



# Environmental Defenders Office

23 August 2023

Hon Tanya Plibersek MP  
Minister for the Environment and Water  
House of Representatives  
Parliament House  
Canberra ACT 2600

**By email:** [Minister.Plibersek@dcceew.gov.au](mailto:Minister.Plibersek@dcceew.gov.au)

Dear Minister Plibersek,

**Requests for reconsideration of decision on referral numbered EPBC 2012/6406 and investigation into compliance with the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)***

Environmental Defenders Office writes on behalf of the Australian Marine Conservation Society and Humane Society International Australia to seek your urgent action to respond to the impacts of finfish farming on the endangered Maugean Skate (*Zearaja maugean*) and the Tasmanian Wilderness World Heritage Area.

Our clients request you take the following actions to respond to the immediate threats posed by finfish farming on these matters of national environmental significance:

1. Reconsider and revoke the Controlled Action Decision relating to the Marine Farming Expansion in Macquarie Harbour (EPBC referral no. 2012/6406) on the basis of substantial new information about the impacts the action has or will have, or is likely to have on a matter protected by a provision in Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**) (section 78(1)(a)), and/or a substantial change of circumstances that were not foreseen at the time of the first decision, and which relates to the impacts the action has or will have, or is likely to have on a matter protected by a provision in Part 3 of the EPBC Act (section 78(1)(aa)).
2. Direct the Department to investigate compliance with the Particular Manner Notice requirements attached to the Controlled Action Decision for EPBC referral no. 2012/6406.
3. Direct the Department to investigate whether the finfish farming currently being undertaken in Macquarie Harbour is the same as the Action that was the subject of EPBC referral no. 2012/6406.

Further detail concerning each of these requests is outlined below.

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## 1. Reconsideration of controlled action decision

As you are aware, on 3 October 2012 the former Federal Environment Minister, the Hon Tony Burke MP, decided that the “Marine Farming Expansion in Macquarie Harbour” (the **Action**) outlined in EPBC referral no. 2012/6406 (**Referral**) was not a controlled action under sections 75 and 77A of the EPBC Act. In this letter, this is referred to as the **Controlled Action Decision**. As the then-Minister considered the action could be carried out in a particular manner, no assessment or approval was required under the EPBC Act.

Under section 78A of the EPBC Act, our clients request that you reconsider the Controlled Action Decision. We note the mandatory requirements in section 78B of the EPBC Act that now apply regarding the need to inform interested persons of the request and invite comments within 10 business days. Given the significance of this reconsideration request, pursuant to section 78B(6), we urge you to publish this request and an invitation to comment on the internet as a matter of urgency.

We understand that the Australia Institute have already written to you on 8 June 2023 requesting the reconsideration of the Controlled Action Decision. Our clients strongly support that request and, to the extent that the two requests overlap, do not seek to repeat or detract from its content.

### 1.1 Limitation under section 78(3) of the EPBC Act does not apply in this case

Section 78(3) of the EPBC Act prohibits the reconsideration of controlled action decisions where an action has been “taken”.

As a preliminary issue, we note the Department of Climate Change, Energy, the Environment and Water (**Department**) has previously expressed a view that the Action the subject of the Referral has been “taken”.<sup>1</sup> On this view, it would not be open for you to reconsider the controlled action decision due to the operation of the prohibition in section 78(3) of the EPBC Act.

We note that the Department’s position on whether the Marine Farming Expansion in Macquarie Harbour has been “taken” does not accord with the Federal Court’s decision in *Huon Aquaculture Group Ltd v Minister for the Environment*.<sup>2</sup> In that case, Huon Aquaculture had argued that the controlled action decision concerning the Marine Farming Expansion in Macquarie Harbour could not be reconsidered due to the operation of section 78(3) of the EPBC Act.

However, his Honour Justice Kerr relevantly found at [221]-[223]:

...Such a construction is implausible: it would neuter the substantive provision. Moreover as a matter of pure text such a construction is inconsistent with the language in which the prohibition is expressed. Section 78(3) prohibits the Minister revoking a decision “**after** ... the action is taken”. Thus for so long as an action is ongoing, the prohibition has no application.

