

FITZGERALD AND BROWNE

LAWYERS

Our Ref: RAB:8360

25 July 2023

The Hon. Tanya Plibersek

Minister for the Environment and Water
PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

By email: minister.plibersek@dcceew.gov.au

Dear Minister,

**MARINE FARMING EXPANSION, MACQUARIE HARBOUR, TASMANIA
(EPBC 2012/6406)**

I act for Bob Brown Foundation Inc. I refer to the decision of the Hon. Tony Burke MP made on 3 October 2012, contained in a notification of that date by reference to ss.75 and 77A of the *Environment Protection and Biodiversity Conservation Act 1999* ("the decision") made on the above referral ("the referral").

Without prejudice to the rights of Bob Brown Foundation Inc. to dispute the validity of part of Regulation 4AA.01, the Foundation requests that you reconsider the decision. This request is made pursuant to ss. 78 and 78A of the *EPBC Act*.

Brief Background

The decision was made in 2012, and in the past 11 years, significant work has been done on the impact of marine farming activities in Macquarie Harbour upon the Maugean Skate.

As is clear from the **attached** decision, one requirement of the decision was that there was to be no significant impact to the Maugean Skate as a result to changes to the benthic environment. The person taking the action was also required to take

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particular measures including survey, assessment of lease areas and targeted management responses.

This application for reconsideration is brought about following the publication of an interim report from Tasmania's Institute of Marine and Antarctic Studies – Macquarie Harbour Maugean Skate Population Status and Monitoring dated 2 May 2023 by Moreno and Semmens ("Moreno and Semmens (2023)"). It is attached to the email carrying this letter.

The Maugean skate is an endangered species listed on the EPBC Act List of Threatened Fauna.

According to the report, the skate is now only found in Macquarie Harbour on the west coast of Tasmania, Australia.

Grounds for Reconsideration – Reg 4AA.01 Requirements

The grounds relied upon to make this request are those identified in s.78(1)(a), s.78(1)(aa) and s.78(1)(b) of the Act.

The source of information is the publication - *Institute of Marine and Antarctic Studies Interim report – Macquarie Harbour Maugean skate population status and monitoring* - dated the 2nd of May 2023

The information became available shortly after 2 May 2023.

The changed circumstances are that the action - salmon farming and aquaculture in Macquarie Harbour - is impacting and threatening the survival of the Maugean Skate. (see the attached report). This report shows with a high degree of certainty that aquaculture operations are significantly impacting the Maugean Skate. The impacts are no longer likely; they have occurred and are occurring.

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) significantly impacts on matters protected by Part 3 of the EPBC Act. The report found a 47% decline from 2014 to 2021 in Maugean skate numbers in Macquarie Harbour and the authors stated:

*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.*¹

¹ Page 1

At page 2 the authors identify and acknowledge the risk of extinction facing the Maugean Skate:

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 current/planned federal (Environment Protection and Biodiversity Conservation Act 1999) and state (Threatened Species Protection Act 1995) conservation actions.

The report identifies the key parameter as dissolved oxygen and attributes the decline in dissolved oxygen levels to 'anthropogenic inputs'. The principal input is, of course, the large-scale development of salmonid aquaculture. The report also refers to river flows and environmental events (which may be increasing in frequency due to climate change).

The authors continue:

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 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).²

It must also be noted that upon the release of this study in May 2023, the University of Tasmania declared publicly there was a need for urgent conservation action:

<https://www.imas.utas.edu.au/news/news-items/under-pressure-scientists-call-for-urgent-conservation-action-to-save-maugean-skate>

As to the request under s.78(1)(b)(ii) of the Act, the decision required the persons taking the action "To ensure there are no significant impacts to the Maugean Skate...". Under paragraph 1 of the decision, certain measures were identified.

² Page 9

The decision also required there to be “no significant impacts on the Tasmanian Wilderness World Heritage Area and the Maugean Skate as a result of water quality changes...”. Other measures were identified at paragraph 2(a)-(f) of the decision.

Put simply, each person taking the action was obliged in the clearest terms to ensure there was to be no significant impact to the Maugean Skate. The attached study clearly demonstrates that significant impacts are being inflicted upon the Maugean Skate, an endangered species listed under the Act. A 47% decline in the population in Macquarie Harbour between 2014 and 2021 as identified in the attached report establishes beyond any doubt that there has been a significant impact and the significant impact is continuing. And this statement needs to be read in light of the 2020 by Moreno et al³ referred to by Moreno and Semmens (2023).

Given the new evidence in Moreno and Semmens (2023) report from IMAS, all three companies that operate fish farms in Macquarie Harbour, being the action(s) in question, are not taking the action in the manner identified in the original decision of EPBC 2012/6406 that requires the companies to: *Take measures to prevent substantial benthic visual, physio-chemical or biological changes attributable to marine farming operations at, or extending beyond 35 metres from the boundary of any lease area.*

And neither are the companies taking measures to ensure there is no significant impact to the Maugean Skate.

The decision must be reconsidered.

Yours faithfully,

FITZGERALD AND BROWNE



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³ Moreno, D., Lyle, J., Semmens, J., Morash, A., Stehfest, K., McAllister, J., Bowen, B. & Barrett, N. (2020). Vulnerability of the endangered Maugean skate population to degraded environmental conditions in Macquarie Harbour. Final Report, Fisheries Research and Development Corporation Project No. 2016-068, Institute for Marine and Antarctic Studies, University of Tasmania, Hobart.