

Deputy Secretary  
Environment Protection Agency Tasmania  
Department of Primary Industries, Parks and Water  
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29th June 2018

**RE: Environmental Management and Pollution Control (Environmental Licences) Regulations 2018.**

Dear Sir,

Thank you for the opportunity to make a submission regarding the draft *Environmental Management and Pollution Control (Environmental Licences) Regulations 2018*.

The Tasmanian Abalone Council Ltd (TACL) is the peak industry body for Tasmania's commercial abalone industry. The TACL welcomes the Government's decision in 2017 to regulate the environmental management of finfish aquaculture under the auspices of the Environment Protection Agency (EPA).

The TACL notes the following:

The Environmental Licences Regulations will be made under the Environmental Management and Pollution Control Act 1994 (*EMPCA 1994*). The Regulations will support various amendments made to the Act in December 2017 in relation to the regulation of finfish farming by the EPA. All marine and inland fish farms will in future require an environmental licence.

It is proposed that the Regulations cover the following matters:

- a special penalty for the contravention of environmental licence conditions relating to the rate of dissolved nitrogen output from a fish farming activity (similar to the special penalty prescribed under the Marine Farming Planning Regulations 2016);
- the prescribed period in which application must be made for the renewal of a fixed-term environmental licence;
- prescribed infringement notice offences and penalties; and
- criteria for the determination by the Director, EPA on whether or not to refer an environmental licence application or licence variation application (in relation to marine farming) to the Board of the EPA for assessment.

In consideration of the above and of the draft regulations, the TACL makes the following comments and recommendations:

### **Special penalties**

The TACL welcomes the inclusion of Special Penalties relating to exceedance of regulated nitrogen outputs for finfish leases. If the primary purpose of Special Penalties is to act as a strong deterrent against exceedances, then the magnitude of the penalty needs to be commensurate with the financial advantage accruing to the finfish company as a consequence of exceeding the nitrogen limit (cap). That is to say, the penalty must be punitive to be an effective deterrent.

An analogy would be the financial penalties imposed on abalone divers with respect to over-catch. I refer specifically to Section 6 of the *Fisheries Abalone Rules 2017* which prescribe the penalties to be applied in the event of a diver exceeding the quota that he is authorised to catch. As the degree of exceedance increases, so does the magnitude of the penalty. The magnitude of the penalty relates directly to the commercial market value of the abalone and effectively “claws back” any (and all) financial advantage that would otherwise accrue to the diver. Indeed, for over-catch exceedances greater than 20%, the penalty is twice the market value of the abalone. Not surprisingly, this provides a very effective deterrent to divers and causes them to carefully monitor and comply with their authorised abalone catch limit.

If a similar system of punitive penalties existed for the regulation of the finfish farming sector, the 42% breach of the nitrogen cap in the Huon region in 2015 may have been prevented. There is little doubt that in this instance, the financial return to the company as a consequence of “additional” production was far in excess of the penalty that was ultimately imposed.

The TACL notes that the EPA has imposed biomass limits on finfish production in Macquarie Harbour. These limits impose specific production caps on each of the salmonid companies that relate to the ability of the harbour to adequately assimilate fish farm waste.

Breaches of biomass limits imposed on finfish companies should also be subjected to Special Penalties.

**Recommendation 1: Special penalties should be expanded to include exceedance of *total allowable biomass* in addition to *total allowable nitrogen output*.**

**Recommendation 2: Licence condition breaches relating to *biomass caps* and *nitrogen caps* should be enforced with Special Penalties of a magnitude commensurate with the financial advantage potentially accrued by the company as a result of the breach.**

**Recommendation 3: Breaches of biomass or nitrogen caps are a matter of high public interest given the potential for substantial damage to the coastal marine environment. For this reason, when a finfish company breaches a licence condition that results in the imposition of Special Penalties, details regarding the nature of the breach and the Special Penalty imposed should be publicly disclosed on the EPA website.**

### **Criteria for referral of environmental licence applications to the EPA Board for assessment.**

The TACL welcomes the inclusion of criteria governing when the EPA Director must refer a licence application to the EPA Board for assessment. However, given the immense value and importance of a healthy coastal marine environment to tourism, recreational fisheries and commercial wild capture fisheries, the TACL believes that **all** applications should be referred to the EPA Board for assessment.

Whilst the TACL acknowledges the role of the *Marine Farm Planning Review Panel* in assessing finfish lease applications under the *Marine Farming Planning Act 1995*, the EPA Board assessment process provides a more rigorous form of environmental assessment.

**Recommendation 4: All applications for environmental licences for finfish farms leases (new applications and variations of existing licenses) should be referred to the EPA Board for full environmental assessment.**

### **Lack of defined finfish pollution thresholds**

The TACL notes that the draft regulations do not contain or refer to any clearly defined coastal marine pollution thresholds. The lack of measurable and enforceable thresholds for acceptable coastal water quality and benthic impact parameters is a major omission and should be addressed as a matter of urgency.

The TACL notes that Section 42Z(2)(j) of EMPCA provides for licence conditions or restrictions that “give effect to a State policy or an environment protection policy.” However, in the absence of regulations or an Environment Protection Policy (EPP) relating specifically to the finfish industry which provides a comprehensive list of specific environmental thresholds, the assessment of applications for environmental licences may lack rigour and purposeful outcomes designed to adequately protect fragile and precious coastal marine ecosystems.

The TACL notes that current management controls regulated by DPIPWE require regular remotely operated underwater video (ROV) monitoring to ensure that there are no significant visual, physico-chemical or biological impacts at or extending beyond 35 metres from the boundary of a finfish lease area. The major weakness in this approach is that the word “significant” is not explicitly defined in any piece of legislation relating to finfish farming.

The TACL believes that there is an opportunity in the drafting of the new *EMPC (Environmental Regulations) 2018* to explicitly define enforceable thresholds relating to visual, physico-chemical and biological impacts that may result from finfish farming. Such an inclusion in the new regulations would provide the finfish sector with a degree of certainty around permissible environmental impacts and related thresholds that they must not exceed.

The TACL notes that these environmental thresholds are currently contained within individual finfish farm licenses. Governance of the salmonid sector has experienced a “crisis in public confidence” in Tasmania, with concerns regularly raised about lack of transparency and lack of rigour around environmental compliance and enforcement. Having key environmental parameter thresholds included within the regulations would provide a more “level playing field” for finfish farmers and more transparency (and confidence) for external stakeholders and the public in general.

**Recommendation 5: Thresholds for acceptable water quality and benthic impact parameters arising from finfish farms should be included within the Regulations and applied in the assessment of applications for all environmental licences.**

Once again, on behalf of Tasmanian's commercial abalone industry, I thank you for the opportunity to make a submission regarding the draft *Environmental Management and Pollution Control (Environmental Licences) Regulations 2018*.

If you have any queries in relation to the comments and recommendations included within this submission, please come back to me,

Dean Lisson

Chief Executive, Tasmanian Abalone Council Ltd

June 2018