In this matter, the short description of the “action” (the subject of the Minister’s decision) encompassed not only the construction of sea pens but also the ongoing operation of

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<sup>1</sup> Question SQ23-000926 asked by Senator Whish-Wilson in Budget Estimates Outcome 2 on 23 May 2023 and the responses of Mr Edwards of the Department of Climate Change, Energy, the Environment and Water.

<sup>2</sup> [2018] FCA 1011; BC201805846. See at [221]-[222].

marine farming. The action was still ongoing in mid 2014. It has remained ongoing to the present.

I am satisfied that as at the end of September 2014 it was open to Huon [Aquaculture] to have requested that the Minister reconsider the decision. ...

Plainly, given this finding of the Federal Court, you have the power to reconsider the controlled action decision.

We provide further detail concerning the bases for the reconsideration of the controlled action decision below.

### **1.2 Bases for the Reconsideration of the Controlled Action Decision**

The Controlled Action Decision recorded that the controlling provisions (under Part 3 of the EPBC Act) were:

- (a) Section 18 and 18A of the EPBC Act, due to the action's potential impact on the Maugean Skate which is an EPBC Act-listed endangered species; and
- (b) Sections 12 and 15A of the EPBC Act, due to the action's potential impacts on the world heritage values of the Tasmanian Wilderness World Heritage Area (**TWWHA**), which includes parts of Macquarie Harbour; and
- (c) Sections 15B and 15C of the EPBC Act, due to the action's potential impacts on the National Heritage values of the TWWHA which includes parts of Macquarie Harbour.

Section 78 of the EPBC Act provides that the Minister may revoke a decision where there is:

- (a) substantial new information about the impacts the action has or will have, or is likely to have on matters protected by a provision in Part 3 of the EPBC Act (section 78(1)(a)), and/or
- (b) a substantial change of circumstances that was not foreseen at the time of the first decision, and which relates to the impacts the action has or will have, or is likely to have on matters protected by a provision in Part 3 of the EPBC Act (section 78(1)(aa))

Our clients request your reconsideration of the controlled action decision based on **both** the above provisions.

#### 1.2.1 Section 78(1)(a) - Substantial new information

There is substantial new information about the impacts that the action has or will have, or is likely to have on matters protected by a provision in Part 3.

This substantial new information includes the 2 May 2023 report by the Institute of Marine and Antarctic Studies, *Interim report – Macquarie Harbour Maugean Skate population status and monitoring (the 2023 IMAS report)*.<sup>3</sup> The 2023 IMAS report was based on 2021 sampling undertaken at three sites, including one within the TWWHA. The 2023 IMAS report followed the funding of additional surveys by the Tasmanian sustainable marine research collaboration agreement (SMRCA) for a further three years from February 2021 to December 2023. However,

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<sup>3</sup> David Moreno and Jayson Semmens (2023) *Interim report - Macquarie Harbour Maugean Skate population status and monitoring*. IMAS. [https://imas.utas.edu.au/data/assets/pdf\\_file/0007/1655611/Maugean-Skate-2021-interim-report-FINAL.pdf](https://imas.utas.edu.au/data/assets/pdf_file/0007/1655611/Maugean-Skate-2021-interim-report-FINAL.pdf)

such was the extinction risk to the Maugean Skate that IMAS issued an interim report of results before the project's completion. Of itself, this is substantial new information.

The 2023 IMAS report findings are of grave concern and call for urgent action. The report found there has been a 47% decline from 2014 to 2021 in Maugean Skate numbers in Macquarie Harbour.

It is important to emphasise that, at the time of the Controlled Action Decision, it was thought a viable Maugean Skate population also lived at Bathurst Harbour. However, a separate IMAS report by David Moreno *et al*<sup>4</sup> (**2022 IMAS report**) found extremely low levels of Maugean Skate DNA traces in Bathurst Harbour indicating that a viable population in that location is unlikely, and uncertainty as to there ever being an established population there. The 2022 IMAS report, therefore, constitutes substantial new information as it demonstrates the importance of protecting the Macquarie Harbour Maugean Skate population.

The 2023 IMAS report is substantial new information as it expresses clear scientific information not known at the time of decision EPBC 2012/6406 that Macquarie Harbour Maugean Skate has declined markedly in a short period, in an area that is now the only site where the species remains. The 2023 IMAS report noted a 'scarcity of new recruits,' adding 'the reduction in the relative abundance of juvenile and sub-adult individuals'<sup>5</sup> to the broader concern about the almost 50% decline in the Macquarie Harbour Maugean Skate population.

