Australian Government
Department of Climate Change, Energy, the Environment and Water

Statement of Reasons for a Decision on Controlled Action Under the *Environment Protection and Biodiversity Conservation Act 1999*

I, RACHEL SHORT (Branch Head, Environment Assessments (Vic and Tas) and Post Approvals Branch), Department of Climate Change, Energy, the Environment and Water (**department**), delegate for the Minister for the Environment and Water (**Minister**), provide the following statement of reasons for my decision of 29 November 2024, under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), that the proposed action by Blue Economy CRC-Co Ltd (**BECRC**) to conduct an aquaculture research trial in the Bass Strait (EPBC Act referral 2024/09946) (**proposed action**), is not a controlled action under the EPBC Act if undertaken in a particular manner.

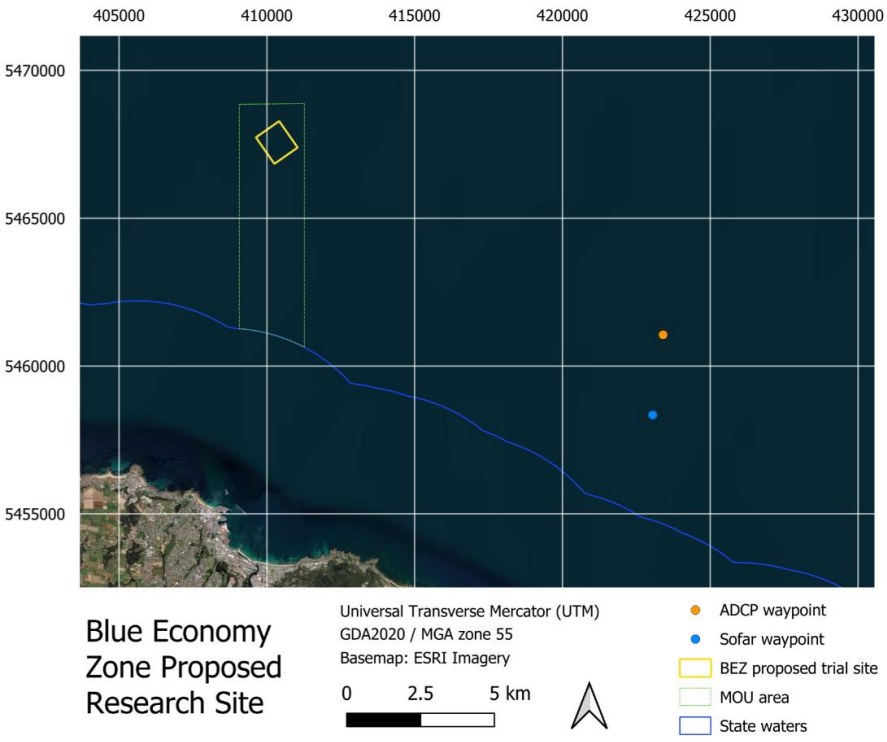
Legislation

1. The legislative provisions that were relevant to my decision and to which I refer in my reasons below are set out at **Annexure A**.

Background

2. The proposed action is to establish, commission, operate, evaluate, and decommission a multi-species aquaculture research trial in the open waters of the Bass Strait.

3. The research trial site (**trial site**), being the area in which the proposed action will occur, is in Commonwealth waters, adjacent to Tasmanian coastal waters and approximately 12km off the cost of Burnie, Tasmania, as reflected in the following:



4. As the map reflects, the proposed action area (reflected by the yellow line in the map) sits within a Fisheries Arrangement Area, generally referred to as the Blue Economy Zone (**BEZ**) (reflected by a green dashed line in the map). The BEZ is an open ocean site for research focussed aquaculture and renewable energy activities and is underpinned by a Memorandum of Understanding (**MoU**) between the Commonwealth and Tasmanian governments.

Description of the proposed action

5. I noted that:

    a. the research trial will take place over a three-year period, with decommissioning occurring at the end of 2027;

    b. the trial is designed to test the capability of existing and new sustainable offshore/high-energy aquaculture farming systems for finfish, being the Tasmanian Atlantic Salmon and Kingfish); and

    c. the trial may explore opportunities for seaweed and shellfish, and, in later stages of the trial, the potential for co-located renewable energy generation.

6. Relevantly, 3 different stages of the proposed action were identified: construction, operation and decommissioning. Specifically, the proposed action would include:

    a. at the construction stage - construction and deployment of a temporary gridded mooring system and aquaculture pens, with mooring lines to accommodate 4 to 6 pens, securing the mooring to the seabed using a series of large concrete mooring blocks and anchors that are lowered to the seafloor, containing all mooring infrastructure within the trial site footprint, and constructing trial infrastructure on shore and towing or shipping to the trial site to be secured to the mooring system;

    b. at the operation stage - stocking a single pen of 15,000 Atlantic salmon smolt and a single pen of 15,000 juvenile kingfish at the trial site, establishing the two pens using conventional farming techniques, drawing from learnings from Storm Bay operations, to understand their suitability for offshore environments, the potential to investigate submersible pens to understand their benefits in offshore environments, and investigating traditional and novel methods of animal husbandry, such as feeding techniques, water circulation, oxygen enrichment, and bathing; and

    c. a decommissioning stage of approximately 2-3 weeks - at the completion of the research trial, all equipment, including mooring blocks and anchors, will be removed from the trial site. Aquaculture pens will be towed to shore and the mooring grid will be disassembled. Mooring blocks and anchors will be lifted from the seabed using a large works vessel.

7. I noted that BECRC stated in the referral:

    > [BECRC] will engage with relevant regulators (primarily under Tasmanian laws but noting Commonwealth regulators may have a role) in relation to ensuring any necessary approvals for alternate aquaculture (e.g. seaweed, shellfish) or renewables trialling are obtained prior to undertaking any additional research activities at the Trial Site.

8. I agreed with the department that if additional research activities are to be undertaken, further referrals for assessment under the EPBC Act may be required.

Description of the environment

9. The proposed action is in the Bass Strait, approximately 12 km north of Burnie, in Commonwealth waters off Tasmania. The proposed action is within the Boags bioregion, which covers over 8,000 km^2 along the north coast of Tasmania.

10. Bass Strait waters along the north coast of Tasmania support a range of commercial and recreational industries including commercial fishing, recreational fishing, commercial shipping, recreational boating and recreational diving.

11. I noted that in the referral, BECRC stated:

> Minimal commercial fishing activity has been recorded to occur in the area. No zoning or marine leases apply to the site. The marine areas surrounding the site are similarly undeveloped.
>
> …
>
> No existing permanent uses occur within the site; transitory shipping, boating and recreational activities may occur in the area. Beyond the establishment of the MoU regarding using the site for the Bass Strait Blue Economy Zone, Marine Aquaculture Trial, no future uses of the area are proposed.

12. The documentation accompanying the referral included a *Marine Environment Assessment* to which I had regard. That assessment referred to undertaking a video survey of the benthic environment, which determined the benthic habitat is unconsolidated bioturbated sandy substrate with shell debris and sparse sponge communities. Several finfish species were observed, including Degen's Leatherjacket (*Thamnocaonus degeni*), Common Gurnard Perch (*Neosebastes scorpaenoides*) and a Gurnard (*Triglidae sp*). Doughboy Scallops (*Chlamys asperrimus*), Seven-armed Starfish (*Astrole scabra*) and fanworms were also observed. A small number of rocky outcrops were observed south of the proposed action area.

13. The seafloor within the trial site ranges was reported to range between 54 and 61 m below mean sea level with shallower areas to the south-west and depth increasing to the north-east.

14. I note that the traditional lands of Tasmanian Aboriginal people are adjacent to the trial site. While no Native Title claims overlap the trial site, the waters of Bass Strait are recognised as being part of Tasmanian Aboriginal sea country and I acknowledge that Tasmanian Aboriginal people have an interest in the offshore environment.

Procedural history

15. A valid referral was received on 27 August 2024. BECRC indicated that they did not believe the proposed action was a controlled action for the purposes of the EPBC Act.

Ministerial invitations to comment and responses

16. By letter dated 27 August 2024, the following ministers were invited to comment on the referral:

    a. Senator the Hon Malarndirri McCarthy, Minister for Indigenous Australians

    b. The Hon Julie Collins MP, Minister for Agriculture, Fisheries and Forestry;

    c. the then Tasmanian Minister for Energy and Renewables and Minister for Parks and Environment, the Hon Nick Duigan MLC.

