



tasmanian conservation trust inc

Legislative Council Sessional Committee Government Administration A
Sub-Committee
Fin Fish Farming in Tasmania Inquiry
Parliament House
Hobart Tas 7000

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The TCT congratulates the Legislative Council for forming the Fin Fish Farming in Tasmania Inquiry. We thank the committee for this opportunity to make a submission. Both myself and Jon Bryan, TCT's Marine Spokesperson are available to present to the committee. As well as preparing most of the TCT's submissions on fin fish farming over more than twenty years, Jon is highly experienced at diving with seals and has provided advice to fin fish farming companies about safe practices while working at fish farms.

OVER VIEW OF THE TCT'S CONCERNS AND RECOMMENDATIONS

The Tasmanian Conservation Trust first became involved with the fin fish farming industry in the mid-1990s when we made submissions on then draft Marine Farming Development Bill 1995. For more than twenty years we have responded to many specific marine farm proposals and made submissions to the state government on proposed changes to legislation related to marine farms.

Many of the issues the TCT raised in the early days of fin fish farming have never been addressed. Despite changes to legislation, most recently the Finfish Farming Environmental Regulations Act 2017, there has been little or no improvements in terms of addressing issues related to pollution of waterways, biosecurity, seal management, social and recreational impacts and the right of the community to have its say over major decisions related to fin fish farming.

The fin fish farming industry was relatively new in 1995 and there may have been a justification for providing an easier or simpler approval pathway for the industry in its infancy. However this cannot be justified any longer.

The industry has been going through a rapid expansion in recent years. The regulatory controls have proven to have been grossly inadequate and the state government and industry have failed to respond to community concerns. In its unnecessary haste to expand, the industry came close to crashing the ecosystem of Macquarie Harbor. The industry started to expand into the east coast of Tasmania, ignoring a massive

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and sustained community backlash. Most recently, the three major companies have moved to expand into Storm Bay, proposing a scale and intensity of farming that is unprecedented.

Rather than strengthen the system for assessing and approving such an expansion, the recent resignation of two scientists from the Marine Farming Planning Review Panel highlights the continuing lack of rigorous independent scientific assessment (further details provided).

The regulatory failures that lead to near catastrophic oxygen depletion events in Macquarie Harbor, and finally lead to regulators scaling back farm size (which may or may not prove sustainable) have not led to significant legislative changes. In addition to the weaknesses in the operation of the panel, the EPA is allowing the Storm Bay expansion knowing there is inadequate scientific knowledge, the same mistake it made with Macquarie Harbor.

The proposed expansion of the three major fin fish companies into Storm Bay is unprecedented in its scale and potential impacts. The combined expansion of salmon farming in Storm Bay is for between 40,000 to 80,000 tonnes per year, which has potential to more than double the production for the entire state (currently at about 55,000 tonnes per year). Former Derwent Estuary Program Director Christine Coughanowr estimates that the nutrient load from this expansion is to be 2300 to 4600 tonnes of bioavailable nitrogen or 6 to 12 times the current nutrient load from all sewerage treatment plants in the city of Hobart or 2 to 4 times the estimated load for all sewerage generated in Tasmania.

Despite this unprecedented scale of expansion, the environmental licences are to be issued by the EPA with no community input to the assessment process. The Marine Farming Development Plans were approved without any significant concessions to community concerns.

OVER-ALL RECOMMENDATION: What is needed is a major over-haul of legislation relating to the fin fish farming industry, in particular legislation relating to the:

- development, review and approval of Marine Farm Development Plans;
- development, review and approval of environmental licences; and
- management of seal inter reactions with fin fish farms.

RECENT AND PROPOSED CHANGES WILL NOT SIGNIFICANTLY ADDRESS COMMUNITY CONCERNS

Finfish Farming Environmental Regulations Act 2017

The Finfish Farming Environmental Regulations Act 2017 were introduced primarily to enable the EPA to become responsible for the environmental regulation of marine farms (previously done by DPIPWE) and to require all farms to have an environmental licence issued under the Environmental Management and Pollution Control Act (EMPCA). Previously environmental licencing was done through a variety of licencing instruments issued by a range of regulators. The 2017 changes resulted in slightly different but largely consistent processes for freshwater and marine farms and for farms and hatcheries. The changes also removed the EPA Director from being a member of the Marine Farming Planning Review Panel and gave the Director the power to required specific environmental matters to be addressed in Marine farm Development Plans.