Against this backdrop, the 2023 IMAS report raises alarm bells at the extent to which 'high impact environmental events' threaten the 'viability' of the Maugean Skate as a species. The report's conclusion that the extinction risk of the Maugean Skate is 'intrinsically linked to the health of their restricted habitat'<sup>6</sup> is also substantial new information.

In this regard, the 2023 IMAS report notes a decline in dissolved oxygen levels caused by 'anthropogenic inputs,' including the large-scale development of salmonid aquaculture, and that '[dissolved oxygen] levels and mixing dynamics are of extreme concern for the persistence of the species'.<sup>7</sup>

This attribution of the likely contribution to the low dissolved oxygen levels in Macquarie Harbour aligns with a 2020 report by Wild-Allen *et al*<sup>8</sup> (**Wild-Allen report**) which considered, amongst other things, the extent to which finfish farms contribute to lower dissolved oxygen levels in Macquarie Harbour.

The Wild-Allen report detailed several model scenario simulations to provide insight into future harbour conditions. One of these scenarios explored the impact of a reduction in anthropogenic nutrient load on water quality by the degree to which dissolved oxygen would improve were it not for finfish farm waste loads and fish farm oxygen respiration. The Wild-Allen report found that a scenario simulation omitting finfish farm oxygen drawdown and dissolved and particulate waste showed 'a 50 per cent reduction in hypoxic water and a 40 per cent reduction in hypoxic sediment

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<sup>4</sup> David Moreno, Jawahar Patil, Bruce Deagle & Jayson Semmens (2022) *Application of environmental DNA to survey Bathurst Harbour (Tasmania) for the Endangered Maugean Skate (Zearaja maugeana)*. IMAS. [https://www.imas.utas.edu.au/\\_data/assets/pdf\\_file/0009/1615788/Project-1.33-Final-Report.pdf](https://www.imas.utas.edu.au/_data/assets/pdf_file/0009/1615788/Project-1.33-Final-Report.pdf)

<sup>5</sup> David Moreno and Jayson Semmens (2023), p.8.

<sup>6</sup> David Moreno and Jayson Semmens (2023), p.9.

<sup>7</sup> David Moreno and Jayson Semmens (2023), p.9.

<sup>8</sup> Karen Wild-Allen, John Andrewartha, Mark Baird, Lev Bodrossy, Elizabeth Brewer, Ruth Eriksen, Jenny Skerratt, Andrew Revill, Kendall Sherrin, Dan Wild. (2020), *Macquarie Harbour Oxygen Process model (FRDC 2016-067)*: CSIRO Final Report. CSIRO Oceans & Atmosphere [https://www.frdc.com.au/sites/default/files/products/FRDC\\_MH\\_Final\\_Rep\\_June\\_2020.pdf](https://www.frdc.com.au/sites/default/files/products/FRDC_MH_Final_Rep_June_2020.pdf)

area.<sup>9</sup> Significantly, when this scenario simulation was extended for a further two years, ‘hypoxia was further reduced; healthy water volume increased from 46% in 2017-18 to 56% and healthy sediment area increased from 32% in 2017-18 to 36% of the total harbour area.’<sup>10</sup>

The Wild-Allen report is substantial new information. It constitutes clear and categorical scientific evidence as to the impact of finfish farming on the decline of dissolved oxygen levels in Macquarie Harbour. It was not in the possession of the Minister for consideration when making the original referral decision.

In addition to the impact of marine farming in Macquarie Harbour on dissolved oxygen levels across the whole of the Harbour (including the TWWHA), compliance monitoring undertaken by the Tasmanian Environment Protection Authority has also documented cases of benthic bacterial matting spreading from Tassal’s lease MF266 into the TWWHA on the eastern side of the Harbour.<sup>11</sup> This information was not available at the time of the original Controlled Action Decision and provides clear evidence of the substantial impacts of finfish farming on the abundance of opportunistic species within areas of Macquarie Harbour within the TWWHA.

The Wild-Allen report, along with the 2023 IMAS report, the 2022 IMAS report and the EPA compliance monitoring data, show that the adverse impacts of the action on both the habitat of the Maugean Skate and the World Heritage and National Heritage values of Macquarie Harbour are substantially more significant than originally determined by the then-Minister.

