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Hon Meg Webb MLC
Chair, Upper House Inquiry
Fin Fish Farming in Tasmania Inquiry

29 November 2019

Dear Ms Webb,

Thank you for the opportunity to make this submission to Tasmania's Upper House Enquiry into Fin Fish Farming in Tasmania.

Given the economic value of the salmon farming industry, it's visions for significant growth and the capacity for severe environmental damage when managed poorly, we applaud the Tasmanian Government for its wise investment in this inquiry process. We hope this process yields deep consideration of some challenging issues and results in a suite of recommendations that support the development of a sustainable salmon industry, operating in harmony with nature and with the multiple other user groups of Tasmania's precious coast and marine environment.

Attached is our detailed submission. As well as addressing each of the elements in the Terms of Reference, we precede the submission with an overview of what is at stake in the consideration of the responsible regulation of the salmon farming industry. We also outline WWF's involvement in the salmon industry and describe some overarching issues relevant to the Inquiry.

We look forward to the opportunity to discuss our input into Inquiry further through the panel hearings.

Kind regards,

Jo-anne McCrea
Manager, Australian Fisheries and Aquaculture
WWF Australia

# WWF Submission, Tasmanian Upper House Inquiry into Fin Fish Farming in Tasmania

## Summary of Recommendations

### *Need for a review of the Environmental Regulatory Framework*

- ❒ Commission an independent update of Tasmania's State of the Environment report as an important foundation piece to understanding the current conditions of the state's species and environs.
- ❒ Commission an independent review of Tasmania's environmental legislation framework.

### *Transparency and Inclusiveness*

- ❒ The independent review of Tasmania's environmental legislative framework should include particular terms of reference relating to introducing best practice transparency, accountability and inclusiveness and also makes recommendations on appropriate elements of a new Policy of Transparency, Accountability and Inclusiveness for Government.

### *Need for Multi-Sector Marine Spatial Planning – A Shared Marine Plan*

- ❒ Government to commit to establishing a Shared Marine Plan for Tasmania which outlines the current and future uses of the entire marine estate for all uses, users and values. The Shared Plan should be informed by a comprehensive data collection process relating the environmental, social and economic factors, and should be established through a science based, consultative, multi-sector marine spatial planning process.
- ❒ No Grow zones areas are identified based on sound environmental data and that these are protected through a process that has the full support of Parliament, and which can be altered only with Parliamentary approval.

### *Tender process, Technical Advisory Panel & Research permits*

- ❒ The Tender Advisory Board should be appointed through an open appointment process and include representation from the following sectors and skills: conservation, aquaculture science, biosecurity, planning and independent business skills.
- ❒ Environmental, social and economic criteria developed in relation to the tender process, should include clear guidance that protection of environmental values has primacy, in order to achieve the associated maintenance of social and environmental values.

### *Macquarie Harbour Formal Agreement*

- ❒ Government to establish a multi-stakeholder working group to develop a new management plan for Macquarie Harbour which addresses the key points outlined in our submission. The group should include representation from at least industry, science advisors, conservation, community, fishing and tourism.

### *The implementation of the Sustainable Industry Growth Plan in relation to Biosecurity Planning*

- ❒ Provisions should be made for all Marine Farm Development Plans and leases to have in place peer reviewed Biosecurity Plans, agreed to by other relevant leases, prior to any approvals.

### *Need for Holistic Management of Marine Activities under the Tasmanian Planning Framework*

- ❒ Bring marine farming within the Land Use Planning and Approvals Act 1993 by:
- ❒ Requiring regional coastal and marine plans to be developed through consultation with all affected stakeholders (including the public). The plans could identify appropriate zones for marine farming, set limits on intensity of development and performance based standards that must be achieved. Regional plans could be reviewed by the Tasmanian Planning Commission and implemented through planning schemes;
- ❒ Introducing Statewide guidance for marine farming provisions in planning schemes;
- ❒ Establishing the Marine Farming Planning Review Panel (subject to the changes discussed below) as a referral agency to consider applications for individual lease developments / expansions;
- ❒ Providing resources to planning authorities to adequately assess applications for marine farming operations.
- ❒ If the Marine Farming Planning Act 1995 remains, ensure that a clear hierarchy of objectives is set out to guide decision making. The hierarchy should prioritise maintenance of natural values.

### *Marine Farming Planning Review Panel Responsibilities*

- ❒ The MFPA should be amended to reverse the 2011 amendments and re-authorise the Panel to refuse applications for marine farming proposals that cannot meet sustainability objectives.

### *Marine Farming Planning Review Panel Processes*

- ❒ Amend the current Marine Farming Review Panels standard procedures to require:
  - A quorum to make decisions
  - A statement of reasons for decisions and responses to all public representation are developed and made public
  - Transcripts to public hearing be made public
  - Biosecurity matters to be integrated in the panels decisions

### *Marine Farming Planning Review Panel Membership*

- ❒ Require the Panel to include a member with qualifications and expertise in relation to marine ecology and hydrology.
- ❒ Require the Panel to include a member representing community issues.
- ❒ Require the Panel to include a member representing the conservation sector.
- ❒ Require the publishing of skills and experiences to demonstrate expertise in the nominated areas.
- ❒ Require fish farming scientists to be totally independent of commercial interest.

### *Baseline information requirements & decision making for Marine Farm Development Plans*

- ❒ Decision-making frameworks must require sufficient scientific data to be provided in order to assess the potential impacts of aquaculture proposals before approvals are given.

### *Social issues*

- ❒ Amend the MFPA Act to explicitly require the Panel to assess and protect social values.

*Powers for the EPA to refuse a Marine Farm Development Plan*

- ❒ Amend the MFPA Act to explicitly provide the EPA Director with the power to refuse a proposed or amended Marine Farming Development Plan where environmental credentials would not be sufficient to support a successful associated environmental license application.

*Right of Appeal to a Marine Farm Development Plan*

- ❒ Allow all parties (including the proponent and any person who made a representation) to appeal to the Resource Management and Planning Appeal Tribunal against a decision to amend a marine farming development plan to facilitate a new marine farming operation.

*Science based management of biomass and cumulative impact*

- ❒ Government to commission and industry to fund, a state wide system of carrying capacity based, nutrient load/biomass limits for all farming regions.

*Responsibilities for collection of environmental monitoring data*

- ❒ The increase in EPA monitoring of salmon farms should continue, funded by industry, to the point that all environmental monitoring data can be independently verified through the EPA or alternate fully independent entity or system.

*Publication of environmental data*

- ❒ Environment Management and Pollution Control Bill be amended to compel the release of all data *unless* an explicit case is made regarding commercial confidentiality. The full case of commercial confidentiality should be required by law to be demonstrated and published.
- ❒ Maintain the existing open process regarding amendments to Marine Farm Development Plans and amendments to marine leases.

*Data Portal*

- ❒ An advisory group be developed to guide the review of the data portal to ensure that information is displayed in a manner which is readily understood, digestible and relevant. The advisory group should contain representative of the following sectors: community, conservation, fishing industry, science providers, tourism.

*Quality of the monitoring programs*

- ❒ Direct the Auditor-General to undertake a review of monitoring and compliance activities undertaken under the MFPA and Living Marine Resources Management Act 1995
- ❒ Request advice from IMAS regarding the desired frequency of monitoring at marine farming sites, and implement any advice received ⍰ Monitoring activities should be conducted by the EPA, with costs recovered from proponents through higher licensing fees and all data published on the EPA website
- ❒ We recommend that EPA adopt clear enforcement guidelines setting scientifically-based performance indicators, identifying a scale of enforcement actions, and indicating which actions will be taken in response to failure to meet those indicators (including graded increases in enforcement activity for repeat offenders). Importantly, EPA must take consistent action in accordance with its guidelines where monitoring reveals that performance indicators are not met.

*Enforcement*

- ❒ Direct the Auditor-General to undertake a review of penalties to ensure they act as strong deterrents to the mature and profitable industry that salmon aquaculture is, and reflect the significant and demonstrated opportunity for severe impacts to arise from non-compliance.

