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Marine Fisheries and Aquaculture
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

By email: fisheries.inquiry@pc.gov.au

Dear Ms Cilento

Inquiry into the Regulation of Marine Fisheries and Aquaculture

The Environmental Defenders Office (Tas) Inc (**EDO Tasmania**) is a non-profit, community based legal service specialising in environmental and planning law. We have a long-standing interest in best practice assessment and regulation of aquaculture and welcome this inquiry.

We acknowledge that the primary focus of the inquiry is wild capture marine fisheries, but wish to respond only in relation to Part 5: Aquaculture, specifically the following information request:

Are existing regulatory arrangements well-targeted and efficient means for managing aquaculture operations and addressing potential environmental impacts?

EDO Tasmania has made a number of previous, detailed submissions to similar recent inquiries focussing on regulation of aquaculture operations in Tasmania (copies of which are attached). It remains our view that the regulatory framework is not well targeted or efficient, often resulting in unnecessary duplication of effort for industry, lack of monitoring, and poor environmental outcomes.

We welcome the Tasmanian government's current efforts to bring the existing suite of biosecurity laws into one targeted and effective Biosecurity Act. We believe that there are similar opportunities to streamline environmental and planning regulations applying to marine farming in a manner that improves environmental outcomes.

Key issues and concerns, outlined in previous submissions, include:

- Lack of integration between land use and marine farming regulation. Local planning laws apply to the land-based components of marine farming, but not to aquaculture operations below high water mark. This compromises strategic planning efforts at the local and regional level, with local planning authorities expected to manage land uses which may impact, or be impacted by, marine farming, while having no involvement in decisions regarding the location, scale or management of marine farming operations.

EDO Tasmania believes that bringing the marine farming activities within the *Land Use Planning and Approvals Act 1993* would improve strategic planning, consistency of regulation and coordination of monitoring and compliance efforts.¹

- Ministerial powers to override the recommendations of the independent, scientific advisory Marine Farming Planning Review Panel, even where the Panel indicates that a proposed marine farming operation will have adverse environmental impacts. Previous powers of refusal under the *Marine Farming Planning Act 1995* should be restored to the Panel.

¹ For example, see the [submission of Kingborough Council](#) to the Senate Inquiry into the Regulation of Fin-Fish Aquaculture in Tasmania, and evidence of Mayor Stephen Wass detailed in the Senate Report (p81)

- The conflicting role of the Department of Primary Industries, Parks, Water and Environment (**DPIPWE**) as both proponent and regulator of the aquaculture industry. We believe that more consistent and targeted compliance action would be achieved by authorising the Environment Protection Authority to assess aquaculture proposals and to enforce permit conditions.
- Lack of independent, transparent monitoring activities. As a result of resource constraints, DPIPWE does not undertake routine monitoring, relying instead on reports provided by industry. Furthermore, such reports are often submitted "voluntarily", rather than explicitly required by a permit condition. As a result, public access to raw monitoring data has been denied on the basis that it is commercial in confidence and that releasing it to the public will discourage industry from continuing monitoring activities.

EDO Tasmania recommends that monitoring activities be undertaken by DPIPWE (or an independent consultant engaged by DPIPWE), and that additional resources be secured through higher licensing fees. The additional fees would be offset by reduced monitoring costs incurred directly by industry. Monitoring data should also be actively made available to the public by publication on the DPIPWE website.

In its report into the Inquiry into Regulation of Fin-Fish Aquaculture in Tasmania, the Senate recommended that the Tasmanian government provide additional resources to DPIPWE to allow for monitoring, enforcement and reporting activities. We support that recommendation.

- Reliance on "adaptive management" to address data deficiency. While we recognise that there are benefits to adaptive management which responds to unanticipated problems, reliance on adaptive management to overcome data shortfalls (rather than to deal with new information) is inappropriate, particularly in relation to impacts on endangered species.

If sufficient data is not provided to clearly identify risks and satisfy the decision maker that impacts on environmental values can be avoided, minimised or appropriately managed, further information should be requested from the proponent or the proposal should be refused. At the very least, data provided with a proposal must be sufficient to enable appropriate performance triggers to be set.

A week after the release of the Senate report referred to above, the Tasmanian Government released an independent review by the Cawthron Institute into fish and marine health in Macquarie Harbour (the site of significant aquaculture expansion since 2012, and ongoing concerns regarding dissolved oxygen levels). That report identified the need for a range of additional work to identify biological response indicators, appropriate monitoring sites, nutrient outputs, flow rates and a monitoring programme to improve understanding of farm-scale and harbour wide changes in water quality.

These findings support the need for more upfront information to ensure that approvals are not given without a clear understanding of potential impacts and a well-designed monitoring programme to identify and resolve problems in a timely manner.

- Decisions in relation to marine farming operations are not open to appeal. To improve transparency and scientific rigour, approval and amendment decisions should be subject to third party merits review in the Resource Management and Planning Appeal Tribunal. This is consistent with the rights of review available in relation to other significant resource management decisions in Tasmania.

Civil enforcement options should also be available to provide opportunities for concerned third parties to take action where the regulatory authority has consistently failed to act.

Thank you for the opportunity to provide comments on the Issues Paper.

Yours sincerely,

Environmental Defenders Office

Jess Feehelly
Principal Lawyer

Attach: Submission to Senate Inquiry into Regulation of Fin-Fish Aquaculture in Tasmania (June 2015) + attachments