



Neighbours of Fish Farming
PO Box 83, Cygnet TAS 7112
Email: secretary@noff.au
Web: <https://noff.au>
President: Peter George 0426 150 369
Email: president@noff.au
ABN 473 096 904 52

Environmental Standards for Tasmanian Marine Finfish Farming 2023 Consultation Draft

Submission by Neighbours of Fish
Farming

15 March 2023

(for further information please contact Glenn Sanders, NOFF Secretary at secretary@noff.au)

1. Introduction

NOFF is a community activist group that is alarmed at the ability of our State government to roll over local communities and sell out our environment to the benefit of multinational aquaculture industries.

Our members are a diverse group of people living throughout southeast Tasmania in communities affected by the finfish aquaculture industry in our waterways.

We are campaigning for a more sustainable and accountable industry, with stricter government regulation, and proven commitment to preserving our waterways and livelihoods into the future.

NOFF is one of many community and scientific groups in Tasmania which have been campaigning for many years for better regulation of finfish farming, specifically the industrial salmon farming industry. A recent membership survey by the Hobart Mercury reported that the vast majority of respondents, 78.5 per cent, do not believe monitoring of the salmon industry is adequate¹. This is a significant indictment of the credibility of present government operations and policies.

However, it is not our role to comment in detail on scientific aspects. That is the role of individuals and organisations with recognized expertise². It is also the role of government, either from their own resources or from those expert individuals and organisations.

NOFF's submission therefore focuses on those aspects of the draft standards which directly affect our community, and which demand social licence and credibility, in scope, process and methodology. Two related aspects in particular are of great concern:

- The absolute powers of the Director of the EPA to decide matters of scientific or community importance.
- The lack of mandatory expert scientific advice.

These defects, and others, in the draft standards threaten their credibility and hence their social licence, essential for the development of the industry.

We note also that these draft standards are a framework, to be further detailed in a number of technical standards still to be developed, and that sources of scientific and other expertise are not yet established³. This too raises serious questions about the draft standards, and the likely effectiveness of their policing.

We make a number of recommendations to remedy this situation.

We are also pleased to note that the draft standards recognise the validity of our long-standing criticisms of industry operations and government regulation, in particular:

- That noise and light pollution is not limited to immediate lease areas, but have a much wider community impact, and therefore past government regulation has been inadequate and ineffective.
- That marine pollution extends much further than the previously specified 35m around each lease, and that industry and government statements on this have therefore been incorrect for over thirty years.

¹ Hobart Mercury, 3 January 2023

² We have previously strongly supported the work of the Tasmanian Independent Science Council (<http://tassciencouncil.org/>) and urge you to take their input into account.

³ NRE and EPA staff advice at webinar, 23 February 2023.

2. Powers and Expertise

Throughout the draft standards, the Director of the EPA is given considerable and seemingly arbitrary powers, subject only to the EPA Act, and the Ministerial Statement of Expectation, which unambiguously requires the Director to “facilitate . . . providing employment opportunities where they are most needed”.⁴

There is a serious lack of clarity about the bases on which the Director is to make decisions, and inconsistencies between clauses which will make regulation and compliance more complex.

For example:

1. Part 2 Division 1 of the draft covers the very important Reference Sites, which will provide a comparative baseline for each lease. According to the draft, “The Director is to determine reference sites and reference values . . . A reference site . . . is to be a site that the Director considers is suitable . . .”⁵. It then states that, should the Director be “unable to determine suitable reference sites, the Director **may** appoint two or more persons to form a scientific panel” to advise on the Director’s determination of suitable reference values to be used in place of a formal reference site.⁶ There is no specification of how the Director is to select panel members, and the use of the word “may” instead of “must” implies that the Director may in fact choose reference values without scientific advice.
2. This contrasts with Part 2, Division 2 on Regional Areas, where the Director “may” determine a Regional Area without any restrictions, and with no scientific advice.
3. Part 4 Division 8 (1) on Light Attenuation states that the Director can communicate to a lease holder that light emissions **may** be causing environmental nuisance. There is no specification of the basis on which the Director should reach such a conclusion, and no provision for seeking expert advice except that, **after** receiving a communication from the Director, the lease holder **must** then engage an expert to prepare a light attenuation plan. This is inconsistent with the procedure set out in Division 9 Noise.
4. Part 4 Division 9 on Noise is even more vague. “**If** the Director forms the view that [noise] emissions from vessels moving outside the lease are causing environmental nuisance the licence holder **may** be directed . . .”. How is the Director to form such a view? Again, and in contrast with Part 2 Division 1 Reference Sites, and Part 4 Division 8 (1) on Light, there is no provision for expert advice, or definition of the required expertise.
5. There is no mention in the draft of public scrutiny, for example to information required for Therapeutant Management (Part 4, Division 6). Transparency is essential in areas such as this, where the industry selects the expert. ‘Commercial in confidence’ must not be allowed to take priority.

