

To: Greenwashing Senate Inquiry Committee  
Senate Standing Committees on Environment and Communications  
Via email:

CC: Australian Consumer and Competition Commission  
Via email:

18<sup>th</sup> June 2024

**Re: ACCC Answers to Questions on Notice, Topic: Greenwashing – Complaint against supermarkets – misleading statements about salmon.**

Dear Committee,

We write to you today in light of the Australian Consumer and Competition Commission’s recent response to Committee Chair Senator Hanson-Young’s question on notice concerning the status of a complaint<sup>1</sup> lodged by the Environmental Defenders Office, on our behalf, to the ACCC regarding sustainability claims on Tasmanian salmon products by major supermarkets. The ACCC answered that they “decided not to take further action at this stage” on the complaint.<sup>2</sup>

We find the ACCC decision deeply concerning. In other words, the ACCC has decided to not investigate ALDI, Coles, and Woolworths supermarkets’ “responsibly sourced” claims and logos on Macquarie Harbour salmon – despite scientific advice to the Australian government that states the product is the “primary threat” to the endangered Maugean Skate’s survival.<sup>3</sup>

The fact that a product that is the primary driver of an extinction emergency can continue to have ‘responsible’ claims on the label without question from the ACCC, demonstrates why current greenwashing legislation and enforcement are inadequate. It also demonstrates the need for the Greenwashing Senate Inquiry to establish strong recommendations to address such inadequacies.

The ACCC’s rationale for not taking further action refers to industry compliance with “regulations and their participation in various voluntary environmental compliance schemes”.

We express the following concerns with this rationale:

- a) The ACCC rationale ignores the evidence of the Conservation Advice by the Threatened Species Scientific Committee to the Australian Government’s Department of Environment which identified salmon farming operations as a “very high risk” threat that is “almost certain to impact the Maugean Skate throughout the entire harbour” with “catastrophic” consequences.<sup>4</sup>

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<sup>1</sup> Environmental Defenders Office to Rami Greiss, ACCC. Potentially false, misleading or deceptive representations relating to salmon products. Dated 1<sup>st</sup> December 2023.

[https://aks3.eko.org/images/20231201\\_ACCC\\_complaint\\_re\\_representations\\_relating\\_to\\_salmon\\_products.pdf](https://aks3.eko.org/images/20231201_ACCC_complaint_re_representations_relating_to_salmon_products.pdf)

<sup>2</sup> AQoN 21. Answers to questions on notice, misleading statements about salmon, Australian Competition and Consumer Commission, Received 31 May 2024.

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Greenwashing/Additional\\_Documents?docType=Answer%20to%20Question%20on%20Notice](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Greenwashing/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice)

<sup>3</sup> Australian Government, Department of Climate Change, Energy, the Environment and Water. Conservation Advice for *Zearaja maugeana* (Maugean skate). September 2023.

<http://www.environment.gov.au/biodiversity/threatened/species/pubs/83504-conservation-advice-06092023.pdf>

<sup>4</sup> Ibid.

- b) It is unclear why the ACCC cites that compliance with regulations was given relevant consideration given nowhere in the ACCC guidance for businesses<sup>5</sup> does it state that industry compliance with regulation is sufficient for substantiating an environmental claim.
- c) Further, the ACCC rationale provides no justification or explanation for why the agency deemed the so-called “extensive regulatory framework” satisfactory for substantiating an environmental claim. To the contrary, the regulatory framework has been deemed insufficient for protecting Macquarie Harbour and the Maugean Skate; hence the Commonwealth’s Conservation Advice recommending the removal of salmon farming from the harbour as an urgent priority.

Notably, two independent reviews of the Macquarie Harbour Broad-scale Environmental Monitoring Program found the Tasmanian Government’s issued Licence Conditions for farms to be “narrowly defined”, “not adequate” and “ineffective” as compliance limits for dissolved oxygen are only at 2 meters – and not at the depths where critical impacts on the Maugean Skate are known to occur.

