Submission No 214

INQUIRY INTO LONG TERM SUSTAINABILITY AND FUTURE OF THE TIMBER AND FOREST PRODUCTS INDUSTRY

Organisation: South East Forest Rescue

Date Received: 8 June 2021

SOUTH EAST FOREST RESCUE

PO BOX 644, Bega, NSW, 2550
sefr@fastmail.fm

Portfolio Committee No 4
NSW Parliamentary Inquiry
Parliament of NSW

By Email & Online: portfoliocommittee4@parliament.nsw.gov.au

Dear Committee,

South East Forest Rescue takes a firm stand on environmental protection of the native forest estate and expresses deep alarm at the welfare of forest-dependent threatened species and the cumulative impacts of industrial degradation of native forests that are exacerbating extinction rates and destroying soil, water, and carbon capacity.

We welcome the opportunity to comment on the question of whether there is any sustainability and future of native forest logging and woodchipping on the south coat of NSW. In our view, there is not, nor has the Forestry Corporation been able to provide any real and proper data or evidence to the contrary.

In the 2019/20 Black Summer bushfires over 1.5 million hectares of forest in the Eden and Southern regions were burned. Professor David Lindenmayer from the Australian National University has said the fires should be used as a trigger to transition away from logging and woodchipping.[1]

The various exemptions to environmental legislation shield and enable this woodchipping and logging. Logging/woodchipping native forests is one of the greatest threats to the forests of the world, and one of the greatest contributors to climate change. The protection of our native forests is of urgent national and international importance in these times of global climate crisis. The native forests of the south east cannot afford any more exemptions and are in urgent need of protection.

[1] Katie Burgess, 'Fire Hit Timber Towns Should Become Carbon Sinks' Canberra Times (online) 16 January 2020 <https://www.canberratimes.com.au/story/6581827/fire-hit-timber-towns-should-become-carbon-sinks-expert/>; see also Lindenmayer et al, 'Recent Australian Wildfires Made Worse by Logging and Associated Forest Management' (2020) 4(7) *Nature Ecology and Evolution* 898.

SUBMISSION TO THE INQUIRY INTO LONG TERM SUSTAINABILITY AND FUTURE OF THE TIMBER AND FOREST PRODUCTS INDUSTRY

SOUTH EAST FOREST RESCUE

June 2021

Contents

Summary of SEFR's Findings

The Regional Forest Agreements ('RFAs') have not ensured sustainability. The RFA's have never delivered ecologically sustainable forest management ('ESFM'). The RFA legislative regime has in fact ensured unsustainability. The Commonwealth proposal to further exempt RFA areas from the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act') is not only irresponsible governance but shows complete lack of willingness to abide by Kyoto Protocols.

On the South Coast of New South Wales thousands of hectares of native forests are being clear-felled every year. The Forestry Corporation of NSW ('FCNSW') is the State sanctioned agency who is responsible. FCNSW descriptions for these activities vary from 'Single Tree Selection - Heavy' to 'Australian Group Selection' to 'Modified Shelter Wood', yet they are all synonymous with and amount to clear-felling or patch clear-felling on the ground. Old-growth, rainforest and mature age forests are being logged at an unsustainable rate. 85% of trees felled are turned into woodchips, either at the Eden woodchip mill or at the various sawmills on the South Coast and then trucked down to the woodchip mill.

The FCNSW have continuously logged over ecologically sustainable limits since the implementation of the RFAs. To meet wood supply commitments, native forest is being cut faster than it is growing back.[2] Most native forest was destroyed in the 19/20 bushfires. The patches of unburnt forest are the only refuge for species. FCNSW are logging this forest.

The RFAs allowed the various woodchipping and logging groups to continue business as usual without any proper oversight or regulation. Logging activities in many areas covered by RFAs have not been subject to an independent environmental assessment that is scientifically sound and rigorous. The scientific processes in the RFAs were politically compromised. Established Joint ANZECC/Ministerial Council on Forestry Fisheries and Aquaculture NFPS Implementation Subcommittee ('JANIS') criteria for forest conservation were not fully applied. There are large areas of native forest that would have been reserved if the original RFA criteria for forest conservation had been fully applied, particularly in the Southern region. The Comprehensive Assessment Report ('CAR') stated that all but 51 hectares of the state forest area of the Southern sub-region were required to be set aside and protected from logging.[3]

The damage to state forests is systematic and routine and the law is disregarded. There has been damage to and destruction of matters of national environmental significance ('NES') and many areas that were dedicated as part of the CAR reserve system have been destroyed. There have only been 4 prosecutions in 20 years on the South Coast. This is despite massive environmental damage, and thousands of breaches of the law and licence conditions. The Forestry Corporation have consistently failed to fulfil their requirements.

