

To:
Executive Officer
Review of the Marine Farming Planning Act 1995
Dept. of Primary Industry, Water and Environment
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Tasmanian Conservation Trust
Submission on:
**Review of the Marine Farming
Planning Act 1995**

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Introduction

In the opinion of many Tasmanians, a review of the *Marine Farming Planning Act 1995* is overdue. The implementation of this Act has highlighted and confirmed concerns raised by the Tasmanian Conservation Trust since we prepared our first submission on the draft Act in January 1995.

Fundamental to our concerns about the *Marine Farming Planning Act 1995* is the way that marine farming activities are quarantined from Tasmania's mainstream planning processes and the lack of public scrutiny of the processes of the Marine Farming Planning Review Panel.

Marine farming is not even subject to the State Coastal Policy, a bizarre situation when one considers that the expansion of the aquaculture industry is the most significant development in Tasmania's coastal zone.

While the Minister wishes to review three policy issues, it is pleasing to note that our response is not limited to these as it would appear to be impossible to give a reasonable response without going outside these issues.

This submission will voice concerns about:

1. Problems with the Review of the *Marine Farming Planning Act 1995* Issues Paper
2. The Marine Farming Planning Review Panel and the process of public consultation.
3. State Coastal Policy.
4. Environmental Impact Assessments.
5. Integration with land use planning and the claim that the *Marine Farming Planning Act 1995* is part of Tasmania's Resource Management and Planning System.
6. Third party appeal rights in the planning process.
7. Cost benefit analysis.

1. Problems with Review of the *Marine Farming Planning Act 1995*

Issues Paper

Section 2.1 apparently misrepresents the objectives of the *Marine Farming Planning Act 1995* (MFPA), the sustainable development objectives of the Resource Management and Planning System (RMPS) and the relationship between the *Land Use Planning and Approvals Act* (LUPAA).

The General Introduction 2.1 (Page 4) to the Review of the *Marine Farming Planning Act 1995* claims that the MFPA has “broad objectives” which are not actually part of the Act although they do resemble those of Schedule 1 of the MFPA, which are objectives of the RMPS. In fact the Purposes and Objectives of the MFPA are outlined in Appendix 2 of the Review and are very different.

This is a fundamental mistake. The result is that the Review of the *Marine Farming Planning Act 1995* suggests that the MFPA will have different outcomes from those that would seem to be intended.

The Act requires that “A person must perform any function or exercise any power under this Act in a manner which furthers the objectives of resource management” (as outlined in Schedule 1). However, experience has led the Tasmanian Conservation Trust (TCT) to believe that the outcomes of the application of the *Marine Farming Planning Act 1995* have been very different to the objectives outlined in Schedule 1.

The RMPS does not have “principles” that the MFPA is claimed to be consistent with, and the objectives of the RMPS are not consistent with the MFPA.

In Section 2.2, (page 5) the Second Reading speech for the *Marine Farming Planning Act 1995* by the Minister of the day says that the Act “... sets out...a mechanism for the examination and assessment of all uses of marine waters, before any step is made to convert part of any water area to a marine farm.”

The TCT believes that, in contrast with the clear intention of the Minister, the application of the Act has consistently ignored the needs of other water users and natural values. For instance, the spotted handfish, *Brachionichthys hirsutis*, is not mentioned in the plans for the D'Entrecasteaux Channel or Tasman Peninsular and Norfolk Bay, despite this species being critically endangered and the issue of its extinction of global significance.

Many local residents and water users also feel that the Marine Farming Planning Review Panel and its application of the Act have ignored their concerns. Either the Act needs to be more explicit in its intent regarding the rights of water users other than the aquaculture industry, or the application of the Act needs to be greatly improved.

2. Marine Farming Planning Review Panel

The operation of the MFPA with respect to selecting zones for marine farming and balancing conflicting interests is largely dependant on the activities of the Marine Farming Planning Review Panel. Tasmania's coastal region is subject to many competing interests and values. Planning decisions about access rights, amenity issues and the need to conserve natural values are complicated by relatively high human population density and conflicting interests.

One would expect that the community would have a right to have a genuine input into any planning decision process involving this important part of our environment, and be entitled to a clear explanation of the decision making process.