For example, Ross et al. (2022) states: “The current parameters and depths limits do not appear to be adequate as environmental standards to monitor and protect the environmental health of Macquarie Harbour... Of note, there is only a single limit for oxygen at 2 m depth. An oxygen limit for bottom and mid waters is strongly recommended to ensure the adequate protection of the flora and fauna of Macquarie Harbour.”<sup>6</sup>

Likewise, SAMS Enterprise states to detect decreased concentrations of dissolved oxygen in mid-waters of the harbour (i.e., the skate’s habitat) “there should be a 20 m EQS (= compliance value) for dissolved oxygen.”<sup>7</sup> To date, no compliance levels at the bottom and mid waters have been incorporated into Licence Conditions.

In addition, members from the Tasmanian Parliamentary crossbench have called for an inquiry into the Environmental Protection Agency (EPA) due to “failures of regulation to address the destructive impact of the salmon industry in Macquarie Harbour, allowing the near-extinction of an ancient and unique species, the Maugean Skate”.<sup>8</sup>

- d) The voluntary certification schemes the ACCC rationale refers to also fail to capture the impact certified farms are having on Macquarie Harbour’s dissolved oxygen levels – resulting in negative impacts to the skate going undetected and unpenalized by the schemes.

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<sup>5</sup> ACCC. Making Environmental Claims: A guide for business. December 2023.

<https://www.accc.gov.au/system/files/greenwashing-guidelines.pdf>

<sup>6</sup> Ross et al. (2022) Assessment of the Macquarie Harbour Broad-scale Environmental Monitoring Program (BEMP) data from 2011-2020:

<https://epa.tas.gov.au/Documents/IMAS%20Assessment%20of%20Macquarie%20Harbour%20BEMP%20data%20from%202011%20to%202020%2C%20March%202022.pdf>

<sup>7</sup> SAMS Enterprise (2022) Review of broad-scale environmental monitoring programs: Macquarie Harbour:

<https://epa.tas.gov.au/Documents/SAMS%20International%20Macquarie%20Harbour%20BEMP%20Review.pdf>

<sup>8</sup> Independent Member for Nelson, Meg Webb. Media Release: Support for call for independent inquiry into EPA. 9 May 2024. <https://megwebb.com.au/media-release-support-for-call-for-independent-inquiry-into-epa/>

The Best Aquaculture Practices (BAP) and GLOBALG.A.P. standards<sup>9 10</sup> impose no dissolved oxygen compliance metrics that farms must adhere to in order to be certified. Instead, they defer the regulator’s “ineffective” Licence Conditions which fail to require compliance for dissolved oxygen beyond 2 meters (as outlined above).

Formal complaints to both certification schemes have highlighted the omission of a dissolved oxygen limit within their standards at the depths required; as well as the lack of safeguards within their standards to protect an endangered species.<sup>11 12</sup> Both certifications have refused to remove their endorsements of Macquarie Harbour farms.

- e) Finally, the rationale ignores the fact that the Aquaculture Stewardship Council (ASC) and RSPCA will not certify Macquarie Harbour due to environmental and welfare concerns;<sup>1314</sup> and that the independent Australian Marine Conservation Society’s Good Fish guide rates Tasmanian farmed salmon as ‘Red’ namely due to industry’s impact on the endangered Maugean Skate.<sup>15</sup>

The ACCC’s seemingly low bar of ‘regulated and certified’ was also echoed in testimony by Coles and Woolworths spokespersons at the Inquiry’s public hearing on the 25<sup>th</sup> May 2024. Under questioning, Woolworths acknowledged that certifications “are not a silver bullet and that they do require other due diligence strategies”; and Coles conceded that “we can’t actually make a claim one way or the other as to whether [Macquarie Harbour salmon farming] is ecologically viable or not”.<sup>16</sup>

We contend that a reasonable consumer would expect a salmon product with a ‘responsibly sourced’ label not to be contributing to the demise of an endangered species.

We contend that a reasonable consumer would expect an environmental certification not to be contributing to the demise of an endangered species.

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<sup>9</sup> Best Aquaculture Practices. Salmon Farm Standard – Issue 2 Revision 4. 7 February 2023.

<https://www.bapcertification.org/Downloadables/pdf/BAP%20-%20Salmon%20Farms%20-%20Issue%202.4%20-%202007-February-2023.pdf>

<sup>10</sup> GLOBALG.A.P. Integrated Farm Assurance. All Farm Base – Aquaculture Module. Version 5.4-1-GFS. 28 October 2021.