However, the various RFA's exemptions shield the woodchipping and logging groups from every piece of environmentally protective law that the rest of Australia's citizens must abide by, and from citizens taking FCNSW and their authorised contractors to court.

[2] NSW Auditor-General, Report to Parliament, Performance Audit 'Sustaining Native Forest Operations' (2009).
[3] Nature Conservation Council RFA Submission No 2000; New South Wales, *National Park Estate (Southern Reservations) Bill 2000 Second Reading*, Legislative Assembly, Parliament Hansard, 6 December 2000, (Evans); *Nationally Agreed Criteria for the Establishment of a CAR Reserve System for Forests in Australia*, Report by the Joint ANZECC/MCFFA National Forest Policy Statement Implementation Sub-Committee, 1997.

After the 19/20 bushfires the EPA engaged an independent expert review and assessment of logging and site-specific operating conditions ('SSOCs'), known as the Smith Report. The Smith Report has concluded that:

> the normal CIFOA [Coastal Integrated Forestry Operations Approval] in the context of the 2019/20 wildfires will not deliver ecologically sustainable management as required under the objectives of the Forestry Act 2012 and is likely to cause a significant impact under the NSW Biodiversity Conservation Act 2016 and the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999.[4]

Under the SSOC's compartments in Yambulla and Mogo SF were logged. However, FCNSW walked away from negotiations with the EPA and have begun logging burnt forest with a business as usual approach. Nadgee SF Cpt 95A was the first in mid March followed by Yambulla Cpt 303A, Mogo and Yambulla 301A. According to the FCNSW plan portal 11 compartments in Yambulla have been or are being logged.

The RFA Review Process Was a Fraud

The basis of the RFA exemptions were that the areas had comprehensive environmental impact assessment ('EIA'), but many areas on the south coast have never had a proper EIA.

The extent to which milestones and obligations have remained uncompleted, the lack of results of monitoring of sustainability indicators, and the Forestry Corporation's lack of adherence to the legislation is disingenuous and exceedingly below satisfactory. The Forestry Corporation's 'implementation' of the RFAs in meeting specific milestones has been an abject failure, consistently late, and professionally inadequate. Despite this the RFA's were rolled over indefinitely.

The number of threatened species has risen dramatically since the RFA's started. Despite being listed on the Commonwealth list, and the NSW list, many species are not covered under the RFAs.

The present system of RFA forest management is uneconomical as the supposed 'income' is generated by the depletion of capital assets. The only economic benefits of logging and woodchipping is to the woodchip mill and a very small number of logging contractors.

Even without the bushfires FCNSW have been operating at million-dollar losses for many years. The Forestry Corporation NSW suffers losses of between $11 – $16 million dollars per year and FCNSW are again obfuscating the losses by conglomerating plantation and native forest figures despite the Auditor General's direction. In our view, it is only the 'Community Service Grant' that enables FCNSW to say it has made a profit in the native forest sector.

> I can only see this loss increasing as Forestry Corporation NSW continues to look for new sources of hardwood timber and the costs of harvest and haulage increase. This will be very difficult to manage.[5]

These vast financial losses cannot be justified, nor can the huge amount of greenhouse gas emissions. Of note, climate change is glaringly absent from any document except for being a subject of further research: Eden RFA Att 6(1).

[4] Andrew P Smith, *Review of CIFOA Mitigation Conditions for Timber Harvesting in Burnt Landscapes* (2020) [9].

[5] NSW Auditor-General, Media Release, Auditor-General's Report, Sustaining Native Forest Operations, 29/4/2009.

There are only approximately 53 jobs in question – the on-ground logging workers. The sawmills can and have transferred to plantation only, as can the woodchip mill. The truck drivers can easily be redeployed. The total jobs in question are approximately 150.

The National Park additions to date, including the recent NSW Riverina Red Gums decision are a progressive step, even though the Liberal National government opened the park to firewood collection. It must be noted that the benchmark was set by New Zealand in 2002, and Australia has been tardy and negligent in its attempts at meeting this world standard.