Together, the lack of definition, lack of transparency, and inconsistent processes mean that the Director apparently has unlimited flexibility to decide if and when to seek advice, from whom, and how the required scientific expertise is defined. At the very least, this leaves the Government, EPA and its Director open to accusations of cherry-picking their expert advisors, or relying on experts employed by the industry.

There is no transparency in this. It will do little to foster social licence and community trust in the standards, the regulatory processes, or the EPA.

⁴ Tasmania. Minister for the Environment. Statement of Expectation - Environment Protection Authority. 28 March 2019, page 3.

⁵ Draft Standard part 2, division 1, clauses 1 and 2.

⁶ Draft standard, part 2, division 1, clause 4 – our emphasis on may.

3. Other comments

As well as the major issues discussed earlier, we have these comments:

1. The standards do not apply to the entire industry, only to marine operations. This omits land-based facilities, and the many freshwater hatcheries, all of which are of serious community concern for, respectively, noise and light pollution, and freshwater quality especially in domestic water supply. Limiting the scope in this way can rightly be seen as avoiding responsibility by buck-passing.
2. The standards need to apply very specifically to lease holders AND to any and all sub-contractors, agents, suppliers and related entities. The industry has a well established track record of avoiding responsibility by the use of sub-contractors.
3. Part 4 Division 8 on Light is incomplete. It does not cover light emitted by vessels in transit, or from land-based aquaculture facilities.
4. Part 4 Division 9 on Noise is incomplete. It addresses noise produced by vessels in transit, but does not deal with noise generated by equipment on the leases themselves, nor does it cover noise from land-based aquaculture facilities. Noise issues are measured at undefined times, and there is no provision for extended monitoring.
5. Division 10 on Decommissioning has no provision for decommissioning should a lease holder be wound up or is otherwise unable to fund decommissioning or to monitor aftereffects. It presumes a lease holder continues in business, leaving the real risk that the taxpayer will have to fund decommissioning.
6. Salmon mortalities are included only as part of waste management (Part 5, Division 5). There is no provision in the draft for standards on the welfare and treatment of seals, dolphins, wild fish, seabirds and the salmon fish stocks themselves. If this is to be covered elsewhere it should be stated explicitly. If this is not covered at all it is a major omission threatening social licence and community support. There needs to be a comprehensive scope statement covering all industry operations, setting out exactly which are covered by these standards.
7. The Depositional zone should extend as far as the impact manifests.
8. The Dispersal zone should be the extent of the impact, not 100m or at the discretion of the Director.
9. Real total permissible dissolved nitrogen output (Division 5) should be determined, not based on models. Or has the EPA decided to adopt an unquantifiable measure?

4. Implementation

From information in the Consultation Draft, Explanatory Paper and Frequently Asked Questions documents, and from participation in the 23 February webinar, it is clear that implementation of these standards will take some time:

- The Environmental standards must be finalized
- The associated Technical standards must be developed
- Sources of expert scientific advice must be identified and engaged for possible use if the Director so decides
- Existing leases must be retrospectively assessed and progressively included under the new standards.

This is a very considerable piece of work, and we question whether, given all this, the EPA will have the resources necessary for regulation, to proactively monitor all leases, especially given the industry's intention to expand substantially, and the government's intention that this should take place on land and further offshore.

We also question the sequence of this implementation. It was obvious from the webinar that, to be charitable, many issues have had only very preliminary consideration, including sources of scientific advice. Given that this is not yet properly in place, where is NRE and EPA currently getting credible, transparent advice from? How can environmental and then technical standards be developed without credible, transparent scientific advice?

Clearly the scientific advice component should have been in place from the start, not included as an afterthought to be set up later, and to be used at the whim of the director.

5. Recommendations

1. There should be a permanent scientific advisory panel, made up of recognised experts independent from industry and government.
2. Recruitment of panel members should be independent and transparent.
3. The scientific panel should be empowered to co-opt additional expertise periodically when necessary, and should be able to take advice from industry, government and community representatives.
4. Panel deliberations, and the evidence presented to them, should be open to public scrutiny by default, with access restricted only in defined circumstances. “Commercial in confidence” issues should rarely be allowed to override public access, and deliberations resulting in restricted access should themselves be notified to the public even when specific details are restricted.
5. As far as possible the same processes and procedures should be applied to all sections of the standards.
6. The standards should apply to all lease holders, their sub contractors, agents and related parties.
7. The Director, EPA **must** consult with the panel on all issues; the panel may decide if consultation is unnecessary, not the Director.
8. Throughout implementation of the standards and beyond, the EPA must be resourced to proactively inspect, regulate and enforce the standards, including staff, and independent access to vessels and equipment for unannounced on site inspections.
9. Funding for the panel, and for EPA resources for proactive regulation and enforcement, should come from mandatory industry levies.⁷

⁷ Tasmania. Legislative Council. Report on Finfish Farming in Tasmania, no. 15, 2022. Recommendation 40.