



8 June 2023

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

Copied to Secretary of Dept of Climate Change, Energy, the Environment & Water
Mr. David Fredericks PSM

Dear Minister Plibersek,

Request for reconsideration of decision EPBC 2012/6406

1. We refer to our letter dated 26 May 2023 regarding the Maugean skate *Zearaja maugeana*. In that letter we described new evidence from the Institute of Marine and Antarctic Studies *Interim report – Macquarie Harbour Maugean skate population status and monitoring* dated 2 May 2023 (the report) that was based on 2021 sampling.¹ The sampling was undertaken at three sites including one site within the Tasmanian Wilderness World Heritage Area (**TWWHA**).²
2. On the basis of the report (and other new evidence since the relevant decision) we request you reconsider **the decision** on referral EPBC 2012/6406 dated 3 October 2012.³ The decision determined the actions were not controlled actions. It was made pursuant to sections 75 and 77A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).
3. This request is made pursuant to s 78A EPBC Act. On the evidence available to us we submit that the correct decision is for the actions to be controlled actions and, subsequently, that the Minister act to immediately and fully protect the Maugean skate by cessation of the relevant actions.
4. The substantial new information available (or change in circumstances) establishes that the impacts of the actions are having (or will have or is likely to have) significant impacts on matters protected by Part 3 of the EPBC Act.

¹ 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

² Report, p3.

³ Notification of Referral Decision – not controlled action if undertaken in a particular manner. Marine Farming Expansion, Macquarie Harbour, Tasmania (EPBC 2012/6406)
<http://www.environment.gov.au/epbc/notices/assessments/2012/6406/2012-6406-referral-decision.pdf>

5. As background for you to make the correct decision and take the correct actions in this letter we also draw your attention to risks of:
- (a) you (or the Commonwealth or a Commonwealth agency) not acting in accordance with sections 321 and 322 of the EBPC Act;
 - (b) the accountable authority of **the Department** of Climate Change, Energy, the Environment and Water not acting in accordance with ss 15, 21 of the *Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**).

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6. The Maugean skate is an endangered species listed on the EPBC Act List of Threatened Fauna.⁴ According to the report, the skate is now only found in Macquarie Harbour on the west coast of Tasmania, Australia.⁵ The report found a 47% decline from 2014 to 2021 in Maugean skate numbers in Macquarie Harbour and concluded:

The scale of the overall decline and the scarcity of new recruits creates significant concern for the conservation of the species and implies the need for immediate action. Furthermore, our results highlight the vulnerability of the species to degraded environmental conditions and the need for further monitoring of the population.

7. The report attributes to the decline in dissolved oxygen levels caused by ‘anthropogenic inputs’ being the large-scale development of salmonid aquaculture.⁶ The report also refers to river flows and environmental events (which may be increasing in frequency due to climate change). These events logically may mean water areas under the aquaculture with low dissolved oxygen moves around Macquarie Harbour, including into the World Heritage areas, creating a significant impact on the skate and World Heritage values. The report states:⁷

The unique hydrology of Macquarie Harbour results in a naturally challenging habitat. While anthropogenic activities since European colonisation have long impacted the harbour, in the past 15 years altered river flows (growing reliance on hydroelectric generation and production demand) and large-scale development of salmonid aquaculture have resulted in considerable changes to the environment. The Maugean skate

⁴ Species Profile and Threats Database EPBC Act List of Threatened Fauna

https://www.environment.gov.au/cgi-bin/sprat/public/publicthreatenedlist.pl#fishes_endangered

⁵ Report, p2. Confirmed by *Zearaja maugeana* – Maugean skate – Tasmanian Threatened Species Listing Statement, v2 (December 2022), p9: <https://nre.tas.gov.au/Documents/Maugean%20skate%20-%20Listing%20Statement%20-%20final.pdf>

⁶ Report pp iii, 9

⁷ Report, p 9.



has been shown to have behavioural and physiological mechanisms that allow it to survive in the challenging conditions of Macquarie Harbour. However, recent changes to the environment (particularly DO levels and mixing dynamics) mean that high impact environmental events have increased in duration, magnitude, and frequency (e.g., duration and severity of low DO periods).

8. For further examples of substantial new evidence or change in circumstances, the report states:⁸

The endangered micro-endemic Maugean skate (*Zearaja maugeana*) is only known from two isolated estuarine systems located on the west coast of Tasmania, Australia, Bathurst and Macquarie Harbours, representing one of most restricted distributions of any elasmobranch (Last and Gledhill, 2007). However, a recent environmental DNA study (Moreno et al., 2022) demonstrated that the vast majority, if not all, of the remaining Maugean skate live only in Macquarie Harbour. These findings highlight the vulnerability of the species and the need for urgent conservation action to ensure the persistence of this unique species.