On the south coast loggers who received exit packages from the Federal Government to exit native forest logging in Tasmania (Wilson, Kasun) in 2011 have been logging and living in NSW since January 2010. It is likely that their relocation of machines, utes and accommodation was paid for by the Forestry Corporation.

For all of the above reasons in our view:

- The RFA regime has not and is not working. RFA's can never and have never delivered sustainable logging.
- Current State management of the native forest estate has gone beyond its scope as the public caretaker and has broken its pact with the community.
- The Forestry Corporation and its authorised contractors should be subject the same legislative requirements as the rest of all citizens of the State, and indeed Australia.
- There should be an immediate enactment of cl 8 of the RFAs, for which the grounds have been triggered, giving effect to ending the RFAs as the mode of native forest mismanagement.

South East Forest Rescue calls for:

1. complete transfer of native wood product reliance to the plantation timber industry and salvage recycled hardwood timber industry.
2. an immediate nation-wide program of catchment remediation, restoration, and native habitat re-afforestation; and
3. until that time, a removal of exemptions to environmentally protective legislation requirements for all Forestry Corporation NSW activities.

We assert that urgency is needed in this forest reform. In our view, the RFA experiment has failed.

Gnupa SF – 4 trees per 2 hectares. "Gnupa was a mistake": FCNSW

Introduction

These representations are the result of monitoring and auditing of the ongoing activities of native forestry logging and woodchipping groups since the *Forestry and National Park Estate Act 1998* was voted through the NSW Legislative Council by the Labor and Coalition governments. That evening in November 1998 marked the point where the community lost the right to affect what happened to its native forest environment.

The conclusions are based on extensive research and on-ground examination of the implementation or, more accurately, non-implementation of the RFAs, Forest Agreements, and Integrated Forestry Operations Approvals ('IFOAs') on unprotected native forest mainly in the Southern and Eden regions, but also the whole of New South Wales, Victoria, and Tasmania since the year 2000.

We use the term logging, as the greenwash word 'harvesting' connotes nurturing planting and watering, none of which are done by FCNSW in native state forests of NSW. State forests are logged, and the debris of tree heads bark and roots are left on the forest floor. Then the whole logs are trucked to the woodchip mill in Eden.

Native forests on the south coast are logged primarily for woodchips (called pulp by the logging/woodchipping groups). Any claim that FCNSW will or are using is waste is erroneous. It must be remembered that a 'pulp log' by its very definition must be waste because the use of mechanical harvesters creates woodchip/pulp logs.[6]

Brief Historical Background

The RFAs are widely perceived in the scientific community to have failed to deliver the intended protection for environmental, wilderness and heritage values that state and federal governments committed to when they signed the National Forest Policy in 1992.[7]

History of the Eden Woodchip Mill

On 14 November 1967 NSW Premier Robert Askin announced that Harris-Daishowa would construct an export woodchip mill at Twofold Bay near Eden. Harris-Daishowa Pty Ltd was incorporated in New South Wales on 20 December 1967. It commenced business as a producer and exporter of wood chips in 1969. Its ultimate holding company was Daishowa Paper Manufacturing Co. Ltd., a company incorporated in Japan. Its business activities were directed solely to extracting whole logs from the forest and exporting the wood chips to Japan. Exports started in 1971.

The original process of approving the tender of the woodchip factory in 1967 was conducted by the Askin Government's Jack Beale MP who it was rumoured was closely related to the co-owner/Managing Director Ron Harris. He granted a 20 year wood supply agreement to the joint venture between Daishowa Paper Manufacturing Co (49%) and Harris Holdings Pty Ltd (51%).

Steady losses throughout the mid to late 1990s, combined with a series of corporate scandals, shook the company to its foundation, and in 2001 Daishowa found itself in financial peril. Plagued by significant debt, rising production costs, and increased competition, Daishowa Paper becomes a wholly owned

[6] M J Connell, *Log Presentation: Log Damage Arising from Mechanical Harvesting or Processing*, Prepared for the Forest and Wood Products Research and Development Corporation, Project no: PN02.1309, CSIRO Forestry (2003).

[7] S Bekessy et al, 'Statement from Concerned Scientists: Statement of Support for Change on Tasmania's Forests' (2004) Protecting Forests, Growing Jobs, Hobart, The Wilderness Society, 601.

subsidiary of Nippon Unipac Holding, a joint company formed with Nippon Paper Industries. The woodchip mill had a name change to South East Fibre Exports ('SEFE') in 2003. The company was 'sold' in 2015 and had another name change to Allied Natural Wood Exports ('ANWE'). The latest name change this year is to Allied Natural Wood Enterprises.

