



## Oysters Tasmania Submission on the Proposed New Marine Farming Management Controls

Thank you for the opportunity to provide a written submission regarding the proposed new marine farming management controls.

Oysters Tasmania is the peak body representing oyster growers in Tasmania.

Tasmania's oyster farming industry produces around \$30 million worth of oysters each year, employs around 300 Tasmanians, and — unlike other industries — pays more than \$1½ million in industry-specific fees and levies to the State Government while having minimal environmental impact. The industry also has significant growth prospects provided the right regulatory arrangements.

The proposal for standardised marine farming management controls represents an increase in regulation for the majority of Tasmania's shellfish farming industry. This is the case because the management controls in the proposed standard represent increased regulation compared to the management controls in those Marine Farming Development Plans that were written or updated prior to 2016 — Plans that cover the majority of Tasmania's shellfish farming industry.

- Each of the eight pre-2016 Plans cover shellfish, but six of them do not cover finfish. These Plans are referred to in this submission as the 'longstanding, shellfish-specific Plans'.
- Each of the six post-2016 Plans cover finfish, but three of them do not cover shellfish.

The onus should be on the Government to justify a new regulation, rather than on the industry to justify why new regulation should not be imposed. Yet the Government has not explicitly argued that management controls affecting shellfish farming should be tightened.

Even if there is a case for tight management controls to apply to finfish farming, this does not mean there is a case for them to apply to shellfish farming. The finfish and shellfish industries are like chalk and cheese, with the impacts of shellfish farming generally being small, both in absolute terms and relative to finfish farming.

Consider some of the tight management controls that are clearly directed at finfish, but that would also be imposed on shellfish farming under the Government's proposed standardisation. These controls relate to light, noise, odour, chemical, blood, mortality, waste, benthic, escape, and wildlife-interaction impacts. Each of these impacts are significant for finfish farming but negligible



for shellfish farming. It makes no sense for the regulatory powers regarding these impacts to be identical across the distinct shellfish and finfish farming industries. In many instances the application of standardised controls would lead to farcical results, such as treating the 'escape' of 500 oysters as akin to an escape of 500 salmon.

The growth of the environmentally friendly oyster farming industry is threatened whenever shellfish farming gets caught up with the increasing regulation of finfish farming. It would be ironic if regulators concerned about issues such as by-catch were themselves guilty of regulatory by-catch.

Oysters Tasmania recommends that the draft standardised marine farming management controls not be implemented in their current form. Either existing management controls should be maintained, or those management controls in the proposed standard that differ from the controls currently applying to the majority of the shellfish farming industry should be applied only to finfish farming.

Set out below are the individual instances where the draft standardised marine farming management controls represent a proposed tightening of management controls for the majority of Tasmania's shellfish farming industry. In each instance, Oysters Tasmania recommends that any such tightening of management controls should not apply to shellfish farming.

Oysters Tasmania would appreciate consideration of these recommendations, as well as any opportunity for ongoing engagement on this issue.

With the right regulatory arrangements, the oyster farming industry can be a booming industry of which Tasmania can be proud, producing ever increasing numbers of our high-value, environmentally-friendly delicacy.



## Contents

Undefined regulatory power .....	4
Surveys as a condition for lease variation .....	4
Surveys as a condition for farming another species.....	4
Wastes from production .....	5
Disposal of all mortalities.....	5
Containment of blood.....	6
Fallowing due to benthic impacts.....	6
Black and grey water.....	6
Regulating the removal of dead fish from cages .....	7
Required participation in plans/programs.....	7
Cage colour .....	7
Light.....	8
Lines extending outside the zone .....	8
Odour .....	8
Escape and recovery .....	9
If, when, and how to remove fouling organisms .....	9
Non-predator wildlife .....	10
Marking equipment .....	10
A duty to police navigation hazards.....	10
Remediation.....	11
Capacity limits.....	11
References to marine farming licence conditions .....	11



## Undefined regulatory power

Proposed control 1.0.1. imposes a requirement to comply with a notice or request from the Secretary. Proposed control 1.0.2. imposes a requirement to comply with a notice or request from the Director of the EPA.

These are new controls, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans, none of which refer to the Director of the EPA.