17. The National Indigenous Australians Agency (**NIAA**) responded on behalf of the Minister for Indigenous Australians on 9 September 2024. In summary, the NIAA responded that BECRC should:

    a. consult with the Traditional Owners and other First Nations stakeholders with an interest in a proposed action and provide them with sufficient time to make informed assessments of the possible impact of the proposed action on their interests, and engage with the Traditional Owners and any other First Nations stakeholders on the range of potential environmental, cultural, social and economic interests and concerns they may have in relation to a proposed action;

    b. seek advice on whether the proposed aquaculture trail is subject to processes under the future act provisions of the *Native Title Act 1993*;

    c. undertake broad consultation with the Tasmanian Aboriginal community organisations and groups on the range of environmental, social and economic concerns and opportunities which may be of interest to them;

    d. prepare a First Nations engagement plan guided by BECRC's Cultural License to Operate (CLO) framework, to assist with undertaking culturally appropriate consultations and to ensuring that First Nations people also benefit from the proposal;

    e. in addition to consulting Aboriginal Heritage Tasmania, engage with Tasmanian Aboriginal community organisations and groups to assess the cultural heritage impacts of the project, and collaborate with the relevant Traditional Owners, knowledge holders and other relevant First Nations stakeholders following the cultural heritage assessment to develop agreed measures for the protection and management of First Nations cultural heritage and consider developing a Cultural Heritage Management Plan (CHMP); and

    f. discuss opportunities for local First Nations people and businesses with the Traditional Owners and other First Nations stakeholders.

18. A response was received on behalf of the Minister for Agriculture, Fisheries and Forestry on 17 September 2024 stating:

    a. the Commonwealth Government has agreed to the revised coordinates in the MOU, as the revised location provides for more suitable benthic conditions, deeper water and safer positioning of infrastructure given known sea and wind characteristics;

    b. any outcomes achieved for agriculture and fisheries sectors from approval conditions are likely to be incidental rather than intentional;

    c. the proposed action will be in Commonwealth waters which support a range of commercial and recreational industries and interests, including commercial and recreational fishing, commercial shipping, recreational boating and recreational diving;

    d. the trial site is within the mapped Commonwealth Bass Strait Central Zone Scallop Fishery;

e. DAFF recommends for BECRC to consult with all the relevant fishing industries which may be impacted by the proposed action activities;

f. any approval of the proposed action should include measures to protect both Indigenous Cultural and Intellectual Property and Free, Prior and Informed Consent principles of Indigenous peoples.

19. A response was received on behalf of the then Tasmanian Minister for Energy and Renewables and Minister for Parks and Environment on 5 September 2024, noting that:

    a. he had no information as to whether the proposal is likely to have a significant impact on protected matters under the EPBC Act and no comment on assessment approach decision in the event of a "controlled action" decision; and

    b. the Tasmanian Minister for Business, Industry and Resources is required to consult with the Director, EPA Tasmania before a permit can be issued to authorise marine aquaculture research activities under the *Living Marine Resources Management Act 1995* (Tas) (**LMRM Act**), and if the permit relates to the marine farming of finfish, the Minister must include any conditions in the permit that the Director, EPA Tasmania consider necessary in respect of the marine aquaculture research activities in accordance with section 15A of the LMRM Act.

Public comments

20. The proposal was also published on the department's website on 27 August 2024, and public comments were invited until 10 September 2024. Forty-five public comments were received, with three submissions from community groups and organisations (Bob Brown Foundation, Neighbours of Fish Farming and NWTAS for Clean Oceans), and forty-two submissions from individuals.

21. The submissions raised a number of issues with the proposed action. In summary, these included:

    a. the proposed action will impact numerous Matters of National Environmental Significance (MNES), and as such must be declared a controlled action, and should be deemed clearly unacceptable under section 74B of the EPBC Act;

    b. there is a lack of transparency in the Tasmanian aquaculture industry, and operations of the aquaculture industry in Tasmania need to improve before expansion into the Bass Strait;

    c. ecological impacts of the action include harm to whale species, fur seals and animals that have habitat or migrate through the Bass Strait;

    d. the proposed monitoring program is inadequate. The duration should be extended, and alterations to the program should be based on science rather than financial constraints. Broader geographical scope should also be incorporated into the program;

    e. there could be facilitated and cumulative impacts of the proposed action through the potential for commercial expansion. The initial project is a precursor to a larger commercial venture which will have much wider environmental implications;

f. scientific uncertainty about the potential impacts of the action cannot itself justify a decision that the action is not likely to have a significant impact on the environment;

g. inadequate community consultation and a lack of social license;

h. importance of the action being regulated and managed by the Commonwealth government due to the proposed action occurring in Commonwealth Waters and the reported inadequacies of the Tasmanian government in regulating the aquaculture industry;

i. the proposed action represents a significant change in what actions are permitted in the Bass Strait area which warrants Federal input under the EPBC Act;

j. incorrect assumptions about the hydrodynamics of the Bass Strait. The trial site sits within or near a stagnant zone, increasing the risk that pollutants will recirculate throughout the centre of the Bass Strait;

k. risk of sediment pollution from fish farms;

l. Bass Strait is an area of high biodiversity and deserves full protection under the EPBC Act, particularly in a time of climate and ocean crises;

m. countries around the world are banning this industry from their waters. It is reprehensible to consider enabling its expansion here;

n. lack of transparency around the use of antibiotics;

o. unreliability of the research trial. The size of the research project imposes limitations on its future applicability. The project also has limited objectives;

p. potential for marine debris from the proposed action and impacts of marine debris on the surrounding environment;

q. the proposed action presents a risk of disease transfer from farmed to wild fish;

r. increased vessel traffic associated with fish farming operations can lead to collisions with marine species, causing injury or mortality;

s. the risk of entanglement in fishing gear or farm infrastructure poses significant threats to seabirds, cetaceans and other marine species;

t. BECRC has not demonstrated how the proposed action will not impact the Giant Kelp Marine Forests of Southeast Australia, cetaceans (when considering the risks of boat strike and entanglement), fur seals and seabirds (when considering entanglement risks) and the Shy Albatross, considering the proximity of the site to Albatross Land, a critical breeding area for the Shy Albatross;

u. the proposed action will impact the Commonwealth Marine Area through nutrient pollution, chemical pollution, farmed fish escapees, habitat degradation and increased maritime traffic;

v. while the probability or impact of each risk taken in isolation may be assessed as unlikely or low, the sum total of these risks indicates that the proposed action should not go ahead;

w. while the proposed action is intended to research the risks and impacts of aquaculture in Bass Strait, in such a special environment, scientific uncertainty should not be allowed to facilitate activities which pose longer term significant risks, especially based on questionable data, a cautious, precautionary approach is required for the assessment of the proposed action;

x. the proposed action area is within or very near to a stagnant zone which increases the risk that pollutants will recirculate throughout the centre of the Strait and not be dispersed as rapidly as the referral documentation assumes. As such, the proposed action should incorporate a full assessment of the long term, Strait wide impacts of the stagnant zone;

y. the proposed 35m and 100m monitoring zones should be significantly extended to quantify realistic local pollution distribution;

z. the monitoring program should be amended to ensure that:

   i. all longitudinal data collected spans the full duration of the proposed action;
   ii. alterations to the program to scale down or cease any aspects should be based on scientific evidence, not on financial constraints; and
   iii. water quality monitoring should continue for at least a year after the proposed action finishes;

aa. proposed action objectives should clearly state that the proposed action will not be able to assess the suitability of Bass Strait for full scale commercial operations;

bb. proposed action should be extended to research at least one viable alternative to open net pens; and

cc. the proposed action should be delayed until more extensive and well publicised community input is organised.

Request for further information

22. On 19 September 2024, the department sought additional information from BECRC to address issues raised during the comment period (and summarised above), and the department's own assessment of the referral documentation. Specifically, information was requested upon:

    a. how the design of infrastructure would reduce the risk of entanglement of marine and migratory species;

    b. procedures and timing for decommissioning of the trial site;

    c. the assumptions in the referral regarding pollutant dispersion and the monitoring program;

    d. flushing and assumptions of hydrodynamics;

    e. the process for state government approvals of the monitoring program;

    f. the comments made by the NIAA; and

    g. procedures for antibiotic use during the proposed action.