The Beginning of the End

In our view, the RFA process, which began in 1996, constituted the beginning of the abandonment by the government of its responsibilities for native forests. Under section 38 of the *Environment Protection Conservation and Biodiversity Act 1999* (Cth) ('EPBCA') the Commonwealth undertook to refrain from exercising its environmental legislative powers for the duration of the Agreements (until 2023 if no extensions are granted). Of course, those RFAs have been extended despite all scientific evidence pointing to the contrary.

RFAs were endorsed by the Commonwealth on the basis that the States had conducted a thorough environmental assessment of their forests. However, reviews of the data used for the Comprehensive Regional Assessments ('CRAs') reveals the data was either flawed, hastily cobbled together, or non-existent. Areas that fell under these RFAs were made exempt from the EPBC Act on the basis that environmental assessments had already been undertaken and that environmental considerations were contained in the RFAs. However, many areas did not have EIAs undertaken.

Further, the RFA 'negotiations' were flawed. Scientists became increasingly concerned when a political decision was made to further modify the RFA measures so that scientifically-based criteria were no longer independently applied as a first step in establishing an 'ecological bottom line'. This was a crucial decision as it was very unlikely that any RFA would deliver ecologically sustainable development ('ESD'), as the modified criteria allowed ecological values to be traded off against economic values.[8]

The principles of ESD are now widely accepted after their introduction in 1992 through the signing of the Rio Declaration: the *Convention on Biological Diversity*.[9] Commonwealth, State and Local governments became bound by the *Intergovernmental Agreement on the Environment 1992,* which contains the ratified principles.[10] These principles are being systematically ignored by the Forestry Corporation NSW.

The RFA 'negotiations' were also flawed from a conflict dispute resolution perspective. When the level of compromise is not active, if the negotiations satisfy processes not outcomes, if the relevant stakeholders have not been identified accurately, if the stakeholders do not have authorisation to speak on behalf of others or make decisions, and if the parties do not come to the table in good faith then the process is flawed.[11] This was the case with the original RFA process.

The RFA process was a political attempt to quash conflict, and as the process progressed it became apparent that the government had not come to the table in good faith, therefore the process was doomed

[8] B Mackey, 'Regional Forest Agreements - Business as Usual in the Southern Region' (1999) 43 *National Parks Journal* 6.
[9] Rio Declaration, *Convention on Biological Diversity,* Rio de Janeiro 5 June 1992, [1993] ATS No 32 (entry into force for Australia: 29 December 1993).
[10] *National Environment Protection Council (New South Wales) Act 1995* (NSW) Sch 1.
[11] L Susskind, A Weinstein, 'Towards a Theory of Environmental Dispute Resolution' (1980) 9 *Environmental Affairs* 311.

to fail. Environmentalist's energies were diffused through the myriad different committees and processes, plus associated travel burdens, and were often confounded by a lack of relevant data to make proper and frank assessments. This 'settlement' process bypassed the regulatory process in which the public interest, not represented by private parties, could be aired.

Environmental issues have a strong moral dimension. Environmental destruction and pollution is seen as immoral and unethical. Some mediation theories suggest that environmentalists should abandon their moral judgments and principles and acknowledge that the position of industrial polluters is as legitimate as their own.[12] However, the assumption that business and environmental interests are fundamentally compatible is generally erroneous. In denying there are any serious moral issues involved in the forestry dispute, the mediation of the dispute, involving moral principles or values, promotes a moral irresponsibility.[13]

> …as between black and white, grey may sometimes seem an acceptable compromise, but there are circumstances in which it is entitled to work hard towards keeping things black and white.[14]

The process was presented as negotiation, but the outcomes were finally determined and announced by the Government, with the multinational Harris Diashowa (now South East Fibre Exports/Allied Natural Wood Exports) coming out the clear winner.

The original Integrated Forestry Operations Approvals ('IFOAs') which contain the licence conditions were signed by Eddie Obeid, and six contracts were signed by Ian McDonald. These contracts enabled the carte blanche logging of native forests on the south coast for 20 years. When FCNSW became a state owned corporation ('SOC') the first commissioner for the Forestry Corporation was Richard Sheldrake, who was directly implicated in the Obeid scandal.