*Seals*

- ❒ Government to commission an independent review of all 'seal management' devices & processes. This review should be used to identify and abolish the use of any devices which use violent methods or have the ability to cause harm.
- ❒ Government should also abandon seal relocation activities & mandate all companies to have installed verifiable seal proof nets in all areas by June 2020.

*Issues Relevant to Environmental Licences*

- ❒ The membership of the Environmental Protection Policy Review Panel should be amended to ensure appropriate independence and expertise in relation to the key environmental issues facing Tasmania's environment.
- ❒ Remove from the Environment Management and Pollution Control Bill the proposal to removing the requirement for a 'Notice of proposal to prepare draft environment protection policy' as this will lead to a significant reduction in transparency and inclusiveness in Government policy making.
- ❒ Remove from the Environment Management and Pollution Control Bill the proposal to reduce the number of dates that a draft Environmental Protection Policy is published to 1, as this limits the opportunity for public engagement.
- ❒ Oppose the introductions of exemptions for waste deposits under the Environment Management and Pollution Control Act.

# 1. What's at stake

Tasmania's marine environment is not only uniquely beautiful but is also recognised as one of the most biologically diverse in the world. The rich variety of marine life includes kelp forests, seagrass beds and sponge gardens each with their own communities of fish and invertebrates, including a range of special creatures from sea dragons and fairy penguins to great white sharks and migrating whales. Tasmanian waters include an area with the highest known marine plant diversity in the world.

About 80–90% of species of most marine groups in Tasmania are endemic, compared to only 10% of species in most groups in northern tropical waters, making them of national & global significance, alongside other notable tropical areas such as the Great Barrier Reef. The sustainable management of activities which operate within this precious area should be a priority for Government and should be performed within a system that engenders trust by the community that elected them to power.

In total 7.9% of Tasmania's State coastal waters are reserved, however only 4.2% is in no-take areas and the majority of this is concentrated around subantarctic Macquarie Island. Only 1.1% of Tasmania's immediate coastal waters are fully and formally protected in sanctuary/no-take areas. Many critical areas of conservation importance are not given any protection within the Government's current planning system.

Tasmania is also home to large and economically significant industries & is home to about half a million people. The salmon farming industry is Australia's largest seafood sector, with an annual output of $497million (www.csiro.au.our-impact), providing 2,200 direct jobs and 6,000 indirect jobs. The value of the industry and jobs it provides are at stake should the salmon industry demise due to loss

of trust either through: loss of the public's trust in the ability for industry to behave responsibly; loss of trust in Government to regulate sustainably, or loss of consumer trust in the credentials of this industry and the product it producers. Multiple other industries (including but not limited to commercial & recreational fisheries and tourism) rely on the access and use of the marine environment; and will equally suffer should unsustainable salmon farm degrade the health of Tasmanian's waters.

## 2. WWF's interest and background in sustainable salmon farming

WWF is the world's largest science-based conservation organization. WWF seeks to address the planet's key environmental issues, including species loss, climate change, marine and forest degradation. One of the biggest threats to biodiversity and ecosystems is where and how we produce food. As the global population and economy continue to grow, resulting in more demand for food, we need to develop a more sustainable food system or face increased insecurity of food supply and greater conflict between different users of irreplaceable natural resources.

The world's aquaculture industry now produces (by weight) as much food as the global beef industry and more than half the volume of all seafood eaten annually. In Australia, the farmed salmon industry is the single largest seafood sector and the fish it produces account for roughly one-third of all fish consumed nationally. The need for this sector to operate in a more sustainable manner has been the key driver of WWF's involvement with the Tasmania's salmon industry from 2011.

WWF-Australia has a long history of collaboration with the salmon farming industry in Tasmania. Building on our successful partnership with Tassal, which concluded in 2018, we have expanded our approach to sustainable aquaculture and marine conservation in Tasmania by deepening our engagement with aquaculture companies, government, scientists and other stakeholders.

WWF believes that Tasmania has a unique opportunity to show the world how sustainable aquaculture can be combined with effective marine protection. But we can't do it without securing three key aspects:

- ❒ Government and industry commitments to enhanced marine spatial planning and protection that better accounts for all marine and coastal values and users;
- ❒ 100% certification of Tasmanian salmon production against the highest global standard for sustainable fish farming (the Aquaculture Stewardship Council or ASC), while also strengthening the ASC standard to reflect Tasmanian conditions;
- ❒ More effective and transparent regulation of aquaculture, including more public disclosure of the environmental impacts of aquaculture; together with science-based limits on salmon farming to protect sensitive ecosystems and vulnerable species, notably in Macquarie Harbour.

These three key prerequisites for a sustainable salmon industry are outlined against the Inquiry Terms of Reference, in our detailed submission, below.

## 3. Overarching Issues

While the Inquiry Terms of Reference highlights the important issues facing the industry, WWF wishes to draw the panel's attention to two overarching issue that must be considered to provide further context. These are outlined below.

### Need for a review of the Environmental Regulatory Framework

Tasmania's primary environmental legislation, was passed quarter of a century ago. Some other Australian jurisdictions with similarly long standing environmental legislation, notably Victoria, have earned praise for embarking on whole-of-framework reviews of their systems, including whether those systems have achieved their intended outcomes.

Consultation recently closed regarding the Bill to amend the *Environmental Management and Pollution Control Act* (EMPC Bill) which proposed a series of individual amendments to Tasmania's primary environmental legislation. Many of the adjustments were specifically relevant to the salmon industry. WWF believes that the Tasmanian government should be undertaking a similar comprehensive review of the state regulatory frameworks governing aquaculture and marine conservation, rather than the timid and piecemeal improvements laid out in the EMPC Bill.

Also, the State Planning Commission is required under legislation to publish a State of the Environment (SOE) report for Tasmania every 5 years. The last SOE report was published in 2009. In the absence of an up to date SOE report, Government has no reliable assessment of the condition of Tasmania's environment, nor of the adequacy of the legislative framework designed to protect environmental values. WWF therefore urges the Government to commission the drafting of a SOE in 2020 and to use this as an important input to the holistic review of Tasmania's environmental legislation described above.

## Transparency and Inclusiveness

Regulatory frameworks must be transparent and subject to scrutiny, in order to deliver public support and confidence in Government and the industries they regulate. This requires public involvement in decision-making, access to information on which decisions are based, and opportunities to reasonably challenge decisions.

There is overarching lack of transparency and inclusiveness in the approach Government takes to managing the salmon industry. This is evident in legislative structures all the way down to project structures. Most other jurisdictions recognise the strategic importance of inclusion and consultation with all relevant stakeholder groups. In relation to fisheries and aquaculture issues, it is common to see the input of the following sectors in all major projects and program through advisory or reference groups: core industry, other related industry, commercial fishing, recreational fishing, indigenous, charter, conservation sector, regulators, science providers.

However, this Government continues to engage almost exclusively with industry to the exclusion of others. Where Government does consult, it does this at 'final draft' stage where there is clearly little desire for genuine consideration of stakeholders input, and lesser capacity for significant adjustments. We outlay the below numerous examples:

Some examples:

- *Transparency of legislative review process and opportunities to engage.* The Tasmanian Government is currently amending the EMPC Act and has recently sought public comment on the considerably developed proposed changes. This compilation of amendments is clearly the result of a review of the EMPC Act. As far as WWF is aware, the proposed amendments did not emerge from an inclusive, participatory or transparent public consultation process. While the short consultation period offered a limited opportunity to comment on the specific amendments that have been determined at the conclusion of that review, a more transparent and inclusive process would have allowed stakeholders to participate in the review itself, and to understand and be part of the discussion around the scope and intent of the review. We hope that such a process will be employed in future reviews and legislative drafting processes.
- *Marine planning pilot.* WWF was invited to be part of the Government's marine planning pilot study at the beginning of 2019 but subsequently 'uninvited'. It seems that there was an understanding of the importance of including a conservation group however the actual implementation of an inclusive process was not committed to. The state of marine planning and the inadequacy of the Growth Plan in terms of both process and resultant product, meant that this pilot project had a critical opportunity to restore and reset good practice in process. Indeed, instead Government reverted to the closed-door process and missed an opportunity to include

Australia's most trusted conservation organization, WWF, with a solutions based expertise in sustainable salmon and marine planning issues, in this process.