23. BECRC provided the information sought on 4 October 2024. BECRC provided a revised monitoring program, an Operations Management Plan, and a response to other matters raised which were, in summary:

    a. there are active tidal and wind-driven currents at the trial site in Bass Strait. Those ocean currents are expected to disperse pellets and fish waste over an area of approximately 4.3 ha of seabed. Consumption of waste pellets by wild fish and benthic infauna, as well as bacteriological decay, will limit the amount of waste accumulating beneath the aquaculture pens;

    b. the monitoring program is adaptive and will respond to results from monitoring during the trial. The monitoring sites will be sampled monthly for 3 months before the trial, through the 12-month trial and for 3 months after the trial. If impacts are detectable at the completion of three months of monitoring post-decommissioning, additional monthly monitoring may be required. The number and location of monitoring sites can be expanded outward to the next distance interval (i.e. 200 m from the outer edge of the pen bays) in the event that parameters are detected above trigger levels;

    c. based on predicted plume and dilutions, the monitoring program will adequately monitor the dispersal of the fish wastes. The proposed monitoring parameters will provide a good description of the dispersion and extent of nutrient elevation above background, which is expected to be a small distance;

    d. BECRC has identified positions for Indigenous membership of both their Research and Technical Advisory Group and their Community Advisory Group, National and statewide formal consultation was undertaken between 2020 – 2023 by the Tasmanian Government and Commonwealth Government on aquaculture in Commonwealth waters and the area of interest, and BECRC consulted with a number of statewide and local Aboriginal groups in 2024. BECRC also committed to engagement with Aboriginal people, groups and organisations will be ongoing throughout the three-year duration of the proposed action.

Decision

24. On 29 November 2024, I made my decision that the proposed action was not a controlled action provided it is taken in the manner set out in the decision notice signed on the same date.

Material considered in my decision

25. In making my decision under section 75 of the EPBC Act, I considered the referral decision brief and its attachments, which are listed at Annexure B to this statement of reasons.

26. I was satisfied that there was enough information to make a decision under s 75 of the EPBC Act about whether the proposed action was a controlled action.

Is the proposed action part of a 'larger action'?

27. Prior to deciding whether or not the proposed action was a controlled action, I considered whether the proposed action was part of a larger action. If I was satisfied the proposed action is a component of a larger action, section 74A(1) of the EPBC Act states I may decide not to accept

the referral. I understood that this is a discretionary power available to me and as such, I am not obliged to exercise the power.

28. I noted the *EPBC Act Policy Statement – Staged Developments – Split referrals: Section 74A of the EPBC Act* (**Split referrals policy**) provides guidance as to matters that can be considered in relation to the exercise of this discretion. The Split referrals policy states that "[a] referred action that is part of a larger action can be refused only if there is a reasonable basis for doing so. The key question for the Minister is: does the splitting of the project reduce the ability to achieve the objects of the Act?"

29. The department considered, and I agreed, that the proposed action may include additional research activities for alternate aquaculture (seaweed and shellfish farming) or co-located renewable energy generation. The details of these additional research activities were not included in the referral since it is currently unknown when, how and if the additional research activities will occur. As I understood from the Extended Project Description provided by BECRC, whether there would be additional research activities was subject to funding and approval.

30. In relation to the latter (i.e., 'approval'), as I have noted above (at [7]-[8]), BECRC has committed to engaging with regulators, which I have stated should include Commonwealth regulators like the department, before any additional research activities at the trial site. The impacts of any additional research activities could be assessed independently of the proposed action, and this would not be inconsistent with the objectives of the EPBC Act.

31. Further, I noted that BECRC stated the proposed action would be undertaken in accordance with the arrangements set out in the MoU, and I accepted that that would be the case. Relevantly, the MoU permits research activities, but does not provide for commercial activities. On this basis, I was satisfied that the proposed action would not have facilitated impacts through the potential for commercial expansion.

32. Ultimately, I did not consider that proposed action was a component of a larger action proposed to be undertaken by BECRC.

Is the proposed action a controlled action?

33. Under s 75 of the EPBC Act, I was required to decide whether the proposed action is a controlled action, and which provisions of Part 3 of the EPBC Act (if any) are controlling provisions for the purposes of the action.

34. In making my decision, I:

    a. understood that I was required to consider all adverse impacts the action has, will have, or is likely to have on each matter of national environmental significance (and I set this out in further detail below);

    b. did not consider any beneficial impacts of the proposed action;

    c. considered the public comments that were received, and which I have summarised at [21] above;

    d. noted that there was no management plan nor bioregional plan I was required to consider under s 176 or 362 of the EPBC Act;

e. took account of the precautionary principle, understanding that the precautionary principle provided that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage (and I explain how this was taken account of in further detail below).

35. Being satisfied that I had enough information to make my decision under s 75 of the Act, I determined that, provided the proposed action was undertaken in a particular manner, the action was not a controlled action, and the following were not controlling provisions for the purposes of the proposed action:

    a. listed threatened species and communities (section 18 & section 18A);

    b. listed migratory species (section 20 & section 20A);

    c. the environment (for a proposed Action taken inside a Commonwealth marine area) (section 23 & section 24A).

36. I was also satisfied that the remaining controlling provisions specified in Chapter 2 of the EPBC Act were not controlling provisions for the purposes of the proposed action.

Listed threatened species and communities (s 18 and s 18A)

37. I had regard to a report from the department's Protected Matters Search Tool (PMST) dated 25 October 2024, which identified 40 listed threatened species and communities that are likely or known to occur within 10 km of the proposed action.

Seabirds

- Shy Albatross – *Thalassarche cauta* – Endangered
- Black-browed Albatross – *Thalassarche melanophris* – Vulnerable
- Wandering Albatross – *Diomedea exulans* – Vulnerable

Protected matter ecology

38. I had regard to the *National Recovery Plan for albatrosses and petrels* (2022) (**Albatross and Petrel Recovery Plan**), which states that the Shy Albatross is an annual breeder and is endemic to Tasmania's Albatross Island, Mewstone Island and Pedra Branca island. They are less oceanic than many other albatross species, and regularly venture close to the coasts of Tasmania and southern Australia. During the breeding season, adults forage close to their colonies, usually within 300 km in continental shelf waters.

39. The Albatross and Petrel Recovery Plan states that the Black-browed Albatross has 69 breeding sites that occur on island groups including Australia, Chile, France and New Zealand, and is an annual breeder. Sub-adults remain in Australian waters all year round with immature birds forming 99% of Black-browed Albatross seen in south-eastern Australian waters between October and January.

40. The Albatross and Petrel Recovery Plan states that the Wandering Albatross has 28 breeding sites across sub-Antarctic island groups of Australia, France and South Africa. The Wandering Albatross is a biennial breeder and is highly dispersive in all the southern oceans.

Environment within and surrounding the proposed action area

41. I noted the MNES Assessment concluded there is:

    a. a high likelihood of occurrence for the Shy Albatross around the BEZ. The referral stated that the Shy Albatross foraging Biologically Important Area (**BIA**) covers the BEZ and sightings have been recorded approximately 16 km away. A breeding colony is located approx. 118 km north-west of the BEZ at Albatross Island and the species is known to forage over a large area from the breeding colony. Additionally, concentrated foraging efforts have been recorded along the coast of the Bass Strait.

    b. a high likelihood of occurrence for the Black-browed Albatross around the BEZ. The BEZ is within a foraging BIA and numerous sightings of the species have been reported near the BEZ, with one sighting within the BEZ. The nearest breeding colony is Macquarie Island, over 1,774km south of the BEZ.

    c. a moderate likelihood of occurrence for the Wandering Albatross around the BEZ. The referral stated the foraging BIA for the species encapsulates Tasmania, including the BEZ. A high number of sightings have been made in the broader area, with the closest being approximately 10 km from the BEZ. Individuals do not appear to spend significant time in any one area of their foraging territory, with the average distance between prey captures being approximately 64 km, and comparatively few instances of foraging being targeted to specific patches. This indicates that while there may be individuals present nearby, individuals tend to use the larger area for foraging.

Potential impacts

42. The Albatross and Petrel Recovery Plan identifies several threats towards the albatross species within Australia's jurisdiction. These threats include:

    a. dependence on fisheries discards;

    b. marine pollution, specifically marine plastics ingestion;

    c. climate variability and change from habitat damage and sea temperature rise;

    d. human disturbance including wind farm infrastructure, visits to breeding sites, boat traffic and overflights; and

    e. disease.