While the changes to environmental licensing are positive the development of Marine Farming Development Plans is largely unchanged. The Department of Primary Industries, Parks, Water and Environment is still responsible, with key responsibilities performed by the Marine Farming Planning Review Panel and the minister. As described in detail below, this system has always failed the community and changes made in 2017 have done nothing to improve the process of developing marine farm development plans.

Having the EPA responsible for development and approval of environmental licenses provides greater consistency but there are still fundamental problems. The EPA's processes still provide no guarantee of community input to development of environmental licences and therefore no guarantee of appeal rights. There also are no legal requirements for environmental licences to place absolute limits on the biomass of fish in farms or to place caps on the amount of key nutrients that are released from farms e.g. dissolved nitrogen. Further details provided later in this submission.

Environmental Legislation (Miscellaneous Amendments) Bill 2019

The state government is currently preparing changes to regulation of fin fish farms, via the Draft Environmental Legislation (Miscellaneous Amendments) Bill 2019. These amendments were not developed through consultation with the community and do not address most community concerns (see examples throughout this submission).

RECOMMENDATION: There are more than 70 detailed changes in this bill relating to fin fish farming and it would be important for the Committee to be briefed by the state government and independent organizations (we recommend the Environmental Defenders Office) about the intent and effect of these proposed amendments. This might prevent the committee making recommendations that the state government may already be considering.

MARINE FARMING DEVELOPMENT PLANNING PROCESS

The Marine Farming Planning Review Panel (MFPR Panel) has a very important responsibility to decide on the areas that are to be made available for fin fish farming. Draft Marine Farming Development Plans (MFD Plans) are developed by DPIPWE and industry representatives and are reviewed by the MFPR Panel. The MFPR Panel is responsible for requesting public submissions on the draft plans and reviewing those submissions and can call public hearings to further consult the public. The Minister for primary Industries receives the recommendations of the panel and makes the final decision whether to approve a MFD Plan and can decide to not act on the Panel's recommendation. Leases can only be issued after a MFD Plan is approved by the Minister. We note changes made to the MFP Act in 2017 that removed the EPA Director as a member of the MFPR Panel and created two new positions, one for an expert in environmental management and one for an expert in fish health.

The review of MFD Plans by the MFPR Panel is the first stage in the process of developing fin fish farms that involves the community and it is the most important stage for the community to have input.

The TCT has made submissions on numerous Draft MFD Plans and participated in numerous MFPR Panel public hearings since the 1990s. We conclude based upon this long and detailed experience that the Panel has proven itself to be an industry rubber stamp. The Panel has never taken seriously the issues raised by the community or

conservation groups and has not made significant changes to draft plans in response to community concerns.

Most incredibly, in its more than twenty years of operation the MFPR Panel has only ever refused one MFD Plan, one proposed for Solders Point at Bruny Island. Ironically this refusal had nothing to do with complaints from community or conservation group interests but was the result of information being provided through public submissions regarding a reef that would have been impacted. The Panel's decision was later overturned following the minister changing the legislation to provide him with the power to do so. Therefore there has never been a MFD Plan proposed that has ultimately been refused.

Once the MFPR Panel decides to recommend to the Minister the approval of a Draft MFD Plan the community has no right to appeal this decision to a tribunal as is the case with planning decisions by local government. Similarly, the minister's final approval of a MFD Plan cannot be appealed to a tribunal.

Community concerns can generally be categorized as relating to lifestyle, recreation, amenity and environmental impact and includes:

- impacts of noise and lights on residences;
- visual impacts as viewed from residences and public places;
- marine litter;
- limiting access to waterways for recreational boating;
- increased boating hazards;
- impacts on recreational fishing;
- impacts on surfing;
- water pollution and biosecurity.

There are a number of commercial fishers who have raised concerns about the impact of fin fish farming on commercial wild fishing resources.

While some people claim that the Marine Farm Planning Act allows the panel to consider a range of social issues, in practice they have been largely ignored or not adequately addressed.

RECOMMENDATION: The MFPA needs to be amended to recognize social values and require appropriate assessment and controls to limit impacts.

The TCT has facilitated 120 submissions to the committee from concerned members of the community. Many of these submissions provide individual personal stories about the impacts that fin fish farms have had or continue to have on people's lives and the largely unsuccessful attempts to have the responsible companies and regulators address them.

Resignation by two expert panel members in 2019

One of the most significant changes the state government made in 2017 was to include two additional positions on the MFPR Panel (as outlined above). Unfortunately the two people who successfully nominated for these new positions resigned in August 2018, after about eight months on the MFPR Panel. Their resignation letter exposed numerous fundamental flaws in the way the MFPR Panel operates. While these people may make submissions to the committee the TCT wishes to summarise their complaints and make some observations and recommendations based on them.