- ❒ *Macquarie Harbour Management Plan development*. The Growth Plan committed to a new Management Plan for Macquarie Harbour. WWF applauded this but also made the sound point that this should be developed based on science and in an open and engaged manner. Despite numerous offers to be part of this process, we understand again that this is being discussed and developed exclusively with industry.
- ❒ *Development of the EPA Salmon Standard.* For over a year the EPA has been developing an 'environmental standard' for the salmon industry. It is understood that this will provide consistent standards for managing environmental issues across the industry. Again, while we have offered to be involved in the development of this fundamentally important process, environmental groups, possibly all groups, have been excluded. Being given the opportunity to comment on a well developed document which already has the buy in of significant politicians and bureaucrats, is not genuine inclusion, nor is it consultation.

Recommendations:
- ❒ Commission an independent update of Tasmania's State of the Environment report as an important foundation piece to understanding the current conditions of the state's species and environs.
- ❒ Commission an independent review of Tasmania's environmental legislation framework.
- ❒ The independent review should include particular terms of reference to documenting and introducing best practice transparency, accountability and inclusiveness within the State's regulatory framework and also makes recommendations on appropriate elements of a new Policy of Transparency, Accountability and Inclusiveness for Government

# 4. The Implementation of the Sustainable Industry Growth Plan for the Salmon Industry and its Impact on Commercial Finfish Farming Operations and Local Communities

## Conflict around growth of the salmon industry

In recent years there have been many and increasing demands on Tasmania's marine environment. While the range of pressures is diverse, there are two fundamental realities that must be respected:

1. The marine environment is a public resource, used and valued by many people and industries
2. All the uses and values rely upon a healthy, well-functioning ecosystem

Historically, different uses of the marine environment have been managed on a sector-by-sector, case-by-case basis, often with little consideration of interactions with other resource uses and users, let alone the needs of marine wildlife and habitats. This has led to conflict between human uses and the health of the marine environment and conflict among different users and industries.

## Weaknesses of the Salmon Growth Plan

The "Sustainable Salmon Industry Growth Plan" (the Growth Plan) details the Government's vision and priorities for the industry. The Government states that the Growth Plan was developed in response to growing public concern regarding industry expansion and sought to allay concerns around public amenity and to provide the salmon industry with a plan to support a conceptual 'doubling' of the industry.

The plan includes a map which identifies areas of Tasmania's coastal waters where salmon will continue to be farmed, areas where further expansion may be allowed, research sites as well as potential new sites and areas where salmon farming will be excluded.

In the plan, Government advised that its selection of 'grow' and 'no grow' zones were based on:

- ❒ advice from government and industry on which areas would be suitable or not suitable for marine farming, in terms of biophysical and environmental conditions;
- ❒ talking to industry about its plans, and where it considers it needs to expand to achieve sustainable growth with good environmental and biosecurity outcomes; and
- ❒ listening to community concerns about where they feel marine farming is not appropriate, for reasons of amenity or alternative uses.

While the concept of defining areas where various values can be protected and uses can be optimized is supported, approach, design and implementation of the salmon Growth Plan map is fundamentally flawed. The fundamental weakness in the current zoning plan are:

- ❒ **Single industry lens, in a multi-use environment.** The growth plan is aquaculture-centric whereas the coastal waters of Tasmania are used and valued by multiple industries and communities, whose current and future needs and aspirations were not sought nor taken account of adequately. While salmon is a significant industry, its development will only proceed sustainably if other adjacent, completing and capable users are all considered collectively in the planning process.
- ❒ **Lack of alignment with and respect for environmental values and assets.** The zoning plan is not founded on a sound understanding of environmental values, significant ecosystems and habitats that need to be protected into the future. A marine planning exercise should reasonable commence with the identification of environmental values that would need to be protected. This is especially true given the scale at which the industry seeks to expand and the importance of environmental health in maintaining all other marine pursuits. However, there was no clear exploration or documentation of these values, meaning that the planning exercise is fundamentally flawed and risks creating severe harm.
- ❒ **'No Grow' Zones do not provide added protection for high conservation areas.** The areas proposed in the Growth Plan as 'no grow' zones are simply areas that the salmon industry does not want to develop, or which the community does not want developed based on amenity or alternative uses. 'No grow' zones should have been identified based on an understanding of Tasmania's high conservation marine areas and be designed to protect vulnerable and valuable habitats for a long term healthy marine environment. Some existing work is available to identify such values, including Environment Tasmania's 2011 report on marine natural values.
- ❒ **In addition, there is a stark imbalance in the strength of further recognition and implementation of the zoning plan.** While areas which are designated as future areas for development are proposed to be formally supported through marine farm planning processes, research permits and tender processes, there is no additional protection provided or security delivered to the areas identified as 'no grow' zones. WWF proposed that No Grow zones areas are identified based on sound environmental data and that these are protected through a process that has the full support of Parliament, and which can be altered only with Parliamentary approval.
- ❒ **The zones allocated to 'growth' were not based on understanding or appreciation of operational capacity or requirements.** The development of the 'zones' in the Growth Plan was largely based on 'desktop' knowledge of some environmental conditions relevant to farming, but without a more detailed analysis of operational capability (including biosecurity and environmental factors) and limited consideration of social factors. This means that the actual areas earmarked for future development in fact have questionable attributes and may not be of value to industry's growth.
- ❒ **No genuine consultation with community, other industries and other stakeholders.** Ensuring clarity and consensus amongst community and all industries using the marine environment about where salmon farming will and won't occur in the future is imperative for sustainable development and community trust. Unfortunately, the process to develop the growth plan did not include community consultation (other than 'listening to concerns' which is inadequate when

planning industrial operations on this scale). Nor did the Growth Plan development include appropriate consultation or needs mapping of other industries.

- **Based on incorrect assumptions.** The fact Government did not invest in the gathering of sound social and environmental data, nor in consultation with communities and industry, meant that incorrect assumptions were made. For instance, the announcement of the King Island area for development was 'coined' by the Tasmanian Government "as an exciting prospect for King Islanders to secure jobs". Had Government undertaken appropriate consideration it would have understood that fact that King Island has zero unemployment and therefore not only does this not appeal to the community, it demonstrates misinformed prospects.

Necessary to build trust and ally concerns, is a deep and detailed whole of marine estate planning process. Instead Government developed a quick, desk-top, superficial zoning plan, not backed by credible science or consultation. Ironically, this has only further eroded trust.

The approach of earmarking areas for salmon development, prior to detailed consultation and without environmental considerations, as currently has been done through the Growth Plan, clearly has not and will not deliver the social licence that the plan aims to provide. This has already been evident through the initial development processes to date in the subsequent groundswell of opposition from the local communities at areas zoned for development (e.g. King Island and North West Tasmania).

## Need for Multi-Sector Marine Spatial Planning – A Shared Marine Plan

To ensure optimal use of Tasmania's waters, maintain industry's social licence to operate and, most importantly, protect valuable marine habitats, WWF believes the identification of future sites for salmon farming must be based on multi-sector marine spatial planning.

By its definition, this would result in a Shared Marine Plan which outlines the future use, sustainable development and protection of Tasmania's waters. This would cover all uses, users and values and not be approached through the singular lens of one industry.

This approach should include detailed, genuine and coordinated consultation with the community, with other industries and coastal resource users (including communities, recreation, conservation, energy, tourism, aquaculture, industry, government and more) as well as the salmon industry. It must also be based on comprehensive analysis of the environmental and other values of potential sites for industry expansion.

The multi-sector marine spatial planning process will take more time and require greater upfront investment than the current superficial and salmon-centric process, but the extra effort is needed to deliver certainty to communities, not to mention securing the important long term social licence that the salmon industry requires prior to any expansion.

## Applying marine spatial planning

Policy-makers and practitioners around the world have developed effective tools for Marine Spatial Planning (MSP).