43. The referral documentation stated that the proposed action may result in localised and temporary direct impacts associated with entanglement risks, and indirect impacts associated with light and food attraction. BECRC predicted these potential impacts would be minor, localised and temporary, given the limited footprint and temporary nature of the proposed action.

44. I agreed with the department's view that, in light of the referral documentation, the Albatross and Petrel Recovery Plan, and the department's *EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance* (**Significant Impact Guidelines**), without mitigation, the proposed action could lead to the following significant impacts:

    a. aquaculture affecting species behaviour through light and food attraction;

    b. entanglement risks specifically from the mooring system and nets; and/or

c. marine pollution leading to ingestion of plastics or causing entanglement.

45. I agreed with the department that these impacts presented a threat of serious or irreversible environmental damage to the threatened species and that there is a lack of full scientific certainty as to the scale of these impacts given this being the first offshore aquaculture operation proposed in the Bass Strait. Accordingly, I considered that the precautionary principle applied, and took account of this in assessing the avoidance and mitigation measures as set out below.

Avoidance and mitigation measures

46. In the referral documentation, BECRC outlined a range of mitigation measures to reduce the impacts of the research trial on threatened seabirds, including measures to mitigate the risk of light and food attraction, entanglement and marine pollution. I had regard to the commitments BECRC made to these measures, which were set out in a number of attachments to the referral, including their Waste Management Plan and Wildlife Management Plan.

47. I noted that BECRC had committed to minimising the risk of entanglement through:

a. the design of the high-quality mooring systems and nets. I understood that the mooring system and nets would be designed to meet the requirements of *Norwegian Standard 9415: 2021 Floating aquaculture farms; Site survey, design, execution and use (NS9415)* (**Norwegian Standards**), which include requirements for taught mooring lines, taught bird exclusion netting, heavily weighted fish nets and specific colour and mesh sizes to reduce the likelihood of entanglement of marine mammals and seabirds. There are currently no Australian standards similar to the Norwegian Standards. The 2009 version of the Norwegian Standards was the first of its kind internationally and was developed to specify technical requirements for floating fish farming in high energy waters. The 2021 revision of the Norwegian Standards sets out best practice where there has previously been scope for discretion. Accordingly, I agreed with the department's view that in the absence of Australian standards, the Norwegian Standards provide confidence in the quality of the mooring systems and nets to be used during the research trial;

b. daily structural integrity monitoring to avoid degradation that may increase entanglement risk due to loose netting, including a commitment to keep moorings, ropes and lines taut at all times. BECRC indicated that daily monitoring would occur via video surveillance, GPS trackers or on-water inspections; and

c. daily monitoring for entangled seabirds and cetaceans, and a commitment to release any entrapped seabirds as soon as possible and when safe to do so. I had regard to the specific procedures and guidelines in the Wildlife Management Plan, including:

> *If the entangled animal is alive, and safe to do so, immediately attempt to release the entangled wildlife*
>
> *If the entangled wildlife is deceased, then the carcass is to be recovered and held until direction is given by either site management or the Trial Site Wildlife Officer, and*
>
> *Reporting requirements*
>
> *All netting must:*

- *Be maintained in a state that prevents any wildlife entanglement, unless for short durations as necessitated by operational requirements (for example, during deployment of nets), and*
- *If netting will not be used for more than one month and presents a risk of entanglement, it is to be removed from the water and stored off-site.*

…

The bird is to be carefully removed from the pen. Photographs should be taken for reporting purposes, including to allow for confirmation of species identity and individual age (ageing is only possible for some species).

Entangled birds are to be covered (e.g. wrapped in dark towel or jumper) before removal to reduce stress to the bird and minimise chance of staff being pecked or clawed. The towel or jumper is to be gently draped over the bird, and never thrown at the bird.

In the case of an eagle or other birds of prey, do not to attempt to remove. Immediately notify Research Trial Site Operations Lead or Trial Site Wildlife Officer who will organise removal by competent personnel e.g. vet, NRE Wildlife Officer or registered wildlife carer.

If the bird displays obvious signs of injury, the disentangled bird is to be kept for veterinary treatment.

If a staff member is unable to remove bird, then report Research Trial Site Operations Lead or Trial Site Wildlife Officer to organise removal

48. BECRC had also committed to minimising the risk of risk of light and food attraction through:

a. the implementation of wildlife exclusion netting and wildlife management procedures to reduce the potential for wildlife interactions. I understood that wildlife exclusion netting would be installed above and below the waterline, to prevent predation by wildlife and reduce entanglement risk. Wildlife exclusion netting is required to ensure the aquaculture operations do not inadvertently becoming a feeding ground for wildlife. The department considered, and I agreed, that if the wildlife netting was kept taut, then entanglement risks were low;

b. installing the wildlife exclusion systems within the pen structure in accordance with *Minimum Requirements for the Mitigation of Seal Interactions with Aquaculture Staff and Infrastructure in Tasmania 2018,* which I understood would ensure adequate fish jump fences, seal proof bird netting, and cover bases, to discourage wildlife interactions with the farmed fish;

c. only feeding farmed fish during daylight hours, to reduce the risk of excess feed that could attract threatened wildlife. I understood that feeding farmed fish during daylight hours increases the likelihood of the farmed fish consuming the feed due to better visibility; and

d. removing farmed fish mortalities from the marine environment to ensure seabirds and other marine species are not attracted to the trial site. I had regard to the fact

that fish pens will be inspected daily and mortalities will be removed from the marine environment as soon as if reasonably practicable, in accordance with the *Biosecurity Program – Tasmanian Salmonid Industry* as specified in the *Biosecurity (Salmonid Biosecurity Zones) Regulations 2022*.

49. I also noted that in the Waste Management Plan, BECRC committed to minimise the risk of marine pollution through ensuring minimal to no loss of debris from all operations, including that all infrastructure would be removed from the marine environment at the end of the trial period. BECRC would develop a decommissioning plan that includes commitments to maintain an inventory of all items as they are removed from the trial site and conduct video surveys to ensure no debris or infrastructure remains at the trial site. The decommissioning plan would also align with the protocols and procedures of the *Environmental Standards for Tasmanian Marine Finfish Farming 2023.*

50. I was satisfied that the avoidance and mitigation measures were adequate to ensure that the likelihood of the impacts identified at [44] above were low. The department incorporated the avoidance and mitigation measures specified above into a set of particular manners in accordance with which the proposed decision should be taken. Being satisfied that the avoidance and mitigation measures were sufficient, I agreed with the department that requiring the proposed action to be undertaken in a manner consistent with those measures would reduce the likelihood of the proposed action impacting on seabirds to be low, or unlikely.

51. The 'particular manner', for the purposes of s 77A of the EPBC Act, that the proposed action was to be undertaken was proposed by the department as that BECRC:

    a. conduct daily inspections at the trial site for entangled seabirds;

    b. release entangled seabirds as soon as possible in the event of seabird entanglement;

    c. ensure the mooring system and all nets used as part of the proposed action meet the requirements of the Norwegian Standard for Floating Aquaculture Farms;

    d. ensure all moorings, ropes and lines are always kept taut and conduct daily inspections for damage. If damage is identified, repairs are made as soon as possible, and damaged equipment is secured until repaired;

    e. install wildlife exclusion netting at the trial site and ensure all wildlife exclusion netting and jump fences used as part of the proposed action meet the Minimum Requirements for The Mitigation of Seal Interactions with Aquaculture Staff and Infrastructure in Tasmania;

    f. ensure farmed fish are only fed during daylight hours; and

    g. ensure all infrastructure and equipment is decommissioned and removed from the Commonwealth marine environment within 3 years of the date of commencement of the Action.

52. I agreed with the department that if the proposed action was taken in a particular manner (i.e., in accordance with the above), the impacts to threatened seabirds was unlikely. Noting that BECRC had committed to these measures in the referral documentation, I believed, and was comfortably satisfied that, BECRC would undertake the proposed action in the particular manner.

Conclusion

53. Having regard to the information before me, and taken account of the precautionary principle, for the reasons set out above I concluded that the proposed action was not a controlled action if taken in a particular manner. I accepted that, if undertaken in the particular manner specified, the proposed action is not likely to have a significant impact on the seabirds.