The former panel members, both eminent scientists, provide a damning assessment of the operations of the Panel. While the current and former ministers have repeatedly claimed the panel process is independent, science-based and rigorous, the former panel members stated that the panel assessment of the Storm Bay Marine Farming Development Plan was not science-based, is not objective and is not rigorous.

The MFPR Panel members stated that:

'Our appointment to the Panel was, we were led to believe, intended to ensure rigour in the review of the proposed developments and to provide the Minister with sound, objective, and scientifically based advice. A number of factors prevented this.'

The letter also says that whilst the two scientists are supportive of a sustainable salmon industry, they resigned from the MFPR Panel because they were unable to '**apply current best practice and the lessons from Macquarie Harbour**'.

The former MFPR Panel members say that their job as scientists was hindered by factors including the panel's '**undue propensity to support what is operationally convenient for the industry**'.

The former MFPR Panel members provide details of how the science required for the assessments is seriously deficient and that when this was raised their concerns were 'inconvenient and unwelcome'.

The former MFPR Panel members said:

- there was '**no detailed biogeochemical model**' for Storm Bay
- **no Government endorsed biosecurity plan**
- no '**regulatory guidelines to define the standards**' companies must be held to
- **natural values of Storm Bay have not been mapped and considered**'.

Ministers Courtney and Barnett approved Tassal and Huon Aquaculture's Storm Bay Marine Farming Development Plans after they had received the resignations from two panel members – ignoring their concerns.

In a media release issued after the letter was made public in February 2018, the TCT recommended that the approval of the Storm Bay Marine Farm Development Plan be revoked. Revoking the Storm Bay plan, as a precursor to revamping the legislation that governs the panel's operations, is the only way to restore the community's trust that the flawed marine farming planning process will be fixed. We proposed this unprecedented step because the former panel member's letter raised issues that fundamentally undermined the integrity of the panel's decision.

Not surprisingly the Minister responded by simply stating that he has full confidence in the MFPR Panel.

At a minimum the minister should have reviewed operation of the panel and we ask that this committee consider a range of potential changes.

Reform of the marine farming development planning process

Based on the former MFPR Panel member's resignation letter and the TCT's long experience of the Panel's poor performance the TCT recommends the following changes to the MFP Act.

Abolish or reform: Abolish the current Panel or at the least undertake a top to tail restructuring.

Panel membership:

- Increase representation on the Panel for interests not aligned with fish farming (conservation group, recreational fishing and community).
- Require fish farming scientists to be totally independent of commercial interests.

Panel processes:

- Panel should be required to have a full complement of members in order to make decisions regarding new/amended plans and have a quorum to make decisions.
- Transcripts of Panel hearings should be produced and made public.
- Panel should be required to produce a statement of reasons and response to public representations and make it public.

Panel subject to review: Panel's response to public representations should be subject to review by the Tasmanian Planning Commission and the TPC should be able to make recommendations to the minister for changes (assuming the minister retains this power), as happens with draft reserve management plans, draft water management plans and proposed planning scheme amendments.

Marine Farming Development Plans be subject to appeal: The recommendation by the Panel to approve a MFD Plan and/or the Minister's final approval should be subject to appeal to the Resource Management and Planning Tribunal.

Remove minister's veto power: Remove or substantially constrain the minister's powers to over-turn decisions of the Panel.

ENVIRONMENTAL REGULATION BY THE ENVIRONMENT PROTECTION AUTHORITY

Despite legislative changes introduced in 2017 there are fundamental flaws in environmental regulation of fin fish farming and these are not addressed in changes recently proposed by the state government.

Legislated limits on pollution from fish farms

While having the EPA responsible for development and approval of environment licences provides for some consistency there are still fundamental problems. Critically, there are no legal requirements for environmental licences to place absolute limits on total biomass of fish allowed in a fin fish farm or to place caps on the amount of key nutrients that are released from farms e.g. dissolved nitrogen.

RECOMMENDATION: We recommend that EMPCA be amended to require all environmental licences to include defined limits of total biomass, dissolved nitrogen and other key nutrients that are released from a fin fish farm. These limits need to be relative to the sensitivity of the receiving environment.

As is the case with sewerage treatment plants in Tasmania, all fin fish farms should be required to ensure that the receiving environment is not harmed by effluent. This will require research to determine the ecological capacity of each receiving environment to sustain the input of effluent.

RECOMMENDATION: The ecological capacity of each receiving environment should be determined prior to licences being issued for new farms or major expansions. As is occurring with sewerage treatment plant licences, environmental licences for existing fin fish farms should also be reviewed and adjustments made to ensure that permitted effluent levels are not harming the receiving environment.