Regarding the recent 'review' process, in an email to conservation groups before the review process the NSW Government stated that 'RFAs will continue as a critical framework … and that the RFA regions and objectives will remain the same'. In the meeting it was stated that the RFAs were to be rolled over regardless. The authors were informed in mid February 2018, that in November 2017 the Federal and NSW Governments agreed to roll over the RFAs.

The outcome of that 'review' had already been decided based on little or no empirical data, making the 'consultation' meetings a charade, and absolutely disingenuous. In our view, this is yet again allowing business as usual for the Forestry Corporation.

Is it a piece of legislation's fault that it has not been implemented – no? However, the legislative regime flawed from the beginning permitted this state of affairs. With exemptions from every piece of protective environmental legislation and inability for citizens to bring action the Forestry Corporation NSW, ANWE and their authorised contractors are the only citizens and corporation that cannot be brought before a court.

[12] D Amy, 'Environmental Dispute Resolution: The Promise and the Pitfalls' in N J Vigg and M E Craft, *Environmental Policy in the 1990s: Towards a New Agenda* (CQ Press, 1990).
[13] B Preston, 'Limits of Environmental Dispute Mechanisms' (1995) 13 *Australian Bar Review* 158; citing D Amy, *The Politics of Environmental Mediation* (Columbia University Press, New York, 1980) 163–87.
[14] Ibid, citing L Fuller, 'Mediation – Its Forms and Functions' (1971) 305 *Southern California Law Review* 328.

Many Areas Have Had No Environmental Impact Assessment

In NSW any activity that will have an impact on the environment generally requires a proponent to undertake an environmental impact assessment ('EIA') as required by either the *Environmental Planning and Assessment Act 1979* (NSW) ('EPA Act'), or the *Environmental Planning and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act'). For a brief period, the Forestry Corporation, was required to undertake EIA.

The EPA Act was strengthened and amended in late 1991 by the *Endangered Fauna (Interim Protection) Act 1991* ('EFIP Act').[15]

However, 3 months later in 1992 the *Timber Industry (Interim Protection) Act 1992* (NSW) ('TIIP Act'), while extending a moratorium on many forests until proper EIA had been conducted, also exempted FCNSW from the EFIP Act.[16]

The TIIP Act suspended the application of Part 5 of the EPA Act in respect of logging activities being carried out in specified forests, and in particular exempted FCNSW from EPA Act ss 111 and 112, though it was still required to produce Fauna Impact Statements ('FIS').[17] In May 1994 the TIIP was amended to extend to the Eden area, however FCNSW discontinued much of its surveying even though this was required as preparation for the development of a FIS.[18] The *Threatened Species Conservation Act* was enacted in late 1995.[19]

The FNPE Act was enacted in 1998, and the RFAs were rolled out. With the enactment of the FNPE Act the TIIP Act was repealed and FCNSW were not required to produce FIS or EIA. Thus, FCNSW were already exempt from any assessment in IFOA areas by the time the EPBC Act was enacted. Therefore, despite FCNSW fabrications, many forests have had no proper EIA.

The FNPE Act has now been overtaken by the *Forestry Act 2012*, which continues to exempt to FCNSW from having to undertake any assessment on the impact logging will have on the areas.[20] Section 40, now 69ZA, was brought across unchanged.

NSW: Southern and Eden Region EIA

On the South Coast of NSW, RFAs were negotiated without minimum standards for environmental impact assessment or public participation.[21] It is erroneously stated by FCNSW that under the Southern RFA, signed by the Commonwealth and NSW Governments in 2001, that the whole of the South Coast area state forests were 'not required to meet the regional reservation targets' and accordingly 'the remaining area of state forest is available for harvesting'.[22] The 1998 Senate Inquiry stated 'a comprehensive assessment to address the environmental, economic and social impacts of forestry

[15] *Endangered Fauna (Interim Protection) Act 1991* (NSW) assented to 17 December 1991.
[16] *Timber Industry (Interim Protection) Act 1992* (NSW) assented to 12 March 1992.
[17] See *South East Forests Conservation Council Incorporated v Director-General National Parks & Wildlife Service* (1993) 81 LGERA 288.
[18] *Timber Industry (Interim Protection) Amendment Act 1994* (NSW) assented to 16 May 1994.
[19] *Threatened Species Conservation Act 1995* (NSW) assented to 22 December 1995
[20] *Forestry Act 2012* (NSW) s 69W.
[21] Environmental Defender's Office NSW, Submission No 15, Senate Environment, Communications, Information Technology and the Arts Committees, *Environment Protection and Biodiversity Conservation Bill 1998 and Environmental Reform (Consequential Provisions) Bill 1998* (1998).
[22] Letter, Nick Roberts CEO Forests NSW to Dan Nikolin, DSEWPC, 13/05/2011.