Such controls would impose a new obligation on many shellfish farmers. As the Government has not stated that this process is intended to introduce new controls and obligations, as the Government has made no case for this new control with regard to shellfish farming, and as there is no case with regard to shellfish farming, proposed controls 1.0.1. and 1.0.2. should not be applied to shellfish farming.

## Surveys as a condition for lease variation

The proposed control at 1.4.11.(b) requires that a new baseline environmental survey be undertaken when required as a condition of varying or expanding a lease area.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

The proposal at 1.4.11.(b) seems to refer to a scenario that should not arise. Namely, it refers to a scenario where a new condition (namely, a requirement to conduct a new baseline environmental survey) is imposed as a condition of varying a lease. Subsection 67(4) of the *Marine Farming Planning Act 1995* states that, as a condition of varying a lease at the request of the lessee, the Minister may vary any condition of a lease. It does not state that the Minister may impose a new condition. Given this, and given the broader concern about a new control being imposed without a case being made for this, proposed control 1.4.11.(b) should not be applied to shellfish farming.

## Surveys as a condition for farming another species

Proposed control 1.4.11.(c) requires a new baseline environmental survey in instances where a lease is varied to allow the farming of another shellfish species.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

The farming of another species of shellfish is not a relevant juncture for requiring a new baseline environmental survey. If areas change over time such that a series of surveys is warranted, this is



the case irrespective of whether the species of shellfish being farmed is the same as it has always been, or new species of shellfish are being farmed.

Given this, and given the broader concern about a new control being imposed without a case being made for this, proposed control 1.4.11.(c) should not be applied to shellfish farming.

## Wastes from production

Proposed control 1.7.1.(d) requires the disposal of wastes from production.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

This proposed new requirement is in addition to longstanding requirements to dispose of wastes from harvesting, processing, and the removal of fouling organisms.

The proposed control relating to wastes from production seems driven by a focus on finfish farming instead of shellfish farming. The growth/production of shellfish involves negligible waste. A requirement to detect and then dispose of wastes from production is not feasible for shellfish.

Given this, and given the broader concern about a new control being imposed without a case being made for this, proposed control 1.7.1.(d) should not be applied to shellfish farming.

## Disposal of all mortalities

Proposed control 1.7.2. requires the disposal of all mortalities at a site that has the necessary approvals to receive this material.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

Issues regarding mortalities are addressed under biosecurity regulation. Addressing mortality in the regulation of marine farming leases is duplicative.

Moreover, the proposed control is excessive compared to the more measured approach that shellfish farmers are already subject to. Shellfish farmers are required to record incidents of shellfish kills and to report significant mortality as a condition of their marine farming licence, and biosecurity regulation can impose requirements for the disposal of these significant mortalities.

When contemplating the regulation of all mortalities, it is worth bearing in mind that an individual oyster may die of natural causes when it is less than a centimetre long.

Given this, and given the broader concern about a new control being imposed without a case being made for this, proposed control 1.7.2. should not be applied to shellfish farming.



## Containment of blood

Proposed control 1.7.3. requires the containment of blood resulting from harvesting, except where an authorisation is provided by the Chief Veterinary Officer and the Director of the EPA.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans. Such longstanding, shellfish-specific Plans make no reference to the Chief Veterinary Officer or the Director of the EPA.

This provision seems driven by a focus on finfish farming rather than shellfish farming. Oysters have blood, but discernible bleeding is not a result of harvesting, so the imposition of this provision on oyster farmers is unwarranted and could cause bizarre compliance and administration costs.

Given this, and given the broader concern about a new control being imposed without a case being made for this, proposed control 1.7.3. should not be applied to shellfish farming.

## Fallowing due to benthic impacts

Proposed control 1.7.4. requires fallowing in response to benthic impacts.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

This provision seems driven by a focus on finfish farming rather than shellfish farming. Shellfish farming does not pose a benthic risk that would warrant fallowing.

Given this, and given the broader concern about a new control being imposed without a case being made for this, proposed control 1.7.4. should not be applied to shellfish farming.

## Black and grey water

Proposed control 1.7.5. requires that black and grey water from the servicing of marine farming operations not be released.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

This provision seems driven by a focus on finfish farming rather than shellfish farming. Shellfish farming operations do not generate black and grey water sufficient to warrant regulation.

Given this, and given the broader concern about a new control being imposed without a case being made for this, proposed control 1.7.5. should not be applied to shellfish farming.