Unfortunately, the lack of any transparency in the decision making process of the Marine Farming Planning Review Panel undermines the credibility of this body and makes it difficult to see how it can make balanced decisions. This impression is not helped by the fact that there is no member on the Marine Farming Planning Review Panel who can legitimately represent local community interests or conservation interests, interests which are arguably the most important for the general community.

Decisions by the Marine Farming Planning Review Panel confirm these concerns. For example:

- The Marine Farming Planning Review Panel approved a marine farming zone near the Nine Pin point Marine Nature Reserve, despite opposition from the Government's own Department of Tourism, the Parks and Wildlife Service and the Coastal Unit of the Department of Environment and Land Management.

If the Marine Farming Planning Review Panel rejects the views of three significant Government bodies, in favour of those of the Marine Farming Branch, one has to wonder

what chance mere members of the community have of having their views taken into account.

- The Marine Farming Planning Review Panel approved the expansion of a lease (Zone 9, page 98 of the Draft Plan for the Tasman Peninsular and Norfolk Bay) that was operating on an area much larger than its lease conditions allowed. In effect, the Marine Farming Planning Review Panel was legitimizing an illegal activity, and doing nothing to encourage marine farm lease holders to abide by the conditions of their leases.
- The Marine Farming Planning Review Panel only reluctantly changed its decision to allow the culture of Pacific oysters in the waters around the Furneaux Group in Bass Strait. This would have effectively introduced this feral pest into waters that had previously been free of this introduced species. The fact that the Marine Farming Planning Review Panel could even consider allowing the introduction of a potential marine pest totally undermines any claim that this body is acting to protect any interests other than the financial ones of the aquaculture industry and the Marine Farming Branch.

- While the lack of transparency in the decision making process of the Marine Farming Planning Review Panel means that it is difficult to assess this process, there are indications that this is seriously flawed. One of the decisions (April 1997) published by the Marine Farming Planning Review Panel on the Georges Bay Marine Farming Development Plan provided a statement by Dr Parslow from the CSIRO (Attachment 1. is a facsimile of this part of the Decision) to support the Panel 's position on "EIS Sufficiency". It is not known if this statement was taken out of context or not, but it is clear that despite Dr Parslow's position, the Marine Farming Planning Review Panel presents no argument or evidence to support its position that Environmental Impact Statements, as it is used by the decision making process of the Marine Farming Planning Review Panel and the Tasmanian aquaculture industry, is sufficient.
- The Marine Farming Planning Review Panel seems to actively discourage participation by the public. The Tasmanian Conservation Trust, for example, has been refused access to transcripts of public hearings of the Panel, although these are supposedly produced for each hearing, and we were freely offered a transcript for the first public hearing.

Third parties have also been denied the opportunity, on almost every occasion, to hear independent professional advice, ask questions of the people giving this advice or respond to this advice.

Public consultation is required by the Act, but unfortunately has little practical meaning. A legal opinion obtained by the Tasmanian Conservation Trust says that this required consultation merely gives the impression that the public will be involved. There is no guarantee that views other than those of the Marine Farming Planning Review Panel and the Marine Farming Branch of Marine Resources will be taken into account.

The Marine Farming Planning Review Panel does not even have to hold public hearings, and certainly does not provide any real opportunity for the public to respond to its decision making process, whatever that may be.

Other concerns about the MFPA will be outlined below, but it should be noted here that the simplest solution to the major problems that the Tasmanian Conservation Trust believes are associated with the MFPA could be solved by removing the Marine Farming Planning Review Panel and bringing the planning process for the aquaculture industry into line with Tasmania's Resource Management and Planning System.

3. State Coastal Policy

The MFPA is not subject to the State Coastal Policy (1996). The fact that marine farming does not have to comply with the State Coastal Policy is a bizarre situation when one considers that the expansion of the aquaculture industry is the most significant development in Tasmania's coastal zone in recent years.

While the Marine Farming Planning Review Panel has stated that it intends to follow the precepts of the State Coastal Policy (at the Georges Bay hearing of the Panel, April 1997), many would argue that this has not actually occurred.