Our clients therefore submit that it is appropriate to revoke the original Controlled Action Decision based on this substantial new information.

#### 1.2.2 Section 78(1)(aa) - Substantial unforeseen change in circumstances

In addition to the substantial new information warranting the revocation of the Controlled Action Decision, there has also been a substantial change in circumstances that were not foreseen at the time of the original decision.

The scientific evidence referred to in section 1.2.1 above also details external influences that affect the impacts the action is having and will continue to have.

The 2023 IMAS report was prepared in the decade after the Controlled Action Decision. It notes a significant decline in deep water (>10 m) dissolved oxygen conditions in Macquarie Harbour (Ross et al., 2020) during that time.<sup>12</sup> This is a substantial change in circumstance that was not foreseen at the time of the original Controlled Action Decision.

In addition, the 2023 IMAS report notes ‘mounting evidence that these low dissolved oxygen conditions are impacting the Maugean Skate population, including inducing mortality events (Moreno et al., 2020).’ Of grave concern, the 2023 IMAS report found a 47% decline from 2014 to 2021 in Maugean Skate numbers in Macquarie Harbour noting the 2016 Bell et al estimate of

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<sup>9</sup> Wild-Allen (2020), p. 62.

<sup>10</sup> Wild-Allen (2020), p. 62.

<sup>11</sup> Environment Protection Authority (2017) *Macquarie Harbour Tasmanian Wilderness World Heritage Area Environmental Status Report*, May 2017, EPA, Tasmania at p 13, accessed at <https://epa.tas.gov.au/Documents/Macquarie%20Harbour%20TWWHA%20Environmental%20Status%20Report,%20EPA,%20May%202017.pdf>.

<sup>12</sup> David Moreno and Jayson Semmens (2023), p.2.

3,200 individuals.<sup>13</sup> Again, this is a substantial change in circumstances that was not foreseen at the time of the original decision.

The 2023 IMAS report attributes the decline in dissolved oxygen conditions to anthropogenic activities, including fish farming activities. This correlates with the Wild-Allen report, which demonstrated the degree to which dissolved oxygen would improve were it not for fish farm waste loads and fish farm oxygen respiration. The Wild-Allen report showed the extent to which dissolved oxygen has been impaired by fish farming, specifically the expansion of fish farming under the Controlled Action Decision. The causal link between fish farming and dissolved oxygen decline is a further substantial change in circumstances that was not foreseen at the time of the original decision.

Significantly, the 2023 IMAS report is an interim report, covering results from only the first year of a three-year study. The authors decided to present an interim report 'because the magnitude of the observed decline in relative abundance is likely to have significant implications for the status of the [Maugean Skate] population.'<sup>14</sup> Scientific evidence clearly shows a substantial change in circumstances and impact since the time of the original decision.

The changes in circumstances outlined above were unforeseen at the time of the original decision. It was not envisioned by the Minister when making the Controlled Action Decision that dissolved oxygen levels would significantly decline notwithstanding the Particular Manner Notice requirements. It was also not foreseen by the Minister that the significant decline in dissolved oxygen levels would induce mortality events in the Maugean Skate population, or that the already threatened Maugean Skate population would further decline by almost half from 2014 to 2021. Our clients consider that the evidence establishes that changes in the potential impacts of the Action with a high degree of certainty.

Our clients therefore submit that it is appropriate to revoke the original Controlled Action Decision based on this substantial unforeseen change in circumstances.

### **1.3 Outcome upon the Reconsideration of the Controlled Action Decision**

Our clients consider that, if all of the scientific information now available had been known at the time of the Controlled Action Decision in 2012, there would have been a finding that the Action would have a significant impact on the matters protected under Part 3 of the EPBC Act, namely an endangered species, the Maugean Skate, the World Heritage values and National Heritage values of the TWWHA.

Specifically, the current scientific evidence is the Action has had a significant impact on the endangered Maugean Skate, including by:<sup>15</sup>

- leading to a long-term decrease in the size of the Maugean Skate population;
- reducing the area of occupancy of the species;

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<sup>13</sup> Bell, J; Lyle, Jeremy; Semmens, Jayson; Awruch, Cynthia; Moreno, David; Currie, S; et al. (2016). *Movement, habitat utilisation and population status of the endangered Maugean skate and implications for fishing and aquaculture operations in Macquarie Harbour*. University Of Tasmania. Report.