The physicochemical conditions in Macquarie Harbour have changed markedly since European settlement, influenced by anthropogenic activities in and around the estuary (e.g., mining, forestry, hydro-electricity generation, and marine farming operations), as well as the more general effects of climate change. Of recent concern, has been a significant decline in deep water (>10 m) dissolved oxygen (DO) conditions in the Harbour (Ross et al., 2020).

There is mounting evidence that these low DO conditions are impacting the Maugean skate population, including inducing mortality events (Moreno et al., 2020). Furthermore, analysis of research gillnet data collected between 2012 and 2018 strongly suggests that this changed environment has reduced the relative abundance of juvenile and sub-adult individuals, likely due to lower egg hatching success and/or juvenile survival (Moreno et al., 2020)

Given the results of Moreno et al. (2020) suggest that the extinction risk for Maugean skate has increased since netting surveys first commenced in 2012, additional surveys were funded by the Tasmanian sustainable marine research collaboration agreement (SMRCA) for a further three years from February 2021 to December 2023. However, the risk to the species makes it prudent to provide an interim report of results prior to the project's completion, such that an updated assessment of Maugean skate population changes in Macquarie Harbour can be outlined and fed into

⁸ Report, p 2.

current/planned federal (Environment Protection and Biodiversity Conservation Act 1999) and state (Threatened Species Protection Act 1995) conservation actions. Here we report on data from the 2021 net surveys and a reanalysis of the entire data set from 2012 to 2021.

9. The “*Zearaja maugeana* – Maugean skate – Tasmanian Threatened Species Listing Statement” dated December 2022 also references recent studies, (including Moreno et al. 2022) and concludes that the Maugean skate is at risk from the aquaculture industry.⁹
10. The report by the Senate Environment and Communications References Committee on *Regulation of the fin-fish aquaculture industry in Tasmania* dated August 2015 made the following recommendation:

Recommendation 22

1.69 That the referral decision Marine Farming Expansion, Macquarie Harbour, Tasmania (EPBC 2012/6406) is reconsidered in accordance with section 78 of the EPBC Act on the basis of emerging evidence regarding dissolved oxygen and nitrate limit levels over the range of depths for which the Maugean Skate is known to inhabit.

1.70 Formal identification of Macquarie Harbour as a critical habitat for the Maugean Skate and formal identification of salmon farming as a threat would precipitate the development of a national threat abatement plan and would further help improve management practices to protect biodiversity, listed species, and other world heritage properties.

11. On February 2022, the prior Australian Government in its response to the Committee report noted the recommendation above.¹⁰ It was not apparent that a formal request under s 78A EPBC Act was made. **This is such a request.**
12. The TWWHA is a declared World Heritage property under the EPBC Act. It contains Macquarie Harbour. The world heritage values include “natural values” which are described by the Tasmanian and Commonwealth governments in the “Statement of Values” of the TWWHA Management Plan, as including:¹¹

⁹ *Zearaja maugeana* – Maugean skate – Tasmanian Threatened Species Listing Statement, v2 (December 2022), p9: <https://nre.tas.gov.au/Documents/Maugean%20skate%20-%20Listing%20Statement%20-%20final.pdf>

¹⁰ Notification of Referral Decision – not controlled action if undertaken in a particular manner. Marine Farming Expansion, Macquarie Harbour, Tasmania (EPBC 2012/6406) <https://www.aph.gov.au/DocumentStore.ashx?id=48ded9b0-c497-403b-9e2a-df35d5878dcf>

¹¹ Tasmanian Wilderness World Heritage Area Management Plan (2016). P 47. https://nre.tas.gov.au/Documents/TWWHA_Management_Plan_2016.pdf



The endangered Maugean skate (*Zearaja maugeana*) found only in Bathurst Harbour and Macquarie Harbour, is the world's only brackish-water skate. Its closest relatives are found in New Zealand and Patagonia.

13. The new information and change in circumstances lead us to conclude that the decision actions in EPBC 2012/6406 will cause significant impacts to Matters of National Environmental Significance under Part 3 of the EPBC Act, in particular:

- (a) an endangered species, *Zearaja maugeana*, per s 18(3) EPBC Act;
- (b) world heritage values of a World Heritage property.