Cetaceans

- Southern Right Whale – *Eubalaena australis* – Endangered
- Blue Whale – *Balaenoptera musculus* – Endangered

54. I had regard to the *National Recovery Plan for the Southern Right Whale (Eubalaena australis)* (2024) (**SRW Recovery Plan**) which states that the Southern Right Whale (**SRW**) is a baleen whale, approximately 17.5 m in length. The SRW is migratory and occurs only in the southern hemisphere with two populations of SRW occurring in Australian waters: the western and eastern populations. For management purposes, the western population includes Western Australia and South Australia waters, whereas the eastern population comprises the coastal waters of Victoria, Tasmania, New South Wales and Queensland.

55. The Blue Whale is a baleen whale with a distribution that includes Australian waters. The *Conservation Management Plan for the Blue Whale* (2015) (**Blue Whale CMP)** states that at least two subspecies are found in the Southern Hemisphere; the Pygmy Blue Whale (*Balaenoptera musculus brevicauda*) (**PBW**) and the Antarctic Blue Whale (*Balaenoptera musculus intermedia*), which are characterised by differences in morphology, distribution, genetics and vocal behaviour. They generally migrate between the breeding grounds at lower latitudes where both mating and calving takes place during the winter and feeding grounds at higher latitudes during the summer.

56. In general, Southern Blue Whales occur in waters south of 60°S and PBWs occur in waters north of 55°S (i.e. not in the Antarctic). By this definition, all blue whales in waters around the BEZ are assumed to be PBWs.

57. The Blue Whale has known feeding grounds in the Bonney Upwelling System and adjacent waters off Victoria, South Australia and Tasmania. These areas are utilised by Blue Whales from November to May. Blue Whales migrate between these feeding aggregation areas, northwards and southwards along the west coast of Australia, to breeding grounds that are likely to include Indonesia.

Environment within and surrounding the proposed action area

58. The MNES Assessment stated that:

    a. the BIAs relevant to SRWs indicate the BEZ spatially overlaps the migration corridor for this species and the extended 5km buffer overlaps with the reproduction BIA. At its closest point, the SRW reproduction BIA is located approximately 3.5 km from the BEZ. Both the migration and reproduction BIAs for SRWs have been recently redefined by the department in efforts to re-evaluate distributions with respect to species biology, ecology, conservation status, and behaviour.

    b. mapping of SRWs migration indicate that migratory paths are unlikely to intersect with the trial site with most pathways extending from the pole toward the

southwest. Sightings have been recorded off Stanley (approximately 51 km from the BEZ) as recently as July 2023. Given the closeness of recent sightings and the known use of this area as migration and potential breeding grounds for SRWs, BECRC concluded the likelihood of the SRW being present in the BEZ is Moderate.

c. there are two BIAs for the PBW that spatially overlap the BEZ, that is, likely foraging area and known distribution. Mapping of PBW migration and breeding pathways indicated that PBWs were present in the deeper waters offshore the BEZ; however, it was temporally limited (present in March only) as a part of their regular migration. This indicated that while it is possible for PBWs to be present in and around the BEZ, they are unlikely to stay for long periods. BECRC therefore assessed the likelihood of occurrence of the PBW in the BEZ as Low.

Potential impacts

59. The SRW Recovery Plan and Blue Whale CMP identify several threats towards the SRW and PBW within Australian waters. These threats include entanglement, vessel disturbance, whaling, climate variability and change, noise interference, marine debris, habitat modification and overharvesting of prey.

60. The referral stated that, for the SRW and PBW, the proposed action may result in localised and temporary direct impacts associated with entanglement and vessel strike risks, and indirect impacts associated with noise emissions. BECRC considered that these potential impacts are predicted to be minor, localised and temporary, given the limited footprint and temporary nature of the activity.

61. I noted that while the department agreed with BECRC that the limited footprint and temporary nature of the activity meant that interactions with cetaceans may be infrequent, the department considered that given the low reproductive output and slow recovery rates of the SRW and Blue Whale populations from historic whaling, an instance of injury or death of an individual from collision with marine vessels may interfere with the species' recovery. Where a single instance of injury or death may interfere with the species recovery, I also considered there was a threat of serious environmental damage. Similar to the seabirds, I considered that there was a lack of scientific certainty as to the scale of the threats posed by these impacts noting this was the first offshore aquaculture operation proposed in the Bass Strait. As such, I considered and applied the precautionary principle.

62. Considering the SRW Recovery Plan and Blue Whale CMP, the referral documentation and the significant impact guidelines, the department agreed with BECRC that threatened whales could be impacted by the proposed action through entanglement risks and vessel strike risks. The department considered that marine pollution is another potential risk to threatened whales that could lead to entanglement or plastics ingestion. I concurred with these views.

63. I also considered and accepted the department's view that aquaculture is not known to generate intense or consistently loud underwater sounds or involve large volumes of vessel traffic that may result in habitat displacement relative to other anthropogenic coastal activities in the more general area. The department therefore did not consider noise interference as a likely impact to whales from the proposed action. I agreed.

64. I found that it was likely that the proposed action would significantly impact threatened whales, by way of entanglement and vessel strike unless adequate avoidance and mitigation measures were implemented.

Avoidance and mitigation measures

65. In the referral documentation, BECRC outlined a range of mitigation measures to reduce the impacts of the aquaculture research trial on whales, including measures to mitigate the risk of entanglement, vessel strike and marine pollution. I had regard to the commitments BECRC made to these measures, which were set out in a number of attachments to the referral including in the Wildlife Management Plan. I noted the Wildlife Management Plan included the following principles and rules:

> *Vessel speed must not exceed 5 knots within the Research Trial Site*
>
> *Navigational sonar must be used on all vessels outside daylight hours and during low visibility, unless responding to an emergency*
>
> *A person must be designated to monitor the presence of cetaceans on all vessels*
>
> *Vessel operations must be shut down if a whale is observed within 1 km of the vessel - recommencement of operations cannot begin until the whale is more than 1 km from vessel, and*
>
> *In the event of an entanglement, implement the Response Protocol*
>
> *..*
>
> *Never restrict the path of a marine mammal or cause it to change direction*
>
> *Never drive a boat into a pod or herd of marine mammals causing it to divide into smaller groups*
>
> *Do not deposit rubbish in the marine environment, and*
>
> *Do not make a sudden noise or attempt to touch or feed a marine mammal*

66. To reduce the risk of entanglement for seabirds, BECRC committed to implementing procedures to free any entangled marine mammals, including to stop all vessel movements immediately and standing off from the animal to avoid causing further stress. I noted that the procedures also involve taking photos of the entanglement or injury and the Research Trial Site Operations Lead contacting the Department of Natural Resources and Environment Tasmania Marine Conservation Program Whale Hotline.

67. The measures that BECRC proposed for seabirds (which I identify from [47] to [49] above) were noted to also apply to entangled marine mammals. Specific to marine mammals were the following measures:

Whale/dolphin entangled in and/or connected with farm equipment, infrastructure or a vessel	• **STOP ALL VESSEL MOVEMENTS IMMEDIATELY** • **DO NOT ATTEMPT TO DISENTANGLE THE ANIMAL** • **RESEARCH TRIAL SITE OPERATIONS LEAD CALL NRE MCP WHALE HOTLINE: 0427 942 537** • **IF OPERATING A VESSEL, STAND OFF FROM THE ANIMAL TO AVOID CAUSING FURTHER STRESS** • Call the Research Trial Site Operations Lead • Take photos of the entanglement and/or injury if possible • Monitor the animal's whereabouts and behaviour • Remain in visual contact with the animal if on a vessel and update the Hotline with any changes
Stranded or beached whale/dolphin	• **RESEARCH TRIAL SITE OPERATIONS LEAD CALL NRE MCP WHALE HOTLINE: 0427 942 537** • **DO NOT ATTEMPT TO MOVE OR RESCURE THE ANIMAL/S WITHOUT FIRST RECEIVING ADVICE AND APPROVAL VIA THE HOTLINE – NRE EXPERTS WILL DIRECT SAFE AND APPROPRIATE FIRST AID PROCEDURES** • Call Research Trial Site Operations Lead • Take photos of animal if possible • Monitoring for additional whales or dolphins offshore • Update the Hotline with any changes to the situation

68. BECRC also committed to minimise the risk of vessel strike through:

    a. wildlife management measures, including reducing speed or stopping when in the vicinity of cetaceans. BECRC stated that the risk of vessel collision with cetaceans is low due to the requirement to adhere to Division 8.1 of Part 8 of the *Environment Protection Biodiversity Conservation Regulations 2000* (Cth) which includes requirements for vessels to maintain slow speeds less than 6 knots within 300 metres of cetaceans and maintain minimum distances from any cetaceans (50 metres for dolphin and 100 metres for whales);

    b. a speed limit of 5 knots for vessels within the trial site, to ensure vessels are able to stop easily and effectively if a cetacean is spotted;

    c. designating a person to monitor for the presence of cetaceans on all vessels operating and during noise generating activities. I noted the commitment to ensure that noise generating activities are to be shut down if a cetacean is observed within 1km of the trial site and not to recommence until all whales have moved more than 1km away from the trial site.