operations is undertaken in each RFA region prior to the completion of an RFA'.[23]

The regulation defining the Agreements requires that the RFA be: an agreement between the Commonwealth and a State, in respect of a region or regions, that: (a) identifies areas in the region or regions that the parties believe are required for the purposes of a comprehensive, adequate and representative national reserve system, and provides for the conservation of those areas; and (b) provides for the ecologically sustainable management and use of forested areas in the region or regions; and (c) is expressed to be for the purpose of providing long-term stability of forests and forest industries.

It is now quite clear that the committee was wrong. The Comprehensive Assessment Report, showing what was required to be conserved to meet the Joint ANZECC/Ministerial Council on Forestry Fisheries and Agriculture National Forest Policy Statement Implementation Subcommittee ("JANIS") criteria, stated that all but 51 hectares of the state forest area of the Southern sub-region were required to be set aside and protected from logging.[24] The State and Commonwealth governments ignored this report.

The 'comprehensive environmental assessment' for the Southern sub-region consisted of two environmental impact assessments covering Wandella/Dampier and Badja/Quenbeyan.[25] As there are 24 state forests in the Southern sub-region, and there seems to have been no other EIA undertaken, it would be remiss to classify that as comprehensive.

The Eden region was subject to an EIA however the critique at the time was less than positive, the main argument being that the assessment was inadequate. The criticisms at the time mirrored common criticism of forestry EIA in that it failed to address environmental impacts adequately, there was a lack of data and scientific research on the impacts of logging to species and ecosystems of the area, and is underscored by parallel criticisms of the fauna impact statement:

> I am obliged to note that, in my opinion, the Eden FIS is an appallingly inadequate document, even by Commission standards. It suggests they do not take the Act (and the conservation of endangered fauna) very seriously.[26]

While EIA processes were quickly adopted by many countries and Australia was no exception,[27]

---

[23] Senate Environment, Communications, Information Technology and the Arts Committees, *Environment Protection and Biodiversity Conservation Bill 1998 and Environmental Reform (Consequential Provisions) Bill 1998*, Ch 6 Protecting the Environment.

[24] Nature Conservation Council RFA Submission No 2000; New South Wales, *National Park Estate (Southern Reservations) Bill 2000 Second Reading*, Legislative Assembly, Parliament Hansard, 6 December 2000, (Evans); *Nationally Agreed Criteria for the Establishment of a CAR Reserve System for Forests in Australia*, A Report by the Joint ANZECC/MCFFA National Forest Policy Statement Implementation Sub-committee, 1997.

[25] *Proposed Foothills Logging Operations Wandella-Dampier, Narooma District*, Environmental Impact Statement, Forestry Commission of New South Wales, April 1983; *Proposed Forestry Operations in the Queanbeyan and Badja Management Areas*, Environmental Impact Statement, State Forests NSW, 1995.

[26] David Papps, Deputy Director (Policy and Wildlife) National Parks and Wildlife Service, 1997 in *South East Forests Conservation Council Incorporated v Director-General National Parks and Wildlife Service* [1993] NSWLEC 194.

[27] Andrew Macintosh, 'The Australian Government's Environmental Impact Assessment (EIA) Regime: Using Surveys to Identify Proponent Views on Cost-effectiveness' (2010) 28(3) *Impact Assessment and Project Appraisal* 175.

FCNSW were less than enthusiastic.[28] The EIA theory at the time suggested the purpose of EIA is: To ensure, to the greatest extent that is practicable, that matters affecting the environment to a significant extent are fully examined and taken into account.[29]

If assumptions are correct this could give some understanding on why state-run agencies were opposed to EIA. If due process was or is followed, the impacts caused by logging on species and ecosystems would have to be fully examined. This was the case in the Redgums, where FCNSW forgot they needed to undertake EIA.