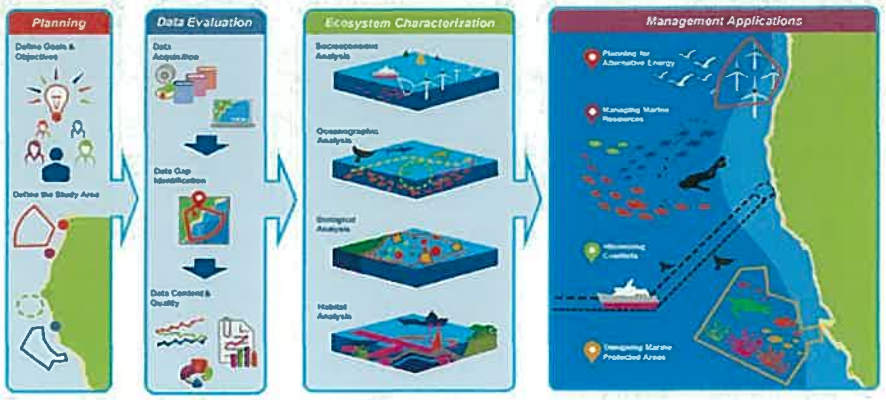


Figure 1: Simplified example of the marine spatial planning (Source:Secretariat of the Pacific Regional Environment Program 2018).

While there are various tools that could be selected to implement multi-sector marine spatial planning, the following general steps would apply:

i. Create a comprehensive picture of the marine area, its values and uses. This will involve gathering existing data, identification of data gaps and filling those to ensure the baseline is appropriately understood to achieve the following outcome:
   a. Documentation & mapping of the natural resources, species and habitats and their values
   b. Documentation & mapping of where and how areas are currently being used by each group and/or sector, including social and economic factors.

   Understanding the multiple users/uses and environmental values of the area, creates transparency and greatly informs technical planning outcomes but also healthy and functional consultation

ii. Define what future success looks like. This should be done in consultation with users, scientist and the community. This would be defined in terms of criteria that the spatial planning exercise will attempt to achieve to the optimal level. These will help guide decisions around zoning and allocation where there are competing aspirations for a given space.

iii. Apply Marine Spatial Planning models and tools to assist in describing alternate future scenarios which optimize (to varying levels) each of the criteria defined with the community. This process is the bringing together of the comprehensive overlays of data, with the criteria for success.

iv. Conduct comprehensive and facilitated consultation on the various scenarios to determine an preferred Share Marine Plan for Tasmania.

## Benefits of a shared marine plan for Tasmania

Key benefits of a genuine multi-sector marine spatial planning approach include:

- ❒ The inclusive process with other industries and the community, founded on environmental values, will increase the likelihood of solid support for areas identified for future salmon farming.
- ❒ Long term certainty to support industry investment.
- ❒ All users understand areas where they have the opportunities for future development.
- ❒ Ecologically important areas area identified and protected.
- ❒ Increased support and trust of Government decision making processes.

A comprehensive range of benefits of this approach are further in the table outlined below.

| | |
|---|---|
| Ecological Benefits | • Identification of biologically and ecologically important areas<br>• Identification and reduction of conflicts between human use and nature<br>• Allocation of space for biodiversity, nature conservation and protected areas<br>• Identification and reduction of the cumulative effects of human activities on marine ecosystems<br>• Biodiversity objectives incorporated into decision-making |
| Economics Benefits | • Greater certainty of access to desirable areas for new investments<br>• Identification of compatible uses within the same area of development<br>• Reduction of conflicts between incompatible uses<br>• Improved capacity to plan for new and changing human activities, including emerging technologies and their associated effects<br>• Better safety during operation of human activities<br>• Reveal trade-offs in resource use and stakeholder group values<br>• Streamlining and transparency in permit and licensing procedures |
| Social Benefits | • Improved opportunities for community and citizen participation<br>• Identification of how decisions on the allocation of ocean space (e.g., closure areas for certain uses, protected areas) may affect communities and economies onshore (e.g., employment, distribution of income)<br>• Identification and improved protection of cultural heritage<br>• Identification and preservation of social and spiritual values related to oceans (e.g., the ocean as an open space) |
| Governance Benefits | • Proactively minimize conflicts between industries and stakeholders seeking to utilise the same sea area<br>• Use economic modelling to simultaneously assess multiple ecosystem services and the values they provide, using a robust, quantitative, and transparent framework<br>• Reduce opportunity costs and potentially result in improved economic outputs while ensuring protection of the marine environment (White *et al*. 2012)<br>• Incorporate scenarios for future planning including the impacts of rising sea temperature, sea level, ocean acidification and other climate changes, as well as the impacts these may have on the environment, industry, infrastructure and coastal communities<br>• Seen as world's best practice and recommended by the Intergovernmental Oceanographic Commission (IOC) of UNESCO, U.S. Commission on Ocean Policy, European Union and several leading research institutions and environmental organisations. Such systems are currently used in many countries including the United States, Canada, and the EU. |

Recommendations:

- ❒ Government to commit to establishing a Shared Marine Plan for Tasmania which outlines the current and future uses of the entire marine estate for all uses, users and values. The Shared Plan should be informed by a comprehensive data collection process relating the environmental, social and economic factors, and should be established through a science based, consultative, multi-sector marine spatial planning process.
- ❒ No Grow zones areas are identified based on sound environmental data and that these are protected through a process that has the full support of Parliament, and which can be altered only with Parliamentary approval.

## Tender process and Technical Advisory Panel

The Growth Plan developed a competitive tender process for granting access to proposed new farming areas, with criteria for success to be determined by Government. WWF agrees in principle with the use of a competitive tender process, this process should proceed only following a clear determination that salmon farming is the preferred and optimal industry for any particular site, based on the results of community and multi-sector industry consultation, as well as comprehensive environmental baseline studies.

The Growth Plan also proposed that a Tender Advisory Board is established to provide advice for particular areas of water. The Tender Advisory Board will make recommendations on the preferred tender with a view to maximising community benefits. WWF supports the concept of a Tender Advisory Board in principle but believes that to earn public trust it is important that committee members are nominated through an open appointment process, that successful appointees are independent of Government and can demonstrate relevant expertise including community and conservation sector representatives. Finally, the terms of reference, decision making and justification of decisions by the Board should be a matter of public record.

The Growth Plan stated that Government will define environmental, social and economic criteria for tenders with the aim of ensuring equity and avoiding monopoly outcomes; that the Board will be responsible for evaluating tenders against these criteria. Environmental, social and economic outcomes can often be competing; hence WWF suggests that clear guidance is required on how to resolve competing objectives. Given that sustainable economic and social outcomes cannot be achieved if the environmental health is sacrificed, WWF urges Government to ensure that environmental criteria are formally prioritised.

Recommendations

- ❒ The Tender Advisory Board should be appointed through an open appointment process and include representation from the following sectors and skills: conservation, aquaculture science, biosecurity, planning and independent business skills.
- ❒ Environmental, social and economic criteria developed in relation to the tender process, should include clear guidance that protection of environmental values has primacy, in order to achieve the associated maintenance of social and environmental values.

### *Research permits*

While it is appropriate to expect industry (i.e. the successful candidate in any proposed tender process) to fund detailed environmental baseline studies and modelling work at a more certain stage of development, some minimum level of environmental data is required to feed into this planning exercise, to ensure the credibility of the end-result (and to avoid the cost to industry of exploring sites which prove unsuitable). This kind of pre-tender research is presently missing from the process.

Also, the investigations described as part of the research permit focus on biological data, rather than social and community consultation. Social and community consultation should be a fundamental part of 'proving' the suitability of any particular site.

It must be made very clear that approval of a research permit and the investment made by a company in early investigations does not constitute an implicit right to farm. It should be clear that the process may not result in a formal licence being granted, for example if baseline surveys do not support a case for fish farming. To avoid investments by companies in sites that are not appropriate for farming, it would be appropriate to include multiple, clearly-defined exit clauses in the research permit.

Recommendation:

- ❒ Government to develop a formal and publicly available exit strategy for research permits.