The Marine Farming Planning Review Panel seems to regularly make decisions that appear to be at odds with the precautionary principle, as it is outlined in the State Coastal Policy. In any case, the Panel and MFPA should be subject to the State Coastal Policy if the intent of this Policy is not to be totally undermined.

4. Environmental Impact Assessments

Section 23 (1) of the MFPA requires that draft plans must contain an Environmental Impact Statement (EIS). Unfortunately, detailed requirements for an EIS are lacking. There is also no requirement for the public to be allowed to get information about the EIS, or the process which was used to develop it.

Environmental Impact Statements developed for existing Development Plans appear to provide only scanty information about important physical and ecological features. For example, in assessments of water movement, there does not appear to be any attempt to investigate changes to flow according to such obvious and important factors as seasonal variation or rainfall.

The MFPA should certainly require an EIS to:

1. State the objectives of the EIS.
2. State the environmental impact objectives of the aquaculture development.
3. Analyze the need for the EIS objectives.
4. Indicate the consequences of the EIS not achieving its objectives,
5. Describe and justify any activities proposed by the EIS.
6. Include adequate information for a thorough assessment of environmental impacts.
7. Describe the environment that will be impacted by marine farming
8. Assess the potential impact of marine farming, and outline impacts on alternative sites.
9. Describe the process of assessing impacts.
10. Justify reasons for allowing marine farming activities to take place in specified areas.
11. Describe and assess any standards and/or safeguards for the protection of the environment that are to be used at the site subject to the EIS, including monitoring.
12. Cite references and other sources of information used during the preparation of the EIS.

The MFPA should also require that results of the EIS are made available for public scrutiny as part of the Draft Marine Farming Development Plans.

In addition, the MFPA should specify who is qualified to undertake an EIS, with those with a financial or other conflict of interest being excluded.

With just four meetings from 1995 to 1999, the Marine Farm Environmental Advisory Committee has not had a chance to play a significant role in allaying public concern about environmental impacts of aquaculture. Greater involvement in this body by community groups should also be encouraged.

5. Integration with land use planning and the claim that the *Marine Farming Planning Act 1995* is part of Tasmania's Resource Management and Planning System.

There is no evidence to suggest that there is integration between land use planning and marine farming. In fact, we understand that the Solicitor General gave an opinion last year to the Department of Primary Industries, Water and Environment (DPIWE) on the issue as to whether Section 20(7) (c) of the Land Use Planning and Approvals Act 1993 (LUPAA) exempts onshore facilities which are "reasonably necessary, essential and incidental to marine farming operations" from the provisions of LUPAA.

It appears that the marine farming planning process may be able to override local planning schemes, a concern that the TCT has raised for some time.

Page 12 of the Review reinforces this view, and also states that "*Marine farming was included as an exemption from the effect of local planning schemes for the fundamental reason that it was founded upon a natural resource. Accordingly planning for the development and utilization of this resource needed to be managed by the State (in a similar way to other natural resources such as water, forests and minerals) to ensure uniform, strategic, coordinated and sustainable outcomes for the benefit of all Tasmanians.*"

The Review does not justify this position and does not show how this approach will achieve " ... *sustainable outcomes for the benefit of all Tasmanians*".

LUPAA contains detailed provisions as to how integrated planning should be achieved, highlighting the shortcomings of MFPA.

The Review (page 6) claims that MFPA is part of the RMPS. There is no legal justification for this position. The statement that MFPA shares the same objectives as RMPS is simply untrue (as outlined elsewhere in this submission). Even though Schedule 1 of MFPA bears some similarity with the Objectives of the RMPS, experience has shown that they have little impact on the application of MFPA.

The lack of effective participation mechanisms for the public make marine farming an completely different system from RMPS.

6. Third party appeal rights in the planning process

As outlined in Section 2 of this submission, there is widespread public concern about the failure of the Marine Farming Planning Review Panel to take into account interests other than those of the aquaculture industry and the marine farming managers in DPIWE.

In particular, there is an impression that:

- MFPA has got the planning mechanism back to front. It is ridiculous to divide Tasmania's coastal waters into areas that can be used for aquaculture and those that cannot, but the Marine Farming Development Plans generally fail to take into account many important social, economic and natural values. The process often seems to completely ignore the fact that potential sites for aquaculture may have some other value that is more important

to the Tasmanian people than an extra lease for the aquaculture industry.