69. The department incorporated the avoidance and mitigation measures specified above into a set of particular manners in accordance with which the proposed decision should be taken. These measures were provided in addition to the particular manners discussed above to protect seabirds. I observed there was some overlap in the particular manners to protect seabirds and whales from risks of entanglement and marine pollution.

70. I considered that, if the avoidance and mitigation measures were implemented, the significant impacts identified at [64] were unlikely. The department incorporated the avoidance and mitigation measures specified above into a set of particular manners in accordance with which the proposed decision should be taken. The 'particular manner', for the purposes of s 77A of the

EPBC Act, that the proposed action was to be undertaken was proposed by the department as that BECRC:

a. ensure no cetacean is injured or killed as a result of the proposed action;

b. ensure that all vessels operate in accordance with Division 8.1 of Part 8 of the EPBC Regulations, do not exceed a speed of 5 knots within the trial site, have an onboard marine fauna observer designated to continuously monitor for the presence of cetaceans during all noise generating activities and shut down all noise generating activities if a cetacean is observed within 1 kilometre of the trial site, and not recommence noise generating activities until all cetaceans have moved more than 1 kilometre away from the trial site;

c. conduct daily inspections at the trial site for cetaceans and implement the response protocol (being the table at [67] above) in the event of cetacean entanglement;

d. ensure the mooring system and all nets used as part of the proposed action meet the requirements of the Norwegian Standard for Floating Aquaculture Farms;

e. ensure all moorings, ropes and lines are always kept taut and conduct daily inspections for damage. If damage is identified, repairs are made as soon as possible, and damaged equipment is secured until repaired;

f. install wildlife exclusion netting at the trial site and ensure all wildlife exclusion netting and jump fences used as part of the proposed action meet the Minimum Requirements for The Mitigation of Seal Interactions with Aquaculture Staff and Infrastructure in Tasmania; and

g. ensure farmed fish are only fed during daylight hours.

71. I agreed with the department that if the proposed action was taken in a particular manner (i.e., in accordance with the above), the impacts to cetaceans was unlikely. As I found with the seabirds, where BECRC had committed to these measures in the Wildlife Management Plan, I believed, and was comfortably satisfied that, BECRC would undertake the proposed action in the particular manner.

Conclusion

72. Having regard to the information before me, and having taken account of the precautionary principle, for the reasons set out above I concluded that the proposed action was not a controlled action if taken in a particular manner. I concluded that, being taken in the particular manner, the proposed action was unlikely to have a significant impact to cetaceans.

Giant Kelp Marine Forests of South East Australia – Endangered

73. Public comments raised the issue that the potential impacts of the proposed action on the Giant Kelp Marine Forests of South East Australia (**Giant Kelp Forest TEC**) were not considered by BECRC in preparing the referral documentation.

74. The MNES Assessment stated that the BEZ has been found to be largely unsuitable for the Giant Kelp Forest TEC based on the sandy substrate and water depths. Benthic surveys also confirmed the lack of presence of the Giant Kelp Forest TEC. The closest area identified as having giant kelp is Black Reef, which the MNES Assessment stated does not meet the criteria of the Giant Kelp

Forest TEC and is approximately 1.1 km to the south of the buffer area and approximately 5 km south of the BEZ. The MNES Assessment stated that the proposed action is not anticipated to result in reduction of the extent of the Giant Kelp Forest TEC.

75. Where the Giant Kelp TEC is not present in the trial site, or the area surrounding the trial site, I agreed with BECRC that the proposed action is unlikely to impact the Giant Kelp Marine Forest of South East Australia.

Other listed species

76. I noted the department's PMST identified the potential presence of additional threatened species or communities within 10 km of the proposed action area. I noted that the likelihood of these species occurring at the trial site was assessed as 'low' by BECRC in the MNES Assessment. Further, based on information available to the department, which included the Species Profile and Threats database, relevant recovery plans and information from the referral documentation, the department considered that significant impacts were unlikely.

77. I accepted the department's view the proposed action was unlikely to have a significant impact on other listed threatened species and communities identified in the PMST.

Listed migratory species (ss 20 and 20A)

78. The department's PMST report indicated that a total of 38 listed migratory species may occur within 10km of the proposed action area.

Seabirds

- Shy Albatross – *Thalassarche cauta* – Endangered; Marine; Migratory
- Black-browed Albatross – *Thalassarche melanophris* – Vulnerable; Marine; Migratory
- Wandering Albatross – *Diomedea exulans* – Vulnerable; Marine; Migratory

79. For the same reasons as those given at [38]-[53] above, I found that the proposed action was not likely to have a significant impact on seabirds if undertaken in the particular manner specified at [51].

Cetaceans

- Southern Right Whale – *Eubalaena australis* – Endangered; Cetacean; Migratory
- Blue Whale – *Balaenoptera musculus* – Endangered; Cetacean; Migratory
- Pygmy Right Whale – *Caperea marginata* – Migratory; Cetacean
- Humpback Whale – *Megaptera novaeangliae* – Migratory; Cetacean

80. For the same reasons as those given at [54]-[72] above, I found that the proposed action was not likely to have a significant impact on the SRW and Blue whale if undertaken in the particular manner specified at [70] above.

81. I had regard to the *Listing advice for the Humpback* which indicates that humpback whales are found in all ocean basins worldwide. Mature Humpback Whales are between 15-18m and can weigh up to 40 tonnes. Within Australian waters there are two such subpopulations; one of which migrates along the east of Australia to breed in the Great Barrier Reef region.

82. The MNES Assessment states that the Pygmy Right Whale (PRW) are circumpolar species found in the southern hemisphere. High numbers of strandings of the PRW suggest regionally

significant populations of these species may be found in the South-east Marine Region, in which the proposed action is located.

83. BECRC stated that the Humpback Whale is likely to be found in the water in and around the trial site and assessed its likelihood of occurrence in the trial site as moderate. A hotspot for the PRW is at Perkins Bay, near the trial site, and BECRC assessed its likelihood of occurrence in the trial site as moderate.

84. I agreed with BECRC that there is the potential for these whales to come into proximity to the trial site throughout the period of the proposed action.

85. The department considered that the potential impacts of the proposed action on the PRW and Humpback Whale were the same as those identified for the SRW and Blue Whale. I also noted that the avoidance and mitigation measures described above for the SRW and Blue Whale were measures proposed for all cetaceans, that is they were to be used for all whale species, not just the SRW and Blue Whale. As such, for the same reasons as those given at [54]-[72] above, I found that the proposed action was not likely to have a significant impact on the PRW and Humpback Whale if undertaken in the particular manner specified at [70] above.

Conclusion

86. For the reasons given above, I found that it was unlikely that there would be any significant impact to migratory species as a result of the proposed action, provided the proposed action was undertaken in accordance with the particular manners set out in my decision notice.

***Commonwealth Marine Environment* (ss 23 and 24A)**

Protected matter description

87. The Commonwealth Marine Area (**CMA**) within the Bass Strait is part of the South-east marine region, an area spanning approximately 1 632 402 km², from the warm temperate waters in the north of the region, through the cool temperate waters around Tasmania, to the subantarctic Southern Ocean waters around Macquarie Island.