Public input and third party appeal rights

Despite changes in 2017, there is still no guarantee of community input to the development of environmental licences and therefore no guarantee of a right to appeal the approval. Currently, a decision to refer a proposal to the EPA Board (which triggers the public comment process and potential for appeal) is made by the Director at his own discretion. The Environmental Legislation (Miscellaneous Amendments) Bill 2019 does not propose to change this.

RECOMMENDATION: The EMPCA should be amended to require that all environmental licence applications and significant amendments are subject to a decision by the EPA Board so that public input and third party appeal rights are guaranteed.

Lease monitoring and other data

RECOMMENDATION: The EMPCA should be amended to require public release of individual lease monitoring data and details of compliance and enforcement activities (where there are no commercial in confidence considerations). The Environmental Legislation (Miscellaneous Amendments) Bill 2019 includes a provision regarding the release of environmental monitoring data but the bill does not require data to be released as the decision is to be at the discretion of the Director. The proposal also only relates to release of environmental monitoring data and does not include compliance and enforcement activities.

Environmental bonds

The EPA director should have the power to impose environmental bonds to ensure companies maintain adequate funds to undertake any necessary remediation work.

Civil enforcement

There should be a general civil enforcement provision, allowing any person with an interest to enforce non-compliance.

SEAL MANAGEMENT

The fin fish farming industry has been far too slow to implement proven methods for avoiding inter actions between seals and their work force and farmed salmon and other fin fish. In 2018 the state government introduced the 'Seal Management Framework' in response to criticism of the massive increase in translocations and ongoing euthanasia of seals. However, the framework, which we note did not get released for public comment and can be changed by government at any time, transitioned to methods that are arguably just as bad.

The industry currently uses bean bag guns and fire crackers as seal deterrents and can capture, corral and release seals into nearby waterways. These are unjustifiable

and may be very cruel to seals. The industry can still obtain approval to have seals euthanized in circumstance that is not justifiable.

The problem of seals being attracted to and eating salmon and other penned fin fish can largely be addressed by using pen systems that have been in use around the world for many years and are currently in use in some Tasmanian farms. Seals are simply suffering because companies want to delay spending money to fix the problem and the government allows them to do so.

While there are a number of variations of fish pen design, the key principle involves building an inner and outer net, the inner net stopping salmon from escaping and the outer net stopping seals from entering. It is vital that nets are kept tensioned to prevent seals from pressing against the nets and catching or injuring salmon. Nets will form holes for a range of reasons, not just related to seals, and must be regularly checked and repaired. In addition to pen design and maintenance fish farm managers must maintain procedures to minimize the release of salmon when they are moving them from pens. While these measures cannot guarantee there will be no problems, it is sure to reduce the problem to negligible levels. Seals do not instinctively know that salmon and other farmed fish are a food source, they must learn this. Over time, as seals are born and raised that do not have easy access to farmed salmon, fewer seals will be attracted to fish farms and the problem should largely disappear.

The other major problem is the interaction between seals and fish farm workers. Again, the solution is a combination of infrastructure to defend workers, good farm/fish management and use of technology to replace human labor for more risky tasks. Seals need places to haul out of the water and fish farm pens are ideal for them. Some Tasmanian farms have learnt that hauling out can easily be prevented by putting a simple wire barrier around the outside of the pens to act as a fence. Workers must also stop attracting seals by properly disposing of dead salmon and not throwing them into the water around farms. When in the water doing pen maintenance or other work, workers are unlikely to be at risk from seals and much of what is interpreted as threatening behavior is harmless. Farm workers need to learn to understand seal behavior and about how to behave around seals to limit provoking them. Increasingly, technology is being used to prevent workers needing to be in the water e.g. some companies in Tasmania use remote cameras to check for holes in nets.

RECOMMENDATIONS: The industry should be required to use best practice pen design to minimise seal and salmon inter-reactions. This requirement should be legislated and be introduced immediately for all new pens and phased in on a very short time frame for existing pens.

The cost benefit of these changes needs to be considered, with enormous cost reductions over time as less farmed fish are lost to seals and less time is used responding to seals being inside or on top of pens. The costs of maintaining barbaric practices in terms of company brand and customer choice needs to also be considered.

RECOMMENDATIONS: The Wildlife Regulations should be amended to prohibit euthanasia or serious injury of seals, unless a person believes their life is under threat and they have no alternative, and to prohibit the translocation, penning or use of deterrents such as bean bag guns and fire crackers.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. McGlone'.

Peter McGlone
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