Non-compliance with sections 321 and 322 of EPBC Act

14. The TWWHA on the UNESCO World Heritage List, is in Tasmania and not within any Commonwealth areas. The TWWHA Management Plan (2016) is to be prepared and implemented by the Commonwealth and Tasmania. The Commonwealth must use its best endeavours to ensure the plan for managing the TWWHA is not inconsistent with:

- (a) Australia's obligations under the World Heritage Convention;
- (b) the Australian World Heritage management principles.

15. The World Heritage Convention (**WHC**) defines "natural heritage" to include:¹²

geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation.

16. Australia's obligations under the WHC include, pursuant to Article 5, to ensure effective and active measures are taken for the protection and conservation of natural heritage:

to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage

17. Australian World Heritage management principles appear in Schedule 5 to the EPBC Rules. The first general principle is:

1.01 The primary purpose of management of natural heritage and cultural heritage of a declared World Heritage property must be, in

¹² Article 2

accordance with Australia's obligations under the World Heritage Convention, to identify, protect, conserve, present, transmit to future generations and, if appropriate, rehabilitate the World Heritage values of the property.

18. The transmission to future generations of World Heritage values includes taking effective and active measures to prevent the extinction of threatened species, including where the World Heritage Area comprises an important part of the only habitat in which viable populations remain.
19. We submit that, to the extent that the TWWHA Action Plan (2016) does not require immediate action by the Commonwealth to effectively protect the Maugean skate, the Commonwealth is in breach of s 321 EPBC Act.
20. Pursuant to s 322 of the EPBC Act, the Commonwealth, and each Commonwealth agency (including the Minister as defined by s 528 EPBC Act) must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to a property that is not inconsistent with:
 - (a) the World Heritage Convention;
 - (b) the Australian World Heritage management principles;
 - (c) the TWWHA Management Plan (2016).
21. Above we have set out values, requirements and obligations under the World Heritage Convention, Australian World Heritage management principles and the TWWHA Management Plan (2016). We submit that if the Minister fails to act to immediately and effectively protect the Maugean skate she, as responsible Minister, will be in breach of s 322 EPBC Act. Others may be in breach.

Non-compliance with duties under the PGPA Act

22. You, the Minister for the Environment and Water, are the responsible Minister for the relevant actions of **the Department** of Climate Change, Energy, the Environment and Water. David Fredericks PSM, the Department's **Secretary**, is the accountable authority of the Department. Pursuant to section 15 of the PGPA Act the Secretary must govern the Department in a way that:
 - (a) promotes the proper use and management of public resources for which the authority is responsible;
 - (b) promotes the achievement of the purposes of the entity.
23. Additionally, the Secretary must govern the Department in a way that is not inconsistent with the policies of the Australian Government: s 21 PGPA Act. Of

critical relevance is the Australian Government policy to stop the extinction of Australia's plants and animals by taking action on difficult problems.¹³

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24. We also note that a purpose of the Department is to 'conserve, protect and sustainably manage our environment and water resources through a nature positive approach'.¹⁴ Acting (or failing to act) in a way that does not effectively save the Maugean skate from extinction by removing aquaculture from Macquarie Harbour would put the Secretary at risk of breaches of the PGPA Act which can be remedied by those with a special interest.¹⁵
25. We have copied this letter to the Secretary and suggest you seek their assistance in accordance with their obligations under the PGPA Act for the Department to assist you immediately and effectively act to prevent the actions under EPBC 2012/6406 - and any other relevant actions – that are contributing to the decline of the Maugean skate.

Next steps

26. We suggest a meeting to discuss these issues. We are continuing to speak to experts and would appreciate being contacted before any decision is being made if you decline a meeting. Further, should any relevant decision be made we request, in advance, you publish a statement of reasons.

We look forward to hearing from you.

Yours sincerely,

A handwritten signature in blue ink, appearing to be "Eloise Carr".

Eloise Carr

Tasmanian Director
The Australia Institute

¹³ Minister for the Environment and Water (2022) *Minister launches Threatened Species Action Plan: Toward Zero Extinctions*

<https://minister.dcceew.gov.au/plibersek/media-releases/minister-launches-threatened-species-action-plan-toward-zero-extinctions>

¹⁴ DCCEEW Corporate Plan 2022-23, p4:

<https://www.dcceew.gov.au/sites/default/files/documents/corporate-plan-2022-23.pdf>

¹⁵ *O'Donnell v Commonwealth of Australia* [2021] FCA 1223 at [135]-[142]