- There is a lack of scientific information about environmental impacts of marine farming, Apart from impacts on the benthos immediately below fish cages. In particular, there is practically no evidence to support the Marine Farming Planning Review Panel's position that increased nutrient levels will not impact the wider environment. The TCT has been asking for such evidence for years, with no sensible response.

No proper assessment of the impacts of the Pacific oyster have been carried out.

Clearly, the precautionary principle is being completely ignored by the Marine Farming Planning Review Panel during its decision making process, and reinforces the impression

that the State Coastal Policy is being ignored, despite assurances to the contrary by the Panel.

- The marine farming managers of DPIWE and Marine Farming Planning Review Panel have failed to discharge the statutory duty of public consultation, and have failed to give proper consideration to genuine community concerns.
- The statutory obligations under Section 21 of MFPA have not been met, particularly in relation to:
 1. Furthering the objectives of resource management within the area covered by the draft plan;
 2. Having regard for the use and development of the region as an entity in environmental, economic, recreational and social terms;
 3. Ensuring a coordinated approach with respect to any matter affecting adjacent land under jurisdiction of the local council.

In relation to #1 above, the following statutory objectives have not been demonstrably met in the Marine Farming Development Plans:

1. To promote the maintenance of ecological processes.

2. To safeguard the life supporting capacity of ecosystems.
3. To avoid, remedy or mitigate any adverse effects of activities on the environment.
4. To promote the sharing of responsibility for resource management and planning between different spheres of Government, community and industry in the State.

In relation to #2, the Marine Farming Development Plans do not demonstrate how they were developed to fit in with regional considerations of economic, recreational and social issues.

In relation to #3, Marine Farming Development Plans appear to be able to be developed without the consent of local councils. For example, the Georges Bay plan was progressed despite local council concerns about the adequacy of sewage treatment and the possibility of litigation.

Despite such obvious shortcomings, and widespread genuine concern about the operation of the planning process, and the Marine Farming Planning Review Panel in particular, once this Panel has made a decision there is no opportunity to appeal.

It is essential that an objective, fair and transparent appeal mechanism be implemented to protect the rights of the general public and values other than those deemed important by the Marine Farming Planning Review Panel.

If the planning process created by MFPA really has achieved the objectives claimed by the Review document, then a process of third party appeal should not create any problems.

7. Cost benefit analysis

The information about production and economic value of the aquaculture industry on page 9 of the Review is not relevant to a review of the MFPA. The operation of the MFPA should be judged on its ability to "... *fill the vacuum that exists in relation to the planning of marine waters*" and act as "... *a mechanism for the examination and assessment of all uses of marine waters, before any step is made to convert part of any water area to a marine farm*" as stated by the Minister during the Second Reading speech.

Even if economic outcomes were fundamental to the MFPA, a mere statement of production of the Tasmanian aquaculture industry is a totally inadequate representation. A proper economic analysis of both the costs and benefits of the Tasmanian aquaculture industry should have been undertaken.

The Tasmanian Conservation Trust has asked for a proper analysis of the economic and social costs and benefits of this industry, and has pointed out the superficial nature of the analysis undertaken in the Marine Farming Development Plans.

It is worth noting that Richard McLaughlin, from the then DPIF, has said at a hearing of the Marine Farming Planning Review Panel that there was no intention to undertake a cost benefit analysis of the Tasmanian aquaculture industry.

Without such an analysis, it is impossible to see whether the aquaculture industry is actually benefiting just a minority of Tasmanians and not all, as claimed on page 12 of the Review. Without such an analysis, it is certainly impossible to judge whether the environmental and social costs are worth the economic benefit.

Conclusion

While it is undeniable that aquaculture is an important part of Tasmania's economy and will be in the future, it is also important to recognize that unless this industry is properly managed its benefits will be outweighed by significant problems. A balanced approach to developing the aquaculture industry in Tasmania is essential if this State is to enjoy its benefits while avoiding the many potential problems that are becoming apparent.

