

GAC 162177

30 November 2016

Compliance and Enforcement Branch  
Environment Assessment and Compliance Division  
Department of the Environment  
GPO Box 787  
Canberra ACT 2601

By email: [compliance@environment.gov.au](mailto:compliance@environment.gov.au)

Dear Sir/Madam

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

We act on behalf of Huon Aquaculture Group Ltd (**Huon**) who, along with two other operators, undertakes marine farming in Macquarie Harbour (**MH**), Tasmania.

Given the deteriorating environmental conditions in MH, and prolonged absence of appropriate action by both the Tasmanian Department of Primary Industries, Parks, Water and Environment (**DPIPWE**) and the Tasmanian Environment Protection Authority (**EPA**), Huon feels compelled to request that you take urgent enforcement action against DPIPWE.

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### **1 BIOMASS DETERMINATION**

Since late 2014, Huon has been requesting that DPIPWE impose a lower biomass limit that will give MH the best chance of supporting sustainable salmonid farming for the long-term. On 29 November 2016 Huon received a letter from Mr Wes Ford, Director of the EPA (attached). This letter advised that Mr Ford intended to make determinations that would require the three marine farm operators reduce standing biomass to 14,000 by 31 January 2017 and then convert the limit to a total permissible dissolved nitrogen output (TPDNO) to commence on 1 May 2017 (**Proposed Biomass Determination**).

Huon's view is that the Proposed Biomass Determination further demonstrates that DPIPWE and the EPA are failing to properly regulate marine farming in MH and that that this failure will cause the ongoing deterioration of the environmental conditions of MH.

Prior to receipt of this letter Huon received a letter from Mr Ford on 15 November 2016, outlining a three month process to determine revised biomass limits in MH.

Following receipt of the letter, Huon representatives met with the Tasmanian Premier, Will Hodgman and the Tasmanian Deputy Premier and Minister for Primary Industries, Jeremy Rockliff on 18 November. At that meeting, Huon was advised that a decision regarding a safe biomass level in MH would be made by the EPA Director and the State Government within 7-10 days.

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Subsequently, Huon representatives attended a briefing on environmental conditions in MH by scientists from the Institute of Marine and Antarctic Studies (**IMAS**) on 25 November.

The IMAS briefing indicated a further and dramatic deterioration of environmental conditions in MH.

This information is further supported by Huon's own compliance information obtained during video sampling on 23 November 2016 which indicated a rapid deterioration of sediment conditions at, and well beyond, compliance sites.

Huon has been of the view that the biomass limits set by DPIPWE have been inappropriate, and likely to cause deteriorating environmental conditions, since the removal of the 52.5% biomass limit (approximately 15,500 tonnes) set by the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities' *decision on referral* dated 3 October 2012 (attached) (**Minister's Determination**).

Further, that the scientific briefing, based on September 2016 data, indicated that the standing biomass of approximately 11,000 tonnes (at that time) was far in excess of what MH can sustain given the deteriorated environmental conditions and at that time we were advised that four leases across the Harbour were non-compliant. .

Whilst Huon does not have information with respect to the other marine farm operator's biomass, Huon estimates that, based on the standing biomass, there will be a peak biomass of 14,000 tonnes<sup>1</sup> for the summer 2016/17. The Proposed Biomass Determination will achieve nothing in terms of requiring a reduction in biomass and in effect preserves the status quo in allowing for the anticipated peak biomass to be achieved. In Huon's view, the, Proposed Biomass Determination is at odds with independent research and findings and will further exacerbate the extremely low dissolved oxygen levels, and deteriorated sediment conditions around farming leases as well as in the World Heritage Area within MH. The Proposed Biomass Determination fails to respond to the scientific evidence which indicates a need for urgent and immediate action.

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## **2 REGULATION OF MACQUARIE HARBOUR BY THE COMMONWEALTH GOVERNMENT**

The Minister's Determination concludes that the proposed action is not a controlled action *provided it is taken in accordance with the manner set out in the decision* pursuant to ss.75 and 77A of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*. The manner in which the proposed action must be taken is set out in the form of conditions that must be complied with.