## Macquarie Harbour Formal Agreement

The Growth Plan proposes a formal agreement, jointly developed by all current finfish licence holders and the Government, for sustainable salmon farming in Macquarie Harbour. WWF agrees that a clear plan to address the situation in Macquarie Harbour is a priority. In order to deliver a sustainable outcome, WWF urges that the plan should address the following:

- ❒ The foundation must be a sustainable biomass limit established by independent scientists based on detailed analysis of observed impacts against changing biomass in the harbour and other external conditions.
- ❒ Given the extreme and varying conditions in the Harbour, the biomass limit must be precautionary, particularly taking into account the need to protect the habitat of the endangered Maugean Skate.
- ❒ The biomass limit should be spatially differentiated, recognising the varying vulnerability of different areas of the Harbour, which would likely result in lease specific biomass limits.
- ❒ The need for transparency, ideally delivered through a set of pre-defined and publically available decision rules, which define Government and industry action in response to likely (as well as unlikely) events. This would be much like a fishery harvest strategy, which defines pre-agreed adjustments to commercial quota based on timely information on the state of the stock. Such an approach would provide both industry and community with much needed certainty.

WWF has been offering to commit our resources to participate in the development of the Macquarie Harbour plan since the publishing of the Growth Plan in 2017. To date, no conservation group has been invited. The development and implementation of the plan should occur through a process involving all relevant stakeholders and should include strong involvement by the conservation sector in its development phase.

Recommendations:

- ❒ Government to establish a multi-stakeholder working group to develop a new management plan for Macquarie Harbour which addresses the key points outlined in our submission. The group should include representation from at least industry, science advisors, conservation, community, fishing and tourism.

### The implementation of the Sustainable Industry Growth Plan in relation to Biosecurity Planning

Biosecurity management should be a priority for Government and for industry. This should be evident in clear and strong requirements for biosecurity plans and their implementation strategy, in all Marine Farm Development Plans. By contrast, the recent marine farming proposal to amend the three plans relevant to Storm Bay, to be farmed by all salmon companies, was approved in the stark absence of a drafted and accepted Biosecurity Plan. While a plan has since been developed, this process is clearly flawed.

Recommendation

- ❒ Provisions should be made for all Marine Farm Development Plans and leases to have in place peer reviewed Biosecurity Plans, agreed to by other relevant leases, prior to any approvals.

## 5. Application of the *Marine Farming Planning Act 1995* Relating to Preparation and Approval Process for Marine Farming Development Plans, including Modifications and Amendments to Marine Farming Development Plans

### Need for Holistic Management of Marine Activities under the Tasmanian Planning Framework

WWF acknowledges and supports the arguments, analysis and recommendations made by the Tasmanian Environmental Defenders Office (EDO) in relation to the need for a holistic management approach to planning of Tasmania's land, coasts and seas, as outlined below.

*The primary vehicle for effective planning in Tasmania is the Land Use Planning and Approvals Act 1993 (LUPPA), however the marine farming is excluded from this legislation and is instead managed under the*

- *Marine Farming Planning Act 1995; and the*
- *Living Resources Management Act 1995*

*The separation of marine farming activities from all other planning activities creates a series of negative consequences including a lack of consistency between activities and industries, a lack of integration with other planning regimes. The placement of marine farming outside the LUPPA also leads to a number of points of transparency and community justice are not available to matters relevant to marine farming. These are explored further in our submission.*

*Currently land based developments have jurisdiction over land use and development but generally have no jurisdiction over the marine farming planning process or decisions relating to activities below high water mark. As a result, planning schemes under the LUPAA cannot regulate farming activities (other than land-based operations or land based components of marine-based farming). In contrast, the Minister can require a planning scheme to be amended to ensure that land based activities to do affect marine farming. This provides an unfair priority for marine farming activities and confounds consideration of the other criteria/objects of the MFPA.*

*The impacts of marine farming are not restricted to the water. Marine farms introduce noise, odour, visual impacts and require infrastructure and access to transport routes and processing facilities & can interfere with other sectors like tourism and recreational activities. The non-integration of the marine planning process with land-based processes therefore makes these cross effects very challenging to manage effectively. Councils are unable to plan for or to be involved in the assessment of marine farming and this hinders effective strategic planning at a municipal and regional level. While MFDP provides some guidance of planning location, the regularity of amendments to these plans or expand or relocate means that the public has little confidence regarding the limits of growth and councils cannot make strategic decisions regarding infrastructure.*

*Experience around the globe eg NZ, has demonstrated that sectoral approaches are generally insufficient to deal with real world complex interrelationships and diverse stakeholder priorities. Sustainable development requires ecosystem based strategic planning.*

*The creation of a separate resource management system for the marine farming sector and the restrictiveness of this system in terms of third party/community input, is contrary to the goal of sustainable development espoused in Tasmanian legislation.*

*The significant immediate and long-term benefits of integration to achieve sustainable development justifies the initial costs involved in restricting the marine farming planning system to accommodate these changes.*

Recommendations:

Bring marine farming within the Land Use Planning and Approvals Act 1993 by:

- ❒ Requiring regional coastal and marine plans to be developed through consultation with all affected stakeholders (including the public). The plans could identify appropriate zones for marine farming, set limits on intensity of development and performance based standards that must be achieved. Regional plans could be reviewed by the Tasmanian Planning Commission and implemented through planning schemes;
- ❒ Introducing Statewide guidance for marine farming provisions in planning schemes;
- ❒ Establishing the Marine Farming Planning Review Panel (subject to the changes discussed below) as a referral agency to consider applications for individual lease developments / expansions;
- ❒ Providing resources to planning authorities to adequately assess applications for marine farming operations.
- ❒ If the Marine Farming Planning Act 1995 remains, ensure that a clear hierarchy of objectives is set out to guide decision making. The hierarchy should prioritise maintenance of natural values.

## Marine Farming Planning Review Panel Responsibilities

Decisions in relation to aquaculture proposals (developments or expansions) are referred to the Marine Farming Planning Review Panel (the Panel) for assessment. In making its decision, the panel is required to take into account public submissions, advice from the marine farming branch, and the sustainable development objectives of the legislation.

Prior to 2011, the Panel was able to refuse unacceptable proposals. In November 2011 the power of the Panel to refuse a draft amendment to a Marine Farming Development Plan was removed by the MFPA. Now, the Panel may make a recommendation to the Minister only and the full power of decision-making rests with the Minister who can also make any changes to the proposal without further consultation with other stakeholders.

WWF supports the position of the Tasmanian EDO raised in its 2015 Senate Enquiry submission:

> *The Panel has an explicit mandate when assessing a proposed aquaculture development to consider whether the proposal can satisfy sustainability objectives. There may be good reasons why the Minister, having responsibility for a range of portfolios, would not accept a recommendation from an expert Panel to approve a proposed aquaculture development, even though the proposal, when considered in isolation, is considered to be sustainable.*
>
> *For example, the Minister may consider that the proposal will have unacceptable visual or amenity impacts on nearby residents, may interfere with views from key tourist spots or may place an undue burden on local government infrastructure. In contrast, there can be no good reason to allow proposed marine farming activities where the independent, scientific expert Panel has determined that the amendments are not sustainable and recommended refusal. Decisions made by the Panel to refuse a proposal should be final (subject to a right of review – see below).*

Recommendation:

- ❒ The MFPA should be amended to reverse the 2011 amendments and re-authorise the Panel to refuse applications for marine farming proposals that cannot meet sustainability objectives.

## Marine Farming Planning Review Panel Processes

In 2018, two members of the panel resigned due to lack of faith in the process being applied to assess the very significant plan amendments in relation to Storm Bay developments. The panel none the less went on to approve those plans with a minimum number of members present. Clearly this is a flaw

in the system, and the panel should be required to have a full complement of members in order to make decisions regarding new/amended leases and have a quorum to make decisions.

Panel should be required to produce a statement of reasons and response to public representations and make these public. Transcripts of panel hearing should be produced and made public.

The panel's reasons and responses to public representations should be subject to review by the TPC (and potentially TPC can make recommendations) as happens with draft reserve management plans, draft water management plans and proposed planning scheme amendments.