88. I had regard to the South-east marine regional profile: A description of the ecosystems, conservation values and uses of the South-east Marine Region, Commonwealth of Australia 2015 (**South-east Marine Region Profile**), which captures information on the conservation values and human activity in the South-east Marine Region. The South-east Marine Region Profile states:

> *While the South-east Marine Region is relatively low in nutrients and primary productivity, localised areas of relatively high productivity, combined with significant variation in water depth and seafloor features, contribute to its recognition as a major marine biogeographic region.*
>
> *Areas of localised high productivity include the Bonney Upwelling in south eastern South Australia, the Bass Strait Water Cascade on the shelf break east of Bass Strait and the flow of the East Australian Current along the eastern edge of the Region.*

89. It also notes that:

a. there are 46 species protected under the EPBC Act that are known or likely to occur in the South-east Marine Region and 94 protected species that may occur in the region;

b. Indigenous occupation of coastal areas adjacent to the region dates back to at least 40 000 years, and Indigenous communities of the South-east Marine Region continue to have a strong cultural and spiritual connection to the ocean, and to use ocean resources for food, traditional purposes and income;

c. the region supports over 20 commercial fisheries, recreational fishing, aquaculture, offshore oil and gas production, shipping transport and port activities.

Environment within and surrounding the proposed action area.

90. The trial site is located entirely outside of Tasmanian territorial waters, within the South-east marine region of the CMA.

91. According to the MNES Assessment, a search of the Underwater Cultural Heritage database on the 2 January 2024 identified two known shipwrecks, the Meteor (ID no. 7501) and the Blythe Star (ID no. 6939). Both shipwrecks are approximately 1.7km from the BEZ, within the 5km buffer area. The referral documentation stated that a search of the Aboriginal Heritage Register did not identify any Aboriginal cultural heritage values within the trial site.

Potential impacts

92. The referral stated that the proposed action may result in potential impacts to the environment in the CMA through the generation of nutrients impacting local water quality, the introduction of pest species from vessel activities and/or aquaculture infrastructure, and through chemicals accumulating in the marine environment.

93. I considered that there was the threat of serious or irreversible environmental damage to the environment in the CMA by these impacts. I also considered that there is a lack of full scientific certainty about given this is the first offshore aquaculture operation proposed in the Bass Strait. As such, I considered and applied the precautionary principle.

94. BECRC considered that the likelihood of these impacts occurring was low because:

a. given the limited number of pens (which would be a maximum of 6 pens and only 2 pens to be stocked with finfish), the low stocking density and the active marine environment (being ocean currents expected to disperse pellets and fish waste over 4.3 ha), the extent of any nutrient enrichment is expected to be highly localised and would not impact local water quality;

b. ocean currents are predicted to help disperse fish wastes (including faeces and uneaten feed), limiting the amount accumulating beneath the aquaculture pen;

c. adequate biosecurity management measures would ensure the likelihood of a pest species being established would be low;

d. there will be no planned discharges of organic chemicals, heavy metals, or other potentially harmful chemicals into the CMA, and the major treatment option for fish species will be fresh water.

95. The referral documentation stated that other potential impacts to the CMA were associated with potential impacts to threatened species and migratory species. I agreed with BECRC that the impacts to marine species and cetaceans were relevant when considering the environment in the CMA, and accordingly, information about the potential impacts of the proposed action on marine species and cetaceans was relevant to, and considered in, my assessment of this controlling provision.

96. While I acknowledged BECRC's assessment that the likelihood of the impacts was low, noting the serious threat to the CMA and that there was scientific uncertainty, I came to the view that, without avoidance and mitigation measures, there was a likelihood of significant impacts to the environment in the CMA through pest species becoming established, nutrient enrichment, and/or chemicals accumulating in the marine environment.

Avoidance and mitigation measures

97. BECRC outlined a range of mitigation measures to reduce the impacts of the proposed action on the environment in the CMA. These measures included measures to mitigate the risk of the impacts identified at [96]. Specifically, BECRC committed to minimising the risk of introducing an invasive species to the CMA through:

a. ensuring all infrastructure is inspected for and deemed clear of invasive species prior to entering the marine environment;

b. operating in accordance with MOS 40 of the *Biosecurity Program – Tasmanian Salmonid Industry* to ensure only healthy fish are stocked at the trial site, with their status signed-off by a biosecurity certifier;

c. inspecting for biofouling every 10-14 days at a minimum, and ensuring nets are cleaned when a high loading of biofouling is present;

d. compliance with the *Australian Ballast Water Management Requirements;* and

e. infrastructure being designed in accordance with the Norwegian Standards and regularly inspected for damage. This would decrease the risk of introducing invasive species, a disease or pathogen and prevent the escape of non-native species.

98. BECRC committed to minimising the risk of chemicals accumulating in the CMA through:

a. ensuring no planned discharges of organic chemicals, heavy metals, or other potentially harmful chemicals into the CMA, and having in place response protocols for any unplanned discharges which were outlined in the Operations Management Plan and included

i) For [fuel and oil] spills less than 100 L:

Contain the spill and prevent any further oil or fuel from escaping to the environment using the spill kits …

If safe or possible to do so, stop the source of the spill. Ensure all actions are recorded accurately

Clean up the spill using absorbent materials …

Contact the site Environment Partner to provide details of the spill …

Clean up used absorbent materials by first placing in hazardous waste bags (located in spill kits) and then disposing of in the appropriate hydrocarbon waste bin at the shore base….

Report and restock. The Research Trial Site Operations Lead is to lodge an incident report and reorder used spill kit materials. Ensure all spill kits that were utilised are returned to a fully stocked state as soon as possible

ii) For [fuel and oil] spills greater than 100 L, in addition to the matters above:

Contain the spill by deploying the PVC containment boom around the entire spill. Whilst that is being retrieved, use the available spill kits (absorbent booms, large kits can be found on feed barges) or any other equipment that may be available: e.g. feed pipe or flexible pipe/hose…

The Principal Investigator BECRC will contact the relevant authorities, and organise for the despatch of the appropriate spill response equipment from the Australia Maritime Safety Authority (AMSA) register/Environmental Protection Authority (EPA)…

The site Environment Partner will manage all logistics and planning regarding the deployment of equipment belonging to external parties

…

Be aware that the major spill response equipment may take up to 4 hours to arrive onsite. This needs to be accounted for when deploying spill response equipment

…

For larger volumes of oil, a surface skimmer will need to be deployed; a specialist vehicle will be engaged to collect and dispose of this waste. The site Environment Partner will help arrange for this service to be onsite when needed. Ensure that all actions and equipment used is recorded

b. fresh water being the major treatment option for fish species; and

c. ensuring that all therapeutants used as part of the proposed action are used in accordance with all applicable regulatory requirements and standards under the *Agricultural and Veterinary Chemical (Control of Use) Act 1995* (Tas), *Veterinary Surgeons Act 1987* (Tas), *Poisons Act 1971* (Tas) and any other relevant State or Commonwealth law governing the prescription and use of agricultural and veterinary medicines.

99. I further noted that BECRC committed to minimise the risk of impacts to water quality from nutrient enrichment through operating in accordance with the *Environmental Standards for Tasmanian Marine Finfish Farming 2023* to ensure no excessive build-up of farmed fish feed and farmed fish faeces beneath and surrounding the pens. They also committed to implementing a

monitoring program, a draft of which was included with the referral documentation and, following the public comments and request for further information, BECRC revised to address matters which were raised, to monitor the impacts of the proposed action on the water quality of the surrounding marine environment.

100. I also noted the department's view, in this context, that if the proposed action complies with the action limits as outlined in the referral, including to farm a maximum of 30,000 fish and not exceed the 3-year timeline for the proposed action, the proposed action would not result in a substantial change in water quality to the environment in the CMA.

101. Further, the conclusions I reached on the avoidance and mitigation measures relating to listed threatened species and migratory species applied equally to my consideration of this controlling provision.