## Regulating the removal of dead fish from cages

Proposed control 1.8.2. requires the removal of dead fish from cages.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

This provision seems driven by a focus on finfish farming rather than shellfish farming. A requirement to remove dead oysters (which are defined as fish, at least in the *Living Marine Resources Management Act 1995*) in a particular way and within a particular timeframe does not recognise that an oyster may die when it is less than a centimetre long and pose no risk.

Given this, and given the broader concern about a new control being imposed without a case being made for this, proposed control 1.8.2. should not be applied to shellfish farming.

## Required participation in plans/programs

Proposed control 1.8.3. requires participation in a fish health management plan or fish biosecurity program as directed.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

Biosecurity regulation is achieved through the Animal Health Act 1995 and the Biosecurity Act 2019. Breaches of biosecurity regulation already give rise to penalties under those Acts. It is duplicative to also make breaches of biosecurity regulation a breach of the conditions of a marine farming lease.

Given this, and given the concern about a new control being imposed without a case being made for this, proposed control 1.8.3. should not be applied to shellfish farming.

## Cage colour

Proposed control 1.9.1.(a) requires fish cages, buoys, netting and other floating marine farming structures and equipment to be grey to black.

The requirement regarding buoys, netting and other floating marine farming structures and equipment is longstanding. But the requirement regarding fish cages is new, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

A cage colour requirement seems driven by a focus on finfish farming, where parts of cages can be permanently prominent above water.



Given this, and given the concern about a new control being imposed without a case being made for this, the regulation of cage colour in proposed control 1.9.1.(a) should not be applied to shellfish farming.

## Light

Proposed control 1.9.1.(f) requires that the Director of the EPA be satisfied that light is not a nuisance.

Longstanding Plans that do not cover finfish farming simply contain a requirement for lighting to comply with the *Environmental Management and Pollution Control Act 1994*. That Act can impose obligations relating to light only if light emissions are specified as environmental nuisances in an environment protection policy. As such, the requirement relating to light under the longstanding, shellfish-specific Plans is narrower than a broad, vague requirement to satisfy the Director of the EPA.

The breadth of proposed control 1.9.1.(f) seems driven by a focus on finfish farming rather than shellfish farming, which does not operate 24-7 and hence does not generate the light-related complaints arising from finfish farming.

Given this, and given the concern about a new control being imposed without a case being made for this, proposed control 1.9.1.(f) should not be applied to shellfish farming.

## Lines extending outside the zone

Proposed control 1.10.3 requires anchors and mooring lines to be five metres below the surface if outside the lease area, and to not extend outside a marine farming zone.

The five-metre-below requirement is longstanding, but the requirement to not extend outside the marine farming zone is new, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

The five-metre-below requirement makes sense for navigation. But given this requirement, the separate requirement for lines not to extend outside a marine farming zone seems unwarranted.

Given this, and given the concern about a new control being imposed without a case being made for this, the ban on anchors and mooring lines outside the marine farming zone under proposed control 1.10.3. should not be applied to shellfish farming.

## Odour

Proposed control 1.11.1. requires the Director of the EPA to be satisfied that odour is not a nuisance. This represents a new control, at least for a number of Plans.



No equivalent control exists in longstanding, shellfish-specific Plans.

This provision seems driven by a focus on finfish farming rather than shellfish farming. The compliance and administration costs of odour regulation should not be applied to shellfish farming simply because of complaints against finfish farming.

Given this, and given the concern about a new control being imposed without a case being made for this, proposed control 1.11.1. should not be applied to shellfish farming.

### Escape and recovery

Proposed controls 1.12.2 and 1.12.3 require reporting of the escape of more than 500 fish and the recovery of escaped fish.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

This provision seems driven by a focus on finfish farming rather than shellfish farming. Shellfish farming should not be subject to escape reporting and recovery requirements motivated by finfish farming. Oysters do not have the means of self-propulsion of finfish, and have markedly less mass — 500 oysters could weigh less than a single salmon.

Given this, and given the concern about a new control being imposed without a case being made for this, proposed controls 1.12.2. and 1.12.3. should not be applied to shellfish farming.

### If, when, and how to remove fouling organisms

Proposed control 1.13.3. requires the removal of fouling organisms, and requires that this removal be done in a certain way.