Recommendations:

- ❒ Amend the current Marine Farming Review Panels standard procedures to require:
  - A quorum to make decisions
  - A statement of reasons for decisions and responses to all public representation are developed and made public
  - Transcripts to public hearing be made public
  - Biosecurity matters to be integrated in the panels decisions

## Marine Farming Planning Review Panel Membership

The Panel is established under the *Marine Farming Planning Act 1995* as an independent body comprised of eight individuals with expertise in a range of disciplines relevant to marine farming, as set out in s.8(2) of the MFPA:

The Panel consists of persons appointed by the Governor including:

- ❒ a Chairperson
- ❒ a person with ability and experience in planning issues nominated by the Chairperson of the RPDC
- ❒ a person, other than the Director, EPA, with ability and experience in environmental management
- ❒ as a person other than the Director, EPA, with ability and expertise in fish health and biosecurity
- ❒ a person with ability in marine resource management
- ❒ a person with ability to assess boating, recreational and navigational issues
- ❒ a person with experience in marine farming
- ❒ a person with expertise in local government issues
- ❒ a person nominated by the Minister

While the additional places on the panel made available for expertise in environmental and fish health fields is an appropriate move, the following deficiencies are still present:

- ❒ There is no explicit requirement for the Panel to include a member with qualifications in relation to marine ecology, hydrology, marine sediments or conservation management.
- ❒ Other than the person appointed by the Minister, there is also no capacity for community concerns or conservation sector positions to be represented.
- ❒ There is no transparent reporting of the members credentials and material evidence of their presumed expertise and its relevance specifically to finfish farming.

Recommendations:

- ❒ Require the Panel to include a member with qualifications and expertise in relation to marine ecology and hydrology.
- ❒ Require the Panel to include a member representing community issues.

- ❒ Require the Panel to include a member representing the conservation sector.
- ❒ Require the publishing of skills and experiences to demonstrate expertise in the nominated areas
- ❒ Require fish farming scientists to be totally independent of commercial interest

## Baseline information requirements and decision making regarding Marine Farm Development Plans

Throughout 2017/2018 the Storm Bay MFDPs were amended supporting the development of industry up to 30,000T, while the following remained true:

- ❒ Major gaps existed in baseline data
- ❒ The required biogeochemical model was not available and is not due for completion until at least 2021.
- ❒ No biosecurity plan existed
- ❒ Without the EPA's new 'environmental standard' being developed and available to describe our farming in the new areas would be managed.

While WWF would support a precautionary increase in production based on the existing data, the scale of approval to farm 30,000T represents 58% of current entire salmon production in Tasmania. This decision is clearly is reckless and fails to respond to precautionary principles.

The Institute for Marine and Antarctic Studies (IMAS) has used a dispersion model (CONNIE3) to investigate the fate of nutrients across Storm Bay at a combined interim target production level of 40,000 tonnes/yr. The CSIRO CONNIE3 model provides some guidance in terms of development. While WWF respects the scientific credentials of IMAS, this model alone is clearly acknowledged to be insufficient to accurately manage the waterway, hence the requirement for the biogeochemical model.

The Panel noted concerns that the stocking density of 25kg/m3 was too high and should be changed to 12kg/m3. This is supported. However, it must also be acknowledged that these amount in themselves do not respond to important issues of cumulative impacts. While 12kg/m3 may be an appropriate density for a singular farm in a waterway, clearly this would likely be an unsustainable biomass should pens cover a large proportion of the waterways. But how much is too much? This fundamental questions remains unanswered, and development should not proceed at this scale until all baseline data and models are available.

Macquarie Harbour was developed under the same regime of 'adaptative management'. In this case, large biomass increases were approved in the absence of a sound understanding of the systems, while Government and industry committed development this understanding in parallel with increased development. It is concerning at the least, to see that Government has failed to learn from this experience, which caused catastrophic impact to the environment of Macquarie Harbour.

It is recognized that certain scales of development are considered prerequisites by industry before they can invest. While this is an important issue for industry, it should not be a relevant factor for the Marine Farming Planning Review Panel, the EPA, nor the Minister. It is the role of these originations and posts to uphold the sustainable management of the environment, entrusted in them by the people of Tasmania. If a smaller step in terms of increased biomass is not economically viable then it should be industry's responsible to address that challenge. For instance, they could withhold any development until 2021 when all the appropriate models are available. This challenge should not be met by approving large increases in stocking, especially in the absence of the required models and data.

While we recognise that there are benefits to adaptive management which responds to unanticipated problems, adaptive management should not be used to overcome shortcomings in scientific evidence presented with an application.

Recommendations:

- ❒ Decision-making frameworks must require sufficient scientific data to be provided in order to assess the potential impacts of aquaculture proposals before approvals are given.

## Access to relevant information regarding applications to amend Development Plans

The MFPA provides for Marine Farming Development Plan amendments applications and application to expand or relocate marine lease areas to be publicly advertised. Environmental Impact Statements and other supporting materials, are required to be published. Input to the process is facilitated through any person being able to make representation by submission and can request to appear at the Panel hearing. The openness and access provided through these processes is supported. This is consistent with other land use processes, and with international marine farming practices, to facilitate public involvement in decisions regarding marine farming operations.

## Social issues

Currently, the MFPA Act does not require the Panel to consider and protect social values in relation to the consideration of development plans. This is a significant oversight as clearly issues such as impact on recreational boating, in addition to noise and visual impacts from farms, are relevant considerations. e.g. Impact on recreational boating and fishing, visual impacts and noise.

Recommendation:

- ❒ Amend the MFPA Act to explicitly require the Panel to assess and protect social values

## Powers for the EPA to refuse a Marine Farm Development Plan

Currently the Marine Farm Planning Review Panel must seek input from the EPA Director on the development of a Marine Farming Development Plan. In addition to such 'input', powers should be provided for the EPA Director to refuse the Plan in situations any associated application for a EL would not be granted due to inability to meet environmental requirements. (refer to this also in the MFP Act section)

Recommendation:

- ❒ Amend the MFPA Act to explicitly provide the EPA Director with the power to refuse a proposed or amended Marine Farming Development Plan where environmental credentials would not be sufficient to support a successful associated environmental license application.

## Right of Appeal to a Marine Farm Development Plan

For most significant land use and development decisions under LUPAA, any person who made a representation can appeal to the Resource Management and Planning Appeal Tribunal. Tribunal effectively re-hears the evidence and makes its own determination as to whether the use or development should proceed. This is also the case in New Zealand and Scotland.

In contrast, there is no right to appeal against a decision under the *Marine Farming Planning Act 1995* to amend a Marine Farming Development Plan to facilitate an aquaculture proposal. Particularly given concerns regarding the independence of the decision-making structure under the MFPA, a right of appeal is important and should be open to any person who made a representation in respect of the

proposal (including affected residents, NGOs, other industries, tourism operators and the local government).

Allowing a right of appeal to the Resource Management and Planning Appeal Tribunal would provide appropriate scrutiny from a body with experience in resource management and procedural fairness that is required to further the sustainable development objectives of the Resource Management and Planning System. The Tribunal has powers to dismiss frivolous appeals and to awards costs in appropriate situations, which is sufficient to deter appeals which lack merit.

Note: bringing marine farming planning and approvals under LUPAA would generally mean that such decisions would be subject to merits review by the Tribunal.

Recommendation

❒ Allow all parties (including the proponent and any person who made a representation) to appeal to the Resource Management and Planning Appeal Tribunal against a decision to amend a marine farming development plan to facilitate a new marine farming operation

# 6. Application of the *Marine Farming Planning Act 1995* relating to management of finfish farming operations with respect to the prevention of environmental harm

## Regulatory Independence

WWF welcome the regulatory amendments which have placed environmental management of finfish farming under the direction of the Tasmanian EPA, and the requirement for an environmental licence under the EMPC Act. There are still a number of issues with the current system.

## Science based management of biomass and cumulative impact

The most significant environmental deficiency in the current management of Tasmanian's salmon farming is the absence of science-based system which is informed by the carrying capacity of the natural environment. Salmon farming will impact the water quality and surrounding environmental health, where the additional nutrients (born from uneaten feed that falls to the seafloor & from salmon faeces) it introduces is in excess of capacity of the receiving waters to 'adsorb' those nutrients in a functional way.