[https://figshare.utas.edu.au/articles/report/Movement\\_habitat\\_utilisation\\_and\\_population\\_status\\_of\\_the\\_endangered\\_Maugean\\_skate\\_and\\_implications\\_for\\_fishing\\_and\\_aquaculture\\_operations\\_in\\_Macquarie\\_Harbour/23168198](https://figshare.utas.edu.au/articles/report/Movement_habitat_utilisation_and_population_status_of_the_endangered_Maugean_skate_and_implications_for_fishing_and_aquaculture_operations_in_Macquarie_Harbour/23168198)

<sup>14</sup> David Moreno and Jayson Semmens (2023), p.10.

<sup>15</sup> Department of Climate Change, Energy, the Environment and Water, *Significant Impact Guidelines 1.1 – Matters of National Environmental Significance*, accessed at: [https://www.dcceew.gov.au/sites/default/files/documents/nes-guidelines\\_1.pdf](https://www.dcceew.gov.au/sites/default/files/documents/nes-guidelines_1.pdf)

- adversely affecting habitat critical to the survival of the species;
- disrupting the breeding cycle of a population of the Maugean Skate;
- modifying, destroying, removing, isolating or decreasing the availability or quality of habitat to the extent that the species is likely to decline; and
- interfering with the recovery of the species.

The evidence is that the Action is also significantly impacting the World Heritage and National Heritage values of the TWWHA in the following ways:

- contributing to the decline in dissolved oxygen in Macquarie Harbour, substantially damaging the habitat important for the conservation of biological diversity (including but not limited to the endangered Maugean Skate) within the TWWHA;
- causing a long-term reduction in the rare, endemic and unique population of the Maugean Skate within the TWWHA; and
- substantially increasing concentrations of suspended sediment, nutrients, and other pollutants in Macquarie Harbour within the TWWHA, with substantial, long-term and/or permanent impacts on both the harbour and its relevant values.

Therefore, upon the reconsideration of the Controlled Action Decision, our clients urge you to find that the Action will have (and has had) significant impacts on matters protected under Part 3 of the EPBC Act and so should be comprehensively assessed under Part 8 of the EPBC Act. Our clients anticipate at the conclusion of such an assessment that you would refuse to grant an approval to the Action.

## **2. Investigate compliance with Particular Manner Notice requirements**

The Controlled Action Decision was made on the basis that the Action would be carried out in a particular manner. The Particular Manner Notice attached to the Controlled Action Decision sets out how the Action must be undertaken. The stated aim of the Particular Manner Notice requirements is to “ensure there are no significant impacts” arising from the Action on the Maugean Skate and the TWWHA.

Given the significant impacts of the Action on both the Maugean Skate and TWWHA that have been documented in the scientific studies cited in section 1 of this letter, our clients have serious questions about whether the requirements in the Particular Manner Notice have been complied with.

We note that section 77A of the EPBC Act provides that it is an offence to fail to comply with the requirements set out in a Particular Manner Notice, with a maximum corporate penalty of 10,000 penalty units or \$2,750,000 if prosecuted. The failure to comply with a Particular Manner Notice requirement also exposes the person undertaking an action to the possibility of committing civil or criminal offences if their action is having or is likely to have a significant impact on a matter of national environmental significance, like a threatened species or World Heritage values.

If the Department discovers that there have been breaches of the Particular Manner Notice requirements that have resulted in a significant impact on a matter of national environmental significance, the EPBC Act also provides avenues for you to make remediation determinations or apply to the Federal Court for remediation orders and/or injunctions. Such information may also be another basis upon which you can reconsider the Controlled Action Decision under section 78 of the EPBC Act.

We therefore request that you urgently direct the Department to investigate whether Particular Manner Notice requirements have been complied with by the marine farming companies the subject of the Controlled Action Decision, namely Huon Aquaculture Group Pty Ltd, Petuna Aquaculture Pty Ltd and Tassal Operations Pty Ltd.

**3. Investigate whether the marine farming expansion in Macquarie Harbour is the same action as what was originally referred in 2012**

Separately to the issue of whether the Action is being carried out in accordance with the Particular Manner Notice, our clients have real questions as to whether the marine farms currently operating in Macquarie Harbour are the same action as what was originally referred and described in the Controlled Action Decision.