102. I considered that, if the avoidance and mitigation measures were implemented, it would be unlikely that the significant impacts identified at [96] would arise. The department incorporated the avoidance and mitigation measures specified above into a set of particular manners in accordance with which the proposed decision should be taken. The 'particular manner', for the purposes of s 77A of the EPBC Act, that the proposed action was to be undertaken was proposed by the department as that BECRC:

a. must not take the proposed action outside the trial site;

b. must not farm more than a total of 15,000 fish in a pen over the course of the proposed action, and not farm more than two pens as part of the proposed action;

c. must ensure the duration of the proposed action does not exceed 3 years in length from the date of commencement;

d. ensure that all equipment that enters the marine environment is free of invasive organisms before entering the marine environment;

e. operate in accordance with MOS 40 of the Biosecurity Program to ensure no live fish or group of live fish from a land-based facility is moved into the trial site unless a veterinary biosecurity certifier has issued a biosecurity certificate in respect of the fish;

f. ensure that the use of any therapeutants is in accordance with all applicable regulatory requirements and standards under relevant State or Commonwealth laws governing the prescription and use of agricultural and veterinary medicines;

g. ensure that no waste enters the marine environment as a result of the Action, in accordance with the International Convention for the Prevention of Pollution from Ships;

h. operate in accordance with MOS 48 of the Biosecurity Program to ensure any farmed fish mortalities are removed from the marine environment as often as is reasonably practicable;

i. operate in accordance with the Environmental Standards for Tasmanian Marine Finfish Farming to ensure no excessive build-up of farmed fish feed and farmed fish faeces beneath and surrounding the pens;

j. inspect all nets, at a minimum once every 10 to 14 days, to detect biofouling. When a high loading of biofouling is detected, the nets must be cleaned; and

k. manage ballast water in accordance with the Australian Ballast Water Management Requirements.

103. I agreed with the department that if the proposed action was taken in a particular manner (i.e., in accordance with the above), impacts to the CMA are unlikely. Noting these measures were proposed by BECRC and that BECRC had revised the Monitoring Program and created an Operations Management Plan in response to the request for further information, I believed, and was comfortably satisfied that, BECRC would undertake the proposed action in the particular manner.

Conclusion

104. Having regard to the information before me, and having taken account of the precautionary principle, for the reasons set out above I concluded that the proposed action was not a controlled action if taken in a particular manner. I accepted that, if undertaken in the particular manner specified is not likely to have a significant impact on CMA.

Other protected manners that are not controlling provisions

105. I noted that the PMST did not identify, within or adjacent to the proposed action area:

a. any declared World Heritage properties;

b. any National Heritage places;

c. any declared Ramsar listed wetlands of international importance;

d. the Great Barrier Reef Marine Park.

106. Further, I considered that the proposed action:

a. clearly does not meet the definition of a 'nuclear action';

b. is not a unconventional gas development and large coal mining development;

c. is not being taken on Commonwealth Land;

d. is located in Australia, not overseas; and

e. is not being undertaken by a Commonwealth agency.

107. In light of the above, and noting the department's views that the proposed action was unlikely to have a significant impact on any other MNES, I agreed with the department that the remaining controlling provisions were not controlling provisions for the proposed action.

Reasons for decision

108. For the reasons given above, I was satisfied that the proposed action is not likely to have a significant impact on any matter protected by Part 3 of the EPBC Act, if it is taken in the manner provided in the decision notice. I therefore decided on 29 November 2024 that the proposed action is not a controlled action – if undertaken in a particular manner.

name and position	Rachel Short Branch Head Environment Assessments (Vic and Tas) and Post Approvals Branch
signature	
date of decision	**Date:** 30 January 2025

Annexure A - Legislation

Section 68 of the EPBC Act relevantly provides:

109. A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

110. A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

Section 74 of the EPBC Act relevantly provides:

Inviting other Commonwealth Ministers to provide information

1) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must:

    a. inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and

    b. invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.

Inviting comments from appropriate State or Territory Minister

111. As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must, if he or she thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance):

    a. inform the appropriate Minister of the State or Territory; and

    b. invite that Minister to give the Environment Minister within 10 business days:

        i. comments on whether the proposed action is a controlled action; and

        ii. information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

Inviting public comment

112. As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the Internet:

    a. the referral; and

    b. an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

Section 75 of the EPBC Act relevantly provides:

Is the action a controlled action?

1) The Minister must decide:

    c. whether the action that is the subject of a proposal referred to the Minister is a controlled action; and

    d. which provisions of Part 3 (if any) are controlling provisions for the action.

(1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

(1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:

a) in response to the invitation under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and

    e. within the period specified in the invitation.

Considerations in decision

113. If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:

    a. the Minister must consider all adverse impacts (if any) the action:

        i. has or will have; or

        ii. is likely to have; on the matter protected by each provision of Part 3; and

    b. must not consider any beneficial impacts the action:

        i. has or will have; or

        ii. is likely to have; on the matter protected by each provision of Part 3.

Timing of decision and designation

114. The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.

Section 77A relevantly provides:

1) If, in deciding whether the action is a controlled action or not, the Minister has made a decision (the component decision) that a particular provision of Part 3 is not a controlling provision for the action because the Minister believes it will be taken in a particular manner, the notice, to be provided under section 77, must set out the component decision, identifying the provision and the manner.

(1A) For the purposes of subsection (1), it does not matter whether or not the Minister believes that the action will be taken in accordance with:

a. an accredited management arrangement or an accredited authorisation process for the purposes of a declaration under section 33; or

b. a bioregional plan to which a declaration made under section 37A relates; or

c. a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of a bilateral agreement.

Annexure B – Materials Considered

A: **Referral documentation**

A1: 2024-09946 Referral

A2: Att 1 - Ext project description

A3: Att 2 - MOU - Cth & Tas

A4: Att 3 - Fishing data

A5: Att 4 - MNES assessment

A6: Att 5 - BEZ baseline survey 2022

A7: Att 6 - Marine enviro assessment

A8: Att 7 - Wildlife MP

A9: Att 8 - Biosecurity MP

A10: Att 9 - Waste MP

A11: Att 10 - Monitoring program

B: **Other information used for recommendations**

B1: 2024-09446 - PMST Report 10km - 25 October 2024

B2: Conservation Management Plan for the Blue Whale

B3: National Recovery Plan for the Southern Right Whale

B4: National Recovery Plan for Albatross and Petrels

B5: South-east Marine Region Profile

B6: Information from the PPTA regarding commercial aquaculture pen density

B7: Listing advice for the Humpback Whale

B8: Norwegian Standards NS9415:2021

B9: Minimum Requirements 2018A for the Mitigation of Seal Interactions

B10: Biosecurity Program Tasmanian Salmonid Industry

B11: Environmental Standards for Tasmanian Marine Finfish Farming 2023

B12: Australian Ballast Water Management Requirements

C: **Public comments**

C1: 2024-09946 - All Public Comments

C2: 2024-09946 - All Public Comments - Summary

C3: 2024-09946 - Comment #14 attachment

C4: 2024-09946 - Comment #19 attachment

C5: 2024-09946 – Comment #20 attachment

C6: 2024-09946 - Comment #22 attachment

C7: 2024-09946 – Comment #38 attachment

D: **Ministerial comments**

D1: 2024-00946 - NIAA comment - 9 September 2024

D2: 2024-00946 - DAFF comment- 17 September 2024

D3: 2024-00946 - Tas EPA comment - 5 September 2024

E: **Decision notice**

F: **Letters to the PPTA and Ministers**

F1: Letter to PPTA

F2: Letter to Minister for Indigenous Australians

F3: Letter to Minister for Agriculture, Fisheries and Forestry

F4: Letter to EPA Tasmania

G: **Correspondence in relation to proposed particular manners**

G1: Conditions team feedback on proposed particular manners

G2: PPTA response to draft decision notice - 28 October 2024

G3: PPTA consent to proposed particular manners

H: **Request for additional information & suspension of timeframe**

H1: 2024-09946 - Request for additional information - Letter to PPTA - 19 September 2024

H2: 2024-09946 - RFI response - Email from PPTA - 4 October 2024

H2.1: 2024-09946 - RFI response - 4 October 2024 - Attachment - Final Response

H2.2: 2024-09946 - RFI response - 4 October 2024 - Attachment - Monitoring Program revised

H2.3: 2024-09946 - RFI response - 4 October 2024 - Attachment - Operations MP new

H2.4: 2024-09946 - RFI response - 4 October 2024 - Attachment - Response to Commonwealth Questions on Currents and Monitoring-Sept 2024

H3: 2024-09946 – Suspension of timeframe – Decision notice – 11 October 2024

H4: 2024-09946 – Suspension of timeframe – PPTA consent – 11 October 2024

H5: 2024-09946 – Suspension of timeframe – Letter to PPTA – 11 October 2024

H6: 2024-09946 – Suspension of timeframe – Decision notice – 1 November 2024

H7: 2024-09946 – Suspension of timeframe – PPTA consent – 1 November 2024

H8: 2024-09946 – Suspension of timeframe – Letter to PPTA – 1 November 2024