It is possible to calculate the carrying capacity of an area in terms of additional nutrients which it can accept without harm. It is also possible to determine an associated biomass that should not be exceeded in order to remain below that carrying capacity.

Such as system would be the most science based, responsible and transparent system for salmon farm management in Tasmania. Importantly, it allow for effective management of the impact of multiple farms and companies farming within a region, as individual leases can be allocated a 'quota' of nutrients, or translated to biomass, which becomes a very clear metric to manage and enforce to protect environmental values.

It should be a priority for Government to commission and industry to fund, a state wide system of carrying capacity based, nutrient load/biomass limits for all farming regions.

Recommendation:

❒ Government to commission and industry to fund, a state wide system of carrying capacity based, nutrient load/biomass limits for all farming regions.

## Responsibilities for collection of environmental monitoring data

Environmental monitoring is a fundamental tool in preventing of environmental harm. The effectiveness of this tool has been undermined by lack of independence and validation mechanisms in the collection of this data. For many years, environmental monitoring has been performed by the operators themselves and not by the EPA or independent third parties. Recent amendments are placing more responsibility on the EPA for the collection of independent monitoring data. However, a larger shift, funded by industry, is required in this area.

Recommendation:

- ❒ The increase in EPA monitoring of salmon farms should continue, funded by industry, to the point that all environmental monitoring data can be independently verified through the EPA or alternate fully independent entity or system.

## Publication of environmental data

Traditionally, the results of the environmental monitoring have not been made public. There are multiple reasons why this is inappropriate. Firstly, as salmon companies are operating in a publicly owned resources, there is a natural right of accessibility to data which describes the impact and relationship of that commercial activity on this public asset. Secondly, full transparency around this data creates an increased incentive to prevent environmental harm. Lastly, full transparency provides the public with full visibility of Government's response to poor monitoring results and reduces the incentive to apply penalties either inconsistently or to a lessor than reasonable extent.

The EMPC Bill, which was open for public submissions in October, proposes to introduce a new section in the EMPC Act which provides powers to release environmental monitoring data. We support this long overdue amendment, with the following additional important comments:

- ❒ While the Bill 'allows' for the environmental data to be released, it does not 'require' the EPA Director to release the data. To provide the certainty of transparency to the public without the risk of inappropriate commercial impact, the EMPC Act should compel the Director to provide full disclosure of all environmental data, except where a legitimate matter of commercial sensitivity is proven. Where environmental data is not released, the full case of commercial confidentiality should be required by law to be demonstrated and published. This is already commonplace in Canada where the law requires all information regarding environmental assessments that are undertaken to be made publicly available. This assists with the transparency of monitoring and encourages performance improvements.
- ❒ Not all issues related to environmental impact are reported through the EPA. For instance, issues related to interactions with threatened, endangered and listed species (seal and bird interactions amongst others) are not. In order to fulfil the intent of the Bill across the industry, there should be full transparency on all environmental matters including at least: water quality, benthic quality and biodiversity impacts, habitat effects, wildlife interactions & movements, fresh water usage, chemical & antibiotic use, mortalities, escape and matters of biosecurity. The Government should make necessary amendments to other legislation to ensure that the principle of transparency of information is applied to all matters of environmental performance.
- ❒ In order to ensure the value of this information released to the wider community, the way the data is synthesised, interpreted and disseminated is important. This should be designed & developed with an advisory committee which includes sectors of the science, conservation and community to ensure it creates useable & intelligible outputs (see more on this in the section on *Data Portal* below.
- ❒ The information released under this section should include details of enforcement activities also including the details surrounding the exercise of *emergency orders* proposed under the EMPC Bill.

Recommendations

- ❒ EMPC Bill be amended to compel the release of all data *unless* an explicit case is made regarding commercial confidentiality. The full case of commercial confidentiality should be required by law to be demonstrated and published.
- ❒ Maintain the existing open process regarding amendments to Marine Farm Development Plans and amendments to marine leases.

## Data Portal

The Growth plan included a commitment to develop a data portal to enable all stakeholders to understand key data about the industry. While an independent web portal would increase transparency, it is important to ensure that the content and format of the portal is developed in consultation with the community and key stakeholders outside of industry (including the conservation sector) to ensure that information is delivered in a manner that is readily understood, digestible and relevant. WWF, with significant experience in both environmental management and community engagement, sought multiple opportunities to contribute to this process seeking input into this process for over a year and been consistently been advised that it is being developed with industry. Finally, the web portal is live and we note the following issues:

- ❒ Graphs of environmental data are provided, however no guidance on how the data is collected or how to interpret this information. For all key monitoring data, Government should have clearly defined acceptable threshold. These many be absolute levels, or based on prescribed trends (e.g. no more than x% increase over 12 months). However there is a complete absence of narrative around the significance of the parameter or the results.
- ❒ Some sections display graphs which compare of industry data and EPA collected data. These graphs are visually difficult to interpret with many lines and similar colour-use the cause of this. Nonetheless, the results seem to suggest that there are discrepancies between these two data sets, but not comment or guidance on the significant of this data. Documentation of the deviation between the data sets should be provided.
- ❒ The timeframes are also misleading. Data is provided for the current years and previous years only to 2017. Of course, this misses the significant impacts observed in 2016. But also, it is important to contextualize the data against a longer time set, at minimum share pre salmon farming levels of the environmental parameters.

Recommendation:

- ❒ An advisory group be developed to guide the review of the data portal to ensure that information is displayed in a manner which is readily understood, digestible and relevant. The advisory group should contain representative of the following sectors: community, conservation, fishing industry, science providers, tourism.

## Quality of the monitoring programs

Many of the issues raised by the EDO in its 2015 Senate Enquiry submission still remain valid:

> *The Broadscale Environmental Monitoring Program provides data on water quality across the southeast, but is collated only every three years. There are concerns that the monitoring sites selected as for that program are not representative and do not provide relevant data for modelling or managing the impacts of marine farming in the south east.*
>
> *Lack of pre-marine farming baseline data relating to environmental health also limits the capacity of the monitoring programme to identify the extent and impact of changes in nutrients.*
>
> *There has also been a reliance on reports and video surveillance submitted by the operators themselves every 6 or 12 months. A review by Hugh Kirkman[i] questioned whether this*

*monitoring regime is adequate to identify and respond to risks. In particular, Kirkman stated that the frequency of video samples "seems inadequate for a meaningful assessment of impacts" and recommended that surveillance be conducted more regularly.*

Recommendations:

- ❒ Direct the Auditor-General to undertake a review of monitoring and compliance activities undertaken under the MFPA and Living Marine Resources Management Act 1995
- ❒ Request advice from IMAS regarding the desired frequency of monitoring at marine farming sites, and implement any advice received  Monitoring activities should be conducted by the EPA, with costs recovered from proponents through higher licensing fees and all data published on the EPA website
- ❒ We recommend that EPA adopt clear enforcement guidelines setting scientifically-based performance indicators, identifying a scale of enforcement actions, and indicating which actions will be taken in response to failure to meet those indicators (including graded increases in enforcement activity for repeat offenders). Importantly, EPA must take consistent action in accordance with its guidelines where monitoring reveals that performance indicators are not met.

## Enforcement

While fines have recently increased, these are still insufficient to outweigh the commercial benefit delivered from non-compliance. A clear case in point was the non-compliance by industry in Macquarie Harbour. The cost to the environment in the case of the Franklin lease was denuding of the benthic environment under the lease. However the cost to industry was minimal. In fact while the EPA directed a de-stocking, the impact was known to be occurring months in advance of this, and the EPA should have directed de-stocking at that point. However, the need to the fish to reach market size was prioritised. Clearly, far more significant penalties than have even delivered with recent amendments are required, to incentivise responsible stocking decisions.

While the special penalty available for use when a 'nitrogen cap' is breached, this is vertically as there a nitrogen cap has only been applied in the Huon River and D'Entrecasteaux Channel.

Recommendations:

- ❒ Direct the Auditor-General to undertake a review of penalties to ensure they act as strong deterrents to the mature and profitable industry that salmon aquaculture is, and reflect the significant and demonstrated opportunity for severe impacts to arise from non-compliance.