The Particular Manner Notice refers to and relies upon the regulation of marine farming under Tasmanian regulatory instruments. We note that these instruments have substantially changed since the Controlled Action Decision. For example:

- marine farming licences issued under the *Living Marine Resource Management Act 1995* (Tas) no longer provide for any water quality monitoring program;
- the Secretary of the department administering the *Marine Farming Planning Act 1995* (Tas) and the *Living Marine Resource Management Act 1995* (Tas) no longer has a role in setting biomass or pollution limits (that is now undertaken by the Director of the Tasmanian Environment Protection Authority); and
- the Tasmanian regulators no longer use the presence of numerous opportunistic polychaetes as an indicator of "substantial benthic visual impact", meaning that the so-called "targeted management responses" mentioned in the Referral and the Particular Manner Notice are not occurring in the way that was originally proposed.

Furthermore, our clients expect that there have been significant changes to the type of equipment and practices employed by the finfish farming operations since the Action was originally referred.

If the marine farming that is occurring in Macquarie Harbour is not the same as the Action as was originally referred under the EPBC Act, our clients are concerned that the marine farming companies operating in Macquarie Harbour may have committed or are continuing to commit offences under the EPBC Act.

If it is discovered that the marine farming that is occurring in Macquarie Harbour is not the same as the Action, the marine farming companies may either be prosecuted or fined for offences under the EPBC Act. You may also require the marine farming companies to make a fresh referral of their actions for assessment and approval under the EPBC Act.

In these circumstances, our clients request that you direct the Department to urgently investigate whether the salmon farming companies are operating within the confines of the Action as referred in 2012.

**4. World Heritage obligations to protect the World Heritage Values of Macquarie Harbour, including its inhabitant the Maugean Skate**

Approximately one-third of Macquarie Harbour is on the World Heritage Register as part of the Tasmanian Wilderness World Heritage Area. As outlined in section 1 above, there is evidence that marine farming in Macquarie Harbour is having a detrimental effect on dissolved oxygen levels across the whole of the Harbour, including the TWWHA, and there have been documented cases of

benthic bacterial matting spreading from marine farming areas into the TWWHA on the eastern side of the Harbour.<sup>16</sup>

The Australian Government has international obligations to protect and conserve World Heritage properties under the World Heritage Convention. Australia's obligations under the World Heritage Convention include ensuring effective and active measures are taken for the protection and conservation of natural heritage (Article 5). These obligations are, in turn, given effect through the EPBC Act.

Australia's World Heritage Convention obligations require you to effectively and actively exercise your powers under the EPBC Act to protect the Maugean Skate and the TWWHA from further harm arising from marine farming. Our clients urge you to exercise your powers under the EPBC Act to reconsider the Controlled Action Decision and investigate the compliance of marine farming in Macquarie Harbour with the EPBC Act consistently with Australia's World Heritage Convention obligations.

### **Next steps**

Through this letter, our clients have urged you to consider three distinct courses of action. Given the ongoing and urgent nature of the matters canvassed in this letter, we request **by no later than 4 pm, 15 September 2023** you:

- (a) Reconsider and revoke the Controlled Action Decision under section 78 of the EPBC Act;
- (b) Urgently direct the Department to investigate whether Particular Manner Notice requirements have been complied with by the marine farming companies the subject of the Controlled Action Decision, namely Huon Aquaculture Group Pty Ltd, Petuna Aquaculture Pty Ltd and Tassal Operations Pty Ltd; and/or
- (c) Urgently direct the Department to investigate whether the marine farming companies are operating within the confines of the Action as referred in 2012.

Should you have any questions concerning matters raised in this letter, please contact Claire Bookless on

Yours sincerely,

**Environmental Defenders Office**

**Claire Bookless**

Managing Lawyer – lutruwita/Tasmania

Reference numbers: S5617 and S5619

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<sup>16</sup> Environment Protection Authority (2017) Macquarie Harbour Tasmanian Wilderness World Heritage Area Environmental Status Report, May 2017, EPA, Tasmania at p 13, accessed at <https://epa.tas.gov.au/Documents/Macquarie%20Harbour%20TWWHA%20Environmental%20Status%20Report,%20EPA,%20May%202017.pdf>.