Mechanical logging has become the norm in the Eden and Southern regions, there has been no assessment of this form of logging. In the *Redgums* case DSEWPC provided that this type of logging 'constitutes an intensification of use and its environmental impacts, if any, require assessment and approval'.[30]

The closest to an EIA can be found in the ESFM plan for the Southern Region, it provides:

> Forests NSW has completed an 'Aspects and Impacts' analysis of forestry operations and determined those operations having the greatest potential for environmental impacts to comprise: Timber harvesting involving tree felling, log extraction and log haulage; Road construction and maintenance, particularly drainage feature crossings and side cuts on steep side slopes; Fire management including fuel hazard reduction burning, particularly in ecologically sensitive habitats and streamside buffers: these operations require in-depth planning, supervision and monitoring.[31]

The Hawke report provides that 'rather than being an exemption from the Act, the establishment of RFAs … actually constitutes a form of assessment and approval for the purposes of the Act'.[32]

The conditions which are required for RFAs have not been met. There is significant on-ground, historical and contemporaneous evidence available to demonstrate this. It is a myth that illegal logging only takes place in countries other than Australia. Auditing of recently logged native forest areas are certain to find instances of logging which does not comply with the legislated obligations FCNSW and its logging contractors must adhere to. We are of the firm belief, and have amassed substantial supporting evidence to show, that the forestry operations undertaken on the South Coast do not conform to RFA requirements.

The various governments have not ensured the adoption of ESFM practices, environmental safeguards

---

[28] See for example *Jarasius v Forestry Commission of New South Wales & Ors* [1988] NSWLEC 11; *J Corkill v Forestry Commission of NSW* [1990] NSWLEC 129; *T R Bailey v The Forestry Commission of New South Wales* [1989] NSWLEC 24; *In The Matter of the Appeal of Giselle Marie Thomas*[1991] NSWDC 90/52/0165; *Jeffrey Nicholls v Director General National Parks and Wildlife Service and Forestry Commission of New South Wales and Minister for Planning* [1994] NSWLEC 155; Green Left Weekly 'Forests Logged Without EIS' (1994) <http://www.greenleft.org.au/node/6890>; *Upper Hunter Timbers Pty Ltd v Forestry Commission of New South Wales* [2001] NSWCA 64.

[29] *Environment Protection (Impact of Proposals) Act 1974*(Cth); *Kivi v Forestry Commission* [1982] NSWLEC; see Stephen Jay, Carys Jones, Paul Slinn, Christopher Wood, 'Environmental Impact Assessment: Retrospect and prospect' (2007) 27 *Environmental Impact Assessment Review* 287.

[30] Rose Webb DSEWPC, letter to Nick Roberts Forests NSW, 01/05/2009.

[31] Forests NSW ESFM Plan, Southern Region (2005), 53.

[32] *Final Report on Progress with Implementation of NSW Regional Forest Agreements: Report of Independent Assessor*, November 2009.

have not improved and continued white-anting of OEH/EPA has not ensured the maintenance of existing regulatory controls.

Merely having an RFA in place cannot be considered a form of assessment, particularly if no EIA has been undertaken. In our view, proper assessment of each activity is required and if there are matters of NES then this should trigger EPBC Act assessment just as every other Australian company and citizen are required to undertake.

Breaches of the IFOA/CIFOA

SEFR has been auditing forestry operations on the South Coast for nearly 20 years. During this time, we have never found a forestry operation that is fully compliant with the IFOA/CIFOA, all operations have varying degrees of non-compliance with these prescriptions. SEFR has a long history of submitting breach reports to the EPA and several other previous departments responsible for forestry compliance with the vast majority of our reported breaches being confirmed. Our breach reports concerning operations in Glenbog State Forest compartments 2329, 2330 and 2335 finally resulted in the EPA prosecuting FCNSW in the Land and Environment Court for rock outcrop breaches.

Many prescriptions have been the subject of systemic non-compliance over the years by FCNSW in all forestry regions. In every compartment audited we always find breaches relating to hollow bearing (H tree) and recruitment trees (R tree). The IFOA specifies minimum retention rates for H and R trees. These retention rates are routinely breached, either in parts of the logging area or across the whole operation.

Along with quantity breaches there are quality breaches. The previous IFOA also specified quality requirements for H and R trees like good crown, minimal but damage and to not be suppressed. These requirements were regularly breached by FCNSW in the marking up of compartments. Also routinely breached are conditions regarding the protection of retained trees namely allowing debris to accumulate more than 1m high within 5m of a retained tree along with retained trees being damaged during the logging of nearby trees.

