulation.



**Mr Gerard Martin MP**  
Chairman

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

This report is supplementary to the Committee's previous report, Report No. 13/52 on the Fisheries Management (Aquaculture) Regulation 1995 and the Fisheries Management (Aquaculture) Amendment (Administration) Regulation 1999.

Following briefings of the Committee by representatives of the Departments of Agriculture, Fisheries and Safe Foods NSW on 9 March, 2000 and hearings conducted on 22 March and 30 October, 2000, the Committee tabled Report No. 13/52 in November, 2000.

The report said that the *Fisheries Management (Aquaculture) Regulation 1995*, the "principal regulation", was due for staged repeal under the *Subordinate Legislation Act* in 2000 but that its repeal was postponed for a year.

This meant that the first review of the costs and benefits of the regulation after its first five years of operation had been delayed. The report said: "*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 1<sup>st</sup> 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.*"

In its report the Committee noted among other things that 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.

The Committee also noted that 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. 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 Committee also found that while discharges from Sewage Treatment Plants were easily predictable as they occurred at times of heavy rainfall there was no such predictability with respect to discharges from boats. The Committee believed 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 recommended 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.

The report made the following 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."*

On 2 May 2001 the Executive Director Seafood of SafeFood New South Wales, Dr Peter Ayres, informed the Committee that pursuant to recommendation 1 above, the Operational Review had been completed and that it made general recommendations under 11 headings. He said that a key recommendation was the completion of shoreline sanitary surveys and that SafeFood had sought additional funds to expedite the surveys. With regard to recommendation 2 he said that SafeFood had either implemented or would soon implement the recommendations of the Management Review which had broad industry support and for which SafeFood had sole responsibility.

On 18 July 2001 Mr Paul Davico Manager of Holidays-A-Float Houseboats Pty Ltd , who had given evidence at the inquiry into the regulations, advised that his company had just completed converting its entire fleet to full pump out facilities. He said that every time a vessel is hired, upon its return to the marina its holding tanks are pumped out into below ground holding tanks. This in turn is pumped into a tanker contracted to Hornsby Shire Council which charges the company \$1.68 per 100 litres of effluent removed. This is paid for by an environmental levy of \$1 per person per day charged by the company to the hirers of vessels. Mr Davico advises that hirers are more than happy to pay the levy as they appreciate the need to protect the environment.

While this private action is commendable and sets a good example it is clear that Government action is necessary to bind other operators in the States waterways.

By notice in the Government Gazette on 31 August 2001 the staged repeal of the principal regulation under the *Subordinate Legislation Act* was again postponed for a further year until 1 September 2002.

In a letter dated 7 November, 2001 the Minister advised that funding for the sanitary surveys referred to in recommendation 1 had now been provided by the Government in accordance with a Report by Dr C J Rodgers, which was commissioned by SafeFood Production NSW. He said that adequate staff would be retained for the project in accordance with recommendation 3.

In respect of Recommendation 2, the Minister confirmed the advice of 2 May, 2001 given by Dr Peter Ayres concerning the implementation of the Management Review recommendations.

On Recommendation 4 the Minister said that a sanitary survey of the Hawkesbury River area was under way in common with other major production areas and that these surveys will continue until the end of 2003. He did not address the first aspect of this recommendation; that funding be provided to sewer critical areas of the Hawkesbury River catchment.

With respect to Recommendation 5 the Minister advises that by conducting sanitary surveys<sup>1</sup> and applying classification procedures in accordance with the Australian Shellfish Quality Assurance Program (ASQAP), New South Wales is applying accepted international practice and ensuring that classified harvest areas will meet the requirements for export administered by the Australian Quarantine Inspection Service, AQIS. He says that the first area classified by SafeFood, Corrie Island at Port Stephens, has already been audited by AQIS and found to comply with export requirements.

The Minister advises that with regard to Recommendation 6 that SafeFood may undertake many initiatives including consumer education to promote production and manufacture of safe food. He says the agency works with AQIS and other agencies to ensure that common standards are applied.

With respect to Recommendations 7 to 12 the Minister states that he "supports the intent of the recommendations and that SafeFood will work as required with responsible agencies to facilitate the outcomes which the adoption of these recommendations may provide". He says that other than recommendation 12 concerning signage, the marking of aquaculture leases is the responsibility of NSW Fisheries and is not linked to export issues. It would appear to the Committee that the control of pollution from boats in oyster producing areas is related to export. Nevertheless the Minister goes on to say that he believes that

---

<sup>1</sup> Information supplied by Safe Food Production NSW is that the NSW Government has allocated \$825,000 for sanitary surveys over a twelve month period. This amount is included in the Government's Coast Protection Package. To date two areas, Corrie Island, Port Stephens and Nelson Lagoon, South Coast have been classified and audited by AQIS

all opportunities to discourage boat owners from disposing of waste in our waterways including the use of warning signs should be explored and exploited.