## Seals

The ongoing issue with seal interaction and management of this interaction has not been adequately resolved. Given that seals will naturally look for the weakest point in the industry's net to seek to feed on salmon, clearly an industry wide approach it needed.

All of industry have had sufficient time now to implement verifiable seal proof nets in all areas where seal interactions exist. Government should now mandate that all of industry to have introduced these nets by June 2020.

Further Government should commission an independent review of all 'seal management' devices & processes. This review should be used to identify and abolish the use of any devices which use violent methods or have the ability to cause harm. Government should also abandon seal relocation activities as this merely reallocates the issue to other industries and is at best a short-term fix.

Recommendations:

- ❒ Government to commission an independent review of all 'seal management' devices & processes. This review should be used to identify and abolish the use of any devices which use violent methods or have the ability to cause harm.
- ❒ Government should also abandon seal relocation activities & mandate all companies to have installed verifiable seal proof nets in all areas by June 2020.

## Issues Relevant to Environmental Licences

We wish to share with you the range of comments that WWF submitted through the recent public consultation process for the EMPC Bill, as these are directly relevant to current legislative system and its ability to prevent environmental harm.

### Change of definition of finfish farming

Section 5C of the EMPC Act defines finfish farming as 'the farming, culturing, hatching, rearing, ranching, enhancement, or breeding, of finfish' and other activities associated with, and for the purposes of, those listed activities. The Bill proposed to limit the definition as it has proven too broad and generated uncertainty about what activities should be assessed and regulated as part of finfish farming. We support this change to ensure that activities that are not directly related to or support regular finfish farming activities deserve separate consideration and should not be authorised by default.

### Absence of criteria for granting an environmental licence

In relation to applications for environmental licences (EL), Section 42 of the EMPC Act give powers for either the EPA's Director (42J) or Board (42K) to '*grant to a person an environmental licence in relation to an activity if the Director is satisfied that it is appropriate to do so.*' These unrestricted powers allow both the Director and the Board enormous flexibility to grant licences with no apparent requirement to provide evidence that potential environmental impacts have been assessed and are being effectively managed. This inadequacy has not been addressed by the Bill. WWF believes the Bill should include an amendment to specify clear criteria that must be met in order to support the issuing of an EL by either the Director or the Board of the EPA. The amendments should also require that the issuing authority publish a public statement which demonstrates how the criteria have been met. Those criteria should be developed through public consultation and we look forward to those discussions.

### Absence of the right of appeal for ELs issued by the Director

*Subdivision 9 - Appeals in Relation to Licences* (Section 42ZJ) provides for a person other than the EL applicant to appeal the grant (or refusal or conditions imposed) of an EL. This is an important provision which would allow for consideration of the rights of stakeholders when issuing these instruments. However, this right of appeal only exists in relation to ELs issued by the Board, while ELs issued by the Director have no right of repeal afforded except to the applicant. This is a serious error and the Bill should be revised to include the right of appeal of all licences issued.

### Ability for the Director to issue ELs for salmon activities unilaterally

Section 42I provides that the Director may deal with (grant, refuse, impose conditions or restrictions) an application for an EL unilaterally or may refer the matter to the Board for consideration and decision-making. Sections 8 and 9 of the *EMPC (Environmental Licences) Regulations 2019* outline criteria that guide when an application should be referred to the Board. Given the scale and projected growth of the salmon farming industry in Tasmania, and the significant environmental impact of poor performance, as well as widespread public concern about the (lack of) transparency and

accountability in decision-making, we strongly implore Government that the Bill should remove the ability for the Director to issue ELs for salmon farming operations unilaterally. All applications for salmon farming activities should be subject to review and determination by the Board and should only occur if specified criteria are met.

## Powers for the EPA to refuse a Marine Farm Development Plan

Currently the Marine Farm Planning Review Panel must seek input from the EPA Director on the development of a Marine Farming Development Plan. In addition to such 'input', powers should be provided for the EPA Director to refuse the Plan in situations any associated application for a EL would not be granted due to inability to meet environmental requirements. (refer to this also in the MFP Act section)

## Assessment of permissible level 2 activities

Section 251D of the EMPC Act provides that a development application (other than an EL) may be referred to the EPA Board for approval under the *Land Use Planning and Approvals Act 1993*. The Board then has power to determine whether it needs to assess the activity to which the application relates. The Bill amends this by providing for the development and application of criteria to guide when the Board might decline to assess an application. This is supported as criteria will help to establish clear expectations and accountability. The criteria prescribed will be important and the environmental sector looks forward to consultation on drafting these criteria.

## Emergency powers

Section 34 of the Act currently provides for a broadening of Emergency Powers to enable authorised officers to take or direct Emergency Action. The existing powers have been ineffective and hence we support the strengthening of powers provided by the Bill, which can be used '*if the officer thinks serious or material harm has or is likely to be caused*'. While the intent of this is supported, we are concerned that the current loose wording around the conditions that must be met to allow officers to act may prevent use of these powers. We recommend more precise language to provide added guidance and confidence to officers when deciding whether to invoke these powers.

## Making, amending and revoking Environmental Protection Policies.

The EMPC Bill proposes changes to Section 96 of the Act in relation to making, amending and revoking Environmental Protection Policies (EPPs). We offer the following comments:

- *Membership of the Environmental Protection Policy Review Panel.* Section 96A currently establishes a panel which is tasked with assisting the Minister to develop and amend EPPs. The membership of the panel is required to be the Chair plus at least 3 other members with '*appropriate skills, qualifications and experience who are appointed by the chairperson*'. There is no further specification of the required skills and experience and this should be amended to ensure appropriate independence and expertise in relation to the key environmental issues facing Tasmania's environment.
- *Removing the requirement for a 'Notice of proposal to prepare draft environment protection policy'.* Section 96G currently requires public notice and consultation regarding the decision to make an EPP. This step in the development of EPPs allows for all stakeholders to have early input, by raising key issues that should be addressed, providing information that would be relevant to the scoping and preparation of the EPP in the early stages. Repealing this section and replacing it with a power for the Minister or Department to seek participation from invited parties only represents a significant reduction in transparency and inclusiveness in Government policy making. This is not supported.

- ❒ *Reducing opportunities to review and comment on draft EPPs.* Section 96I currently requires that a draft EPP is published on 2 consecutive Saturdays in appropriate local newspapers. The Bill proposes to amend this by reducing the number of publication dates to 1. This again limits the opportunity for public engagement and is not supported. We support the requirement to advertise the draft EPPs on Government websites, however this does not replace the need advertise through traditional means, especially as these are commonly now accessed digitally.

## Change in the definition of Waste Depot

Schedule 2 of the EMPC Act deals with level 2 activities which are required to be assessed and regulated by the EPA. 'Waste depots' are included as a level 2 activity and the Act currently provides a definition. The Bill proposes to change the definition to allow that '*certain activities, particularly once-off and temporary activities, do not warrant assessment and regulation as level 2 activities*', with provision to be made in forthcoming regulations to define further exceptions. There is however no necessary relationship between the *one-off* or *temporary* nature of an activity and the scale of environmental impact. If an infrequent action would not result in harm, this must be demonstrated through the permit process. We have seen many examples where once-off activities are environmentally significant and in need of appropriate assessment, such as the disposal of very large amounts of fish faeces and feed collected from beneath fish farms. We therefore oppose the introduction of exemptions which may allow individuals or companies to avoid obligations for responsible disposal.

Recommendations:

- ❒ The membership of the Environmental Protection Policy Review Panel should be amended to ensure appropriate independence and expertise in relation to the key environmental issues facing Tasmania's environment.
- ❒ Remove from the EMPC Bill the proposal to removing the requirement for a 'Notice of proposal to prepare draft environment protection policy' as this will lead to a significant reduction in transparency and inclusiveness in Government policy making.
- ❒ Remove from the EMPC Bill the proposal to reduce the number of dates that a draft Environmental Protection Policy is published to 1, as this limits the opportunity for public engagement.
- ❒ Oppose the introductions of exemptions for waste deposits under the EMPC Act.

[i] Kirkman, H. 2014. Review of Monitoring the Environmental Effects of Salmon Farming in Tasmania. Available at www.et.org.au