As there are three operators farming in MH and the Minister's Determination applies to the whole area, DPIPWE must be responsible for enforcing compliance with the conditions. In particular, DPIPWE is responsible for setting biomass limits in MH.

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<sup>1</sup> This is based on expected mortalities and limitations in growth due to the conditions in MH and advice from the EPA on 15 November to Peter Bender that estimates the biomass peak at 16,000.

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I also refer to the accompanying letter to the Minister's Determination, addressed to Mr Peter Bender, Managing Director of Huon Aquaculture Group Ltd (attached).

In accordance with that letter, we write to advise you that Huon is unable to comply with the conditions in the Minister's Determination. While Huon is complying with its lease conditions pursuant to the *Marine Farming Planning Act 1995* (Tas) and the licence conditions pursuant to the *Living Marine Resources Management Act 1995* (Tas), it is unable to demonstrate compliance with the Minister's Determination.

Huon has formed the view, supported by a range of independent scientific evidence that the cumulative impact of the aquaculture operations in MH is breaching the conditions imposed by the Minister's Determination.

As the 'person taking the action' for the purposes of the Minister's Determination, DPIPWE is lawfully required to comply with the conditions.

As outlined by DPIPWE in the referral information, the action is defined to include "*the expansion of marine farming operations, that will occur consistent with the 2012 amendment to the Macquarie Harbour Marine Farming Development Plan.....*".<sup>2</sup>

As previously stated, Huon has been of the view that the biomass limits set by DPIPWE have been inappropriate, and are likely to cause deteriorating environmental conditions, since the removal of the 52.5% limit set by the Minister's Determination.

Huon's concerns have been communicated to DPIPWE and the Commonwealth Minister for the Environment (**Minister**) since late 2014. Communication with the (former) Commonwealth Minister, Greg Hunt, included the provision of a briefing note and supporting scientific evidence to his Office and which was also provided to Department of Environment Officer, Chris Oats.

In addition, a Huon representative along with a Petuna Seafoods Tasmania representative, met with Senator Birmingham in his capacity of Parliamentary Secretary to the Minister for the Environment on 31 September 2014.

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### **3 DPIPWE HAS FAILED TO COMPLY WITH THE MINISTER'S DETERMINATION**

In failing to set appropriate biomass limits, and despite concerns being raised by Huon, DPIPWE has also failed to comply with a number of the conditions imposed by the Minister's Determination including the following:

**Condition 1a** – *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;*

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<sup>2</sup> See the Full Court's comments regarding ss.523 and 524 of the EPBC Act: *Secretary, Department of Primary Industries, Parks, Water and Environment v Tasmanian Aboriginal Centre Incorporated* [2016] FCAFC 129

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**Condition 1d** – *if a substantial benthic visual, physio-chemical or biological impact is detected as a result of benthic video assessment, targeted management responses must be implemented within 10 weeks of the assessment;*

**Condition 2b** – *take measures to prevent the rolling annual median value of quarterly water quality indicator values for....dissolved oxygen, as recorded within the compliance region, from exceeding the identified limit level.*

Huon has, on numerous occasions, requested confirmation from DPIPWE that appropriate remedial action be undertaken to ensure compliance with the conditions imposed by the Minister's Determination. Huon is unable to meet the conditions under the Minister's Determination in the absence of a concerted effort on the part of all operators and appropriate management by DPIPWE.

Huon would welcome the opportunity to provide the independent scientific evidence and reports compiled over several years from our operations at MH. Huon will also make its experts available to the Commonwealth Department of Environment to present the information.

Given Huon's concerns that it cannot comply with the Minister's Determination unless there is proper management by DPIPWE, Huon also reserves its right to seek declarations and injunctions with respect to the Minister's Determination in the Federal Court.

Please acknowledge receipt of this correspondence and advise of your intended course of action within 7 days.

Yours faithfully



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