[https://documents.globalgap.org/documents/220125\\_GG\\_IFA\\_CPCC\\_AQ\\_V5\\_4-1-GFS\\_en.pdf](https://documents.globalgap.org/documents/220125_GG_IFA_CPCC_AQ_V5_4-1-GFS_en.pdf)

<sup>11</sup> Roebuck et al. to Global Seafood Alliance. Formal Complaint – Type 1. Dated 22 September 2023.

[https://drive.google.com/file/d/11TL\\_6fyTR4PuRGnoU0MMYRpRqC8Pf\\_sX/view](https://drive.google.com/file/d/11TL_6fyTR4PuRGnoU0MMYRpRqC8Pf_sX/view)

<sup>12</sup> Roebuck et al. to GLOBALG.A.P. Formal Complaint. Dated 22 September 2023.

<https://drive.google.com/file/d/1QuJefUOwrMWQ7QhxSWAwjy51MT1atYZr/view>

<sup>13</sup> ASC The Aquaculture Stewardship Council responds to recent WWF Australia report on Macquarie Harbour. 6 September 2021 <https://au.asc-aqua.org/news/the-aquaculture-stewardship-council-responds-to-recent-wwf-australia-report-on-macquarie-harbour/>

<sup>14</sup> RSPCA. RSPCA Approved Farming Scheme Standard. Farmed Atlantic salmon. May 2020.

[https://rspcaapproved.org.au/wp-content/uploads/2022/03/2020-05\\_FARMEDATLANTICSALMON\\_Standard.pdf](https://rspcaapproved.org.au/wp-content/uploads/2022/03/2020-05_FARMEDATLANTICSALMON_Standard.pdf)

<sup>15</sup> Goodfish Atlantic Salmon Petuna <https://goodfish.org.au/species/atlantic-salmon-petuna/>

GoodFish Atlantic Salmon Tassal <https://goodfish.org.au/species/atlantic-salmon-tassal/>

Goodfish Atlantic Salmon Huon <https://goodfish.org.au/species/atlantic-salmon/>

<sup>16</sup> Elliot, R (Woolworths) and Donnelly, B (Coles). Proof Committee Hansard. Senate. Environment and Communications References Committee. Greenwashing. Friday 24 May 2024.

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2F27971%2F0000%22>

Arguably most importantly, we contend that a reasonable consumer would expect the agency in charge of protecting their consumer rights, the ACCC, to disallow the sustainable labelling of product(s) that the Australian Government science has concluded is contributing to the demise of an endangered species.

The ACCC decision highlights the need for the Greenwashing Senate Inquiry to address:

- 1) The ACCC's reliance on industry regulatory frameworks as sufficient evidence to substantiate claims.
- 2) The ACCC's reliance on the certification schemes as sufficient evidence to substantiate claims.
- 3) The ACCC's disregard of the scientific evidence by deferring to 1) and 2).

To address these, we strongly urge the Inquiry to not only follow the EU Green Claims directive in banning broad claims such as 'responsible sourced' and the like;<sup>17</sup> but to also establish mandatory due diligence legislation similar to that of the EU Corporate Sustainability Due Diligence Directive recently adopted by the European Parliament.<sup>18</sup>

Mandatory due diligence would require large corporations to take actions when adverse environmental and human rights harms occur in their supply chains – regardless of certification.

Finally, in addition to strengthening and establishing legislation, we need substantive enforcement and penalties that effectively deter greenwashing.

We would be pleased to discuss this letter in further detail with the committee.

Sincerely,

Kelly Roebuck, Living Oceans Society  
Anisha Humphreys, Ekō  
Alistair Allan, Bob Brown Foundation  
Jessica Coughlan, Neighbours of Fish Farming

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<sup>17</sup> European Parliament. 'Green claims' directive. March 2024.

[https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/759609/EPRS\\_ATA\(2024\)759609\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/759609/EPRS_ATA(2024)759609_EN.pdf)

<sup>18</sup> European Commission 2024. Corporate sustainability due diligence. [https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en)