Any claim that the Marine Farming Planning Review Panel and the Marine Farming Development Plans that this body creates balance the needs of other water users, or protects vital natural values, is a sad joke. In any case, the MFPA does not even mention such basic considerations as aesthetic values and access by other water users.

Serious analysis of economic, social and environmental costs and benefits of the Tasmanian aquaculture industry are lacking.

The simplest solution to the major problems that the Tasmanian Conservation Trust believes are associated with the MFPA could be solved by removing the Marine Farming Planning Review Panel and bringing the planning process for the aquaculture industry into line with Tasmania's Resource Management and Planning System.

This would provide a fair, objective and transparent way of developing management plans for the aquaculture industry. In addition, it provides a fair and workable appeal process. It would also create efficiencies in that it would remove the need to provide financial support for the additional planning system represented by the Marine Farming Planning Review Panel.

In contrast to the existing planning processes for Tasmanian aquaculture and the Marine Farming Planning Review Panel, the Tasmanian mainstream planning process, Tasmania's Resource Management and Planning System has worked to allow true community involvement and responsible planning outcomes.

Attachment 1.

Below is a facsimile of evidence used by the Marine Farming Planning Review Panel to justify its April 1997 Decision on the Georges Bay Marine Farming Development Plan.

7. EIS SUFFICIENCY

Many objectors addressed the question of the sufficiency of the Environmental Impact Statement. It was described as "superficial" and worse. The Break O'Day Council said it was "unacceptable that such an approach can prevail where the activities of a State Government Agency are concerned", yet local Government can be subjected to a far more stringent regime of environmental consideration in its decision making processes. The consequence, according to the Council was that there must be an EIS which "must consider in detail the impact of the proposed development of the environment, and before the development proceeds the impact must be understood and must be acceptable".

The argument is not a novel one. Mr Bryan, on behalf of the Tasmanian Conservation Trust has raised this argument at all previous Panel public hearings. It has been part the Conservation Trust's submissions in respect of all earlier Plans. In response to those submissions the Panel has sought expert advice from Dr John Parslow. Dr Parslow is a Principal Research Scientist in the CSIRO Division of marine research. Dr Parslow is an expert in the field of marine nutrient cycling and coastal eutrophication. He was a member of the award winning study of the nutrient enrichment of Port Phillip Bay where he participated in the technical group responsible for development of models of the input and fate of nutrients.

Dr Parslow told the Panel as long ago as February 1996 that

"My understanding is in drawing lines fixing zones you are weighing up a whole series of things. You are weighing up the issue of is this actually viable for marine culture in the first place?. Things like visual impact and other rival uses. So there are a whole bunch of things that you are weighing up. It would be very nice if in weighing up all those things you had some kind of broad scale map of benthic community types and other properties of the environment and you could look at those and say, well maybe this is an area that is so valuable that we think we shouldn't even put a zone there. In principal it would be nice to be in that position. But you are not in that position and I think frankly even with the best technologies coming along you are not going to be in that position over the whole Tasmanian coastline for a long time. So at the moment, unless you know about some particular thing, some particular environmental aspect, I think you are probably choosing those zones, weighed heavily by these other factors. I think that is the best that you can do. I think what is then incumbent upon you is to take the measurements within the zone to ensure that, having chosen it and fixed it, before farming operations commence, that there is not something that is in there that you don't want to be."

The Panel has previously held that a site by site approach is appropriate, whereby the additional requirements that have to be met before farming can occur are taken into account.

When a MFDP identifies for farming any water not previously farmed an extensive baseline survey is required. If that survey identifies unusual habitat or the presence of a rare or endangered species, farming will not occur as no licence to farm will (or can) be issued. The administering department is as much bound by Section 4 of the MFP Act and its schedules as the Panel is. Such an approach is consistent with Dr Parslow's evidence.

If the baseline survey reveals that there is no special circumstance that prevents farming, farming can then commence. It can only commence when carried out in accordance with the monitoring controls set out in each Plan and in accordance with any licence conditions.

The combination of these matters leads to the imposition on the farmers of considerable expense but also a set of circumstances which enable the Panel to meet the requirements of sustainable development (sustainable is used here in an environmental sense).