Longstanding, shellfish-specific Plans have a requirement that waste from the removal of fouling organisms must be disposed of in a certain way. In other words, most shellfish farmers can currently choose if, when and how to remove fouling organisms. Only once these choices are made does regulation kick in, with regulation specifying how the waste must be disposed of.

If the new provision were adopted, a shellfish farmer would no longer be free to choose if, when and how to remove fouling organisms. For instance, a shellfish farmer could be regulated to remove fouling organisms at an unreasonable frequency.

Given this, and given the concern about a new control being imposed without a case being made for this, proposed control 1.13.3. should not be applied to shellfish farming.



## Non-predator wildlife

Proposed control 1.13.7. bans deliberate unauthorised interaction with wildlife, and proposed control 1.13.8. requires compliance with directions to manage, mitigate, or avoid interactions with wildlife.

These proposed controls go beyond the requirements in longstanding, shellfish-specific Plans that ban unauthorised predator control of protected species.

This means that, while anyone who undertakes unauthorised interactions with wildlife faces penalties under the *Nature Conservation Act 2002*, such activity does not currently represent a breach of lease conditions for most shellfish farmers (except if the activity constitutes predator control of protected species).

If these new provisions were applied to shellfish farmers, it would effectively increase the penalty for unauthorised interaction with wildlife. Applying a higher penalty on shellfish farmers, compared to any other person who undertakes this unauthorised interaction with wildlife, would be unwarranted.

Given this, and given the concern about a new control being imposed without a case being made for this, proposed control 1.13.7. should not be applied to shellfish farming.

## Marking equipment

Proposed controls 1.13.9., 1.13.10., and 1.13.11. allow for requirements that marine farming equipment be marked and monitored.

No equivalent controls exist in longstanding, shellfish-specific Plans. These proposed controls are vague, and represent a blank cheque when no case has been made to mark and monitor marine farming equipment.

Given this, and given the concern about new controls being imposed without a case being made for this, proposed controls 1.13.9., 1.13.10., and 1.13.11. should not be applied to shellfish farming.

## A duty to police navigation hazards

Proposed control 1.13.13. requires notifications to, and compliance with directions by, the Marine and Safety Authority regarding potential hazards to navigation.

There is no such control in longstanding, shellfish-specific Plans. This proposed control goes beyond the standard provision requiring the recovery or disposal of structures or equipment that have broken away from the lease area. As such, it would extend the navigation management responsibilities of shellfish farmers beyond the management of their own equipment and structures.



Given this, and given that a commitment was made that this process would not introduce new controls or change obligations, proposed control 1.13.13. should not be applied to shellfish farming.

## Remediation

Proposed control 1.13.14. requires remediation by the holder of an environmental licence upon the cessation of marine farming.

This represents a new control, at least for a number of Plans. No equivalent control exists in longstanding, shellfish-specific Plans.

Shellfish farmers are not required to hold an environmental licence and there is no case for this to change.

Given this, and given that a commitment was made that this process would not introduce new controls or change obligations, proposed control 1.13.14. should not be applied to shellfish farming.

## Capacity limits

Proposed control 1.3.8. sets capacity limits for shellfish farming.

Proposed control 1.4.14. also relates to capacity limits for shellfish farming — requiring lessees in certain circumstances to measure shellfish and to report the measurements.

The requirement to measure is long-standing, but the requirement to report is new, at least for longstanding, shellfish-specific Plans.

The Government should take the opportunity of this updating process to offer to change a Plan's capacity limits if all lessees subject to the Plan agree. This would be appropriate, as the dominant purpose of shellfish capacity limits is to prevent unfairness between lessees, rather to achieve any broader environmental purpose.

## References to marine farming licence conditions

The references to "marine farming licence conditions" in the proposed notes to 1.4.11. and 1.4.12. represent changes compared to longstanding, shellfish-specific Plans.

Such references imply that the regulation of marine farms need be achieved by way of licences under the *Living Marine Resources Management Act 1995* rather than by way of leases under the *Marine Farming Planning Act 1995*. This runs counter to the recommendation in Oysters Tasmania's submission to the Review of the *Living Marine Resources Management Act 1995* to detach shellfish farming from licensing arrangements under that Act. Given this, management controls should not imply that regulation will be always be achieved by way of marine farming licence conditions.