The remake of the IFOA's which resulted in the current CIFOA was not meant to weaken environmental protections and to strengthen the enforceability of the above prescriptions, but this has been an abject failure with the most extreme example being the complete gutting of the old rock outcrop prescription 5.11.

Rocky outcrop case study

Rocky outcrops contain likely habitat for threatened flora and fauna. The IFOA-TSL, list several threatened flora and fauna species that use rocky outcrops in the Eden region. Species include Brush-tailed Rock Wallaby (*Petrogale penicillata*), Spotted-tailed Quoll (*Dasyurus maculates*), Eastern Cave Bat (*Vespadelus troughtoni*) and for flora *Davallia pyxidata* and *Poa cheelii*. Rocky outcrops are also important areas of habitat for many species of reptiles (Michael *et al* 2010). Large rocky outcrops would also be likely to provide refugia for many fauna species during wildfire events.

Observations from compartments logged prior to this prescription, reveal very few rocky outcrops that are intact. With over half of the state forest area logged already before this condition was introduced, less than half of the remaining rocky outcrops remain undisturbed by intensive logging. The protection of the remaining undisturbed outcrops in the region is of the utmost importance.

SEFR has found a consistent failure to adhere to condition 5.11 Rocky outcrops and cliffs. The following is a summary of SEFR breach reports regarding condition 5.11 and the outcome of the investigation into these reports.

Yambulla 434

An audit of this compartment revealed a massive outcrop that also had a cliff line that had no exclusion marked and had been logged. This outcrop and cliff was so visible from Imlay Rd that someone had painted their name on it. The harvest plan map shows areas of rocky terrain in the Net Harvest Area (NHA), and identifies the area where the outcrop was located as rocky terrain.

Glenbog 2375

This audit found the presence of two rocky outcrops that were not marked with an exclusion zone. The exclusion zones of both outcrops had been logged, and one had logging disturbance on the outcrop itself and had suffered a post logging burn through the exclusion and outcrop. A third probable outcrop was found but due to time constraints was not accurately measured. This outcrop was also logged and burnt.

The harvest plan map for this compartment shows that approximately half of the NHA has rocky terrain. This should have alerted the Supervising Forestry Officer ('SFO') to the probable occurrence of rocky outcrops.

EPA response Yambulla 434 and Glenbog 2375

At the time of these breach reports the TSL was regulated by the National Parks and Wildlife Service ('NPWS'), with one officer for the whole area south of Sydney to the Victorian border. The Yambulla outcrop was audited by the officer and confirmed verbally to SEFR as being an outcrop and cliff line. Unfortunately before finalising the outcomes of these two breach reports, and several other breaches, the investigating officer left NPWS and no one continued the investigation. After many attempts to get these breach reports followed up SEFR was told it was now past the statute limit to enable enforcement.

Nullica 713

SEFR conducted an audit of this compartment on the 7/4/08 and found a possible rocky outcrop at coordinates 0741555, 5904157 (AGD 66) that had no exclusion marked and had been logged. It was

difficult to determine the size of the outcrop due to the large amount of logging debris covering the outcrop and adjoining area.

A breach report was sent to the EPA on the 21/4/08,[33] and as a result, an investigation was conducted one month later, confirming a breach of condition 5.11. A warning letter was issued to FCNSW in relation to this, and other breaches found in the compartment.

Nullica 711

During an audit of this compartment on the 17/8/08, SEFR found an unmarked rocky outcrop at coordinates 0742697, 5902537.[34] Both the exclusion zone and the outcrop had been logged. All the outcrops found in previous breaches have been composed of granite. This outcrop was a different type of rock, possibly basalt, and comprised of small rocks tightly packed from ridge to gully covering approximately 50m by 50m, containing heath vegetation with emergent eucalypts.

While the rocks were small and did not protrude above ground level, the near 100% coverage, and the area it covered, made the outcrop highly visible. Once again we were amazed the SFO failed to identify and mark the outcrop. The change in vegetation was also highly visible and could be classed as heath, which should also be excluded from logging.

Following the investigation by the EPA, which confirmed the breach of 5.11, a warning letter was sent to FCNSW for this, and other issues of non-compliance of the TSL.

Glenbog 2314, 2315

An audit of these compartments was conducted in late October 2008.[35] SEFR identified one outcrop in 2314-1 (RO 1) and three outcrops in 