**Copied to:**

Mr. David Fredericks PSM,  
Secretary of the Department of Climate Change, Energy, the Environment & Water

Senator the Hon Murray Watt, Minister for Agriculture, Fisheries & Forestry



# Environmental Defenders Office

20 September 2023

Hon Tanya Plibersek MP  
Minister for the Environment and Water  
House of Representatives  
Parliament House  
Canberra ACT 2600

**By email:** [Minister.Plibersek@dcceew.gov.au](mailto:Minister.Plibersek@dcceew.gov.au)

Dear Minister Plibersek,

**Requests for reconsideration of decision on referral numbered EPBC 2012/6406 and investigation into compliance with the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)***

We refer to our letter dated 23 August 2023 and **enclose** a copy of the same for your reference.

As you are aware, Environmental Defenders Office writes on behalf of the Australian Marine Conservation Society and Humane Society International Australia to seek your urgent action to respond to the impacts of finfish farming on the endangered Maugean Skate (*Zearaja maugeana*) and the Tasmanian Wilderness World Heritage Area.

In our letter of 23 August 2023, we requested you consider three distinct courses of action:

- (a) Reconsider and revoke the Controlled Action Decision under section 78(1)(a)(i) and (ii) of the EPBC Act;
- (b) Urgently direct the Department to investigate whether Particular Manner Notice requirements have been complied with by the marine farming companies the subject of the Controlled Action Decision, namely Huon Aquaculture Group Pty Ltd, Petuna Aquaculture Pty Ltd and Tassal Operations Pty Ltd; and/or
- (c) Urgently direct the Department to investigate whether the marine farming companies are operating within the confines of the Action as referred in 2012.

Since the date of our letter, your Department issued a Conservation Advice for *Zearaja maugeana* (Maugean skate) effective from 6 September 2023. This underscores the need for urgent and decisive action to protect the Maugean skate.

Given the urgency of the matters canvassed in our letter of 23 August 2023, we requested your response by no later than 4 pm, 15 September 2023.

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ABN: 72002 880 864

We received an automated acknowledgement of receipt on 23 August 2023, however have not received a substantive reply to the time of writing.

We write to request your response as a matter of urgency.

Should you have any questions concerning matters raised in this letter or our letter of 23 August 2023, please contact Jared Sharp on (03) 6223 2074 or by email at [jared.sharp@edo.org.au](mailto:jared.sharp@edo.org.au)

Yours sincerely,

**Environmental Defenders Office**



**Jared Sharp**

Senior Solicitor – lutruwita/Tasmania

Reference numbers: S5617 and S5619

**Copied to:**

Mr. David Fredericks PSM,  
Secretary of the Department of Climate Change, Energy, the Environment & Water  
**By email:** [david.fredericks@dcceew.gov.au](mailto:david.fredericks@dcceew.gov.au)

Senator the Hon Murray Watt, Minister for Agriculture, Fisheries & Forestry  
**By email:** [minister.watt@aff.gov.au](mailto:minister.watt@aff.gov.au)



**Australian Government**  
**Department of Climate Change, Energy,  
the Environment and Water**

MC23-029178

Ms Claire Bookless  
MANAGING LAWYER  
ENVIRONMENTAL DEFENDERS OFFICE  
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[claire.bookless@edo.org.au](mailto:claire.bookless@edo.org.au)

Dear Ms Bookless

Thank you for your correspondence of 23 August 2023 to the Minister for the Environment and Water, the Hon Tanya Plibersek MP concerning impacts of finfish farming on the Maugean skate and the Tasmanian Wilderness World Heritage Area, including a request for reconsideration of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) decision 2012/6406: Marine Farming Expansion in Macquarie Harbour. Minister Plibersek has asked me to thank you for your correspondence and to reply on her behalf.

The Department of Climate Change, Energy, Environment and Water is considering your request in accordance with the requirements of the EPBC Act and Regulations.

I assure you the department takes the matters you have raised seriously, including in the context of current scientific information regarding the Maugean skate.

Thank you again for bringing your concerns to the Government's attention.

Yours sincerely

Rachel Short  
Branch Head  
Environment Assessments (Vic and Tas) and Post Approvals Branch

18 September 2023