As indicated above one such opportunity was recently taken by Holidays-A-Float Houseboats Pty Ltd at its own initiative when it converted its entire fleet to full pump out facilities. The Committee believes this action should be commended. However to ensure that other operators in this and other waterways comply, Government action is required.

The Committee expects that these and the remaining recommendations are being explored with NSW Fisheries in the current revision of the principal regulation which is due for staged repeal on 1 September 2002.

The Committee thanks the Minister for his attention to the recommendations 1 to 6. The Committee however notes that recommendation 4 has only been partly answered. He did not address the first aspect of this recommendation; that funding be provided to sewer critical areas of the Hawkesbury River catchment. The Committee also awaits the consideration of recommendations 7 to 12 by the responsible agencies in the current revision of the principal regulation which is due for staged repeal on 1 September 2002.

**Appendix 1: Letter dated 18 July 2001 Mr Paul Davico  
Manager of Holidays-A-Float Houseboats Pty Ltd**



Regulation Review Committee  
Parliament of New South Wales  
Parliament House  
Macquarie Street,  
Sydney NSW 2000

18<sup>th</sup> July '01

Re: No discharge of sewage into our Waterways

Dear Sir,

We refer to the report on Fisheries Management (Aquaculture) Regulation 1995 and the Fisheries Management (Aquaculture) Amendment (Administration) regulation 1999 prepared by the Regulation Review Committee (Report No 13/52 November 2000)

We own and operate a large fleet of houseboats and cruisers being one of the largest fleets in New South Wales at our premises at Brooklyn on the Hawkesbury River. As you are aware the township of Brooklyn and many townships on the lower areas of the Hawkesbury River are also not sewered. All of our vessels come under Waterways Authority's classification of Commercial Vessels Class 4, being recreational use.

This week we completed converting our entire houseboat & cruiser hire fleet to total no discharge of sewage into our river system – namely the Hawkesbury River. Every vessel is on full pump out facilities.

The system we have installed is very simple and efficient. Each and every time a vessel returns to our marina its holding tanks are pumped out by a vacuum type pump system, which in turn pumps the sewage into a below ground holding tanks in our carpark. This is in turn pumped into a tanker who contracts to Hornsby Shire Council. Council charge us \$1.68 per 100 litres of effluent removed from our tanks. We in turn charge all our hirers an environmental levy of \$1-00 per person per day for the removal of their sewage from our vessel at the completion of their hire.

All of our hirers are more than happy to pay this levy, as they all appreciate that their sewage is not going into our waterways and we are helping to protect this area of the environment. We commenced pumping out and charging the above fee from the 1<sup>st</sup> Feb '01 on all the vessels that were capable of being pumped out.

**HOLIDAYS-A-FLOAT HOUSEBOATS PTY. LIMITED**

ACN 069 470 640

65 Brooklyn Road, Brooklyn. N.S.W.

P.O. Box 56, Brooklyn. 2083

Telephone: (02) 9985 7368 Fax: (02) 9985 7758

The hirers do not need any further instructions to operate and use the toilet system. Hence there is no need to have an instructional video on board the vessel.

Furthermore all of our employees have absolutely no reservations in connecting the pump out hose to each and every vessel as it is simple, clean and no mess whatsoever.

Should you require any further information on our system or furthermore all government agency members are more than welcome to inspect our system.

We again thank the Review Committee for allowing myself to speak at the meeting on Monday 30 October 2000. Our Company feels very proud that all of our vessels now comply with Waterways survey regulations and do not discharge effluent into our waterways. Furthermore all other vessels should also comply and not discharge.

Yours faithfully



P. Davico (Manager)

C C Waterways Authority - Mr. John Hickey  
Mr. Brett Moore

Code Regulation Review Committee

**Appendix 2: Letter dated 7 November, 2001 from the  
Minister for Agriculture**

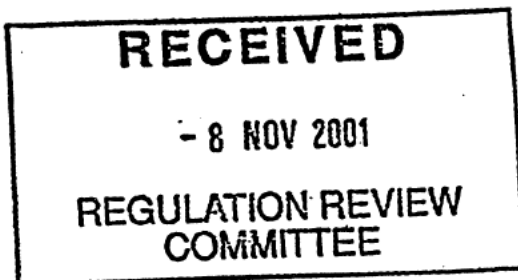




Minister for Agriculture  
Minister for Land and Water Conservation

105494

The Hon Janelle Saffin MLC  
Chairman  
Regulation Review Committee  
Parliament House  
SYDNEY NSW 2000



07 NOV 2001

Dear Ms Saffin

**Report 13/52 on the Fisheries Management (Aquaculture) Regulation and  
Fisheries Management (Aquaculture) Amendment (Administration) Regulation  
1999**

Thank you for your letter of 2 October, regarding recommendations of the Regulation Review Committee contained in Report 13/52 of November 2000.

Further to the advice provided by the Executive Director Seafood of SafeFood, Dr Peter Ayres, regarding the sanitary survey of NSW shellfish harvest areas, I can advise the Committee that the recommendations of the Rodgers' Review were considered by Cabinet and the Government has provided SafeFood with funding to undertake this project in NSW commercial shellfish harvest areas (recommendation 1).

As noted by Dr Ayres, the sanitary survey process was already underway prior to Dr Rodgers' Review and consequently oysters from Wallis Lake, Corrie Island Port Stephens and Nelson Lagoon (around 30% of NSW production) will be harvested in accordance with the requirements of the national shellfish program, the Australian Shellfish Quality Assurance Program (ASQAP), by the end of 2001.

The sanitary survey of other commercial shellfish harvest areas has also commenced and adequate staff will be retained to conduct the project (recommendation 3). Since data to complete the surveys must be collected on many occasions over an extended period and under a range of climatic conditions, the process will continue until the end of 2003. The Corrie Island project commenced in June 1999, was completed in June 2001 and served as a pilot scheme for the sanitary survey/classification process. The sanitary survey of Hawkesbury River harvest areas is also underway (recommendation 4) in common with other major production areas.

With regard to recommendation 2, I confirm Dr Ayres' advice of 2 May regarding the implementation of the Management Review recommendations.

LEVEL 17 "PARKVIEW" 157 LIVERPOOL STREET SYDNEY NSW 2000 AUSTRALIA  
PO BOX K220 HAYMARKET NSW 1240 AUSTRALIA

TELEPHONE (02) 9372 0123 FACSIMILE (02) 9372 0199 INTERNET <http://minister.agric.nsw.gov.au> EMAIL [ministers.office@agric.nsw.gov.au](mailto:ministers.office@agric.nsw.gov.au)

By conducting sanitary surveys and applying classification procedures in accordance with the ASQAP, NSW is applying "accepted international practice" and ensuring that classified harvest areas will meet the requirements for export as defined in the *Export Control (Processed Foods) Orders* administered by the Australian Quarantine Inspection Service (AQIS) (recommendation 5). The first area classified by SafeFood, Corrie Island at Port Stephens, has already been audited by AQIS and found to comply with export requirements.

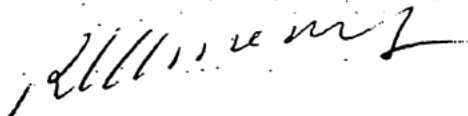
With regard to recommendation 6, SafeFood may undertake many initiatives, including consumer education, to promote the production and manufacture of safe food. The Agency works with AQIS and other appropriate bodies to facilitate this and ensure that common standards are applied to product destined for domestic or export markets.

I support the intent of recommendations 7 - 12 and SafeFood will work as required with responsible agencies to facilitate the outcomes which the adoption of these recommendations may provide. Other than the specific signage referred to in recommendation 12, the marking of aquaculture leases is the responsibility of NSW Fisheries and is not linked to export issues. I believe that all opportunities to discourage boat owners from disposing of waste in our waterways, including the use of warning signs, should be explored and exploited.

The State of NSW has recently made exceptional progress in improving food safety, particularly shellfish safety, since SafeFood commenced its' regulatory functions. By adopting these initiatives, implementing improved labelling and product tracking procedures and requiring food producers to implement individual food safety plans, NSW has become a leader in the management of shellfish safety issues.

Should you require further information on these matters, please contact my office on 9372 0123.

Yours sincerely



**RICHARD AMERY MP  
MINISTER FOR AGRICULTURE  
MINISTER FOR LAND AND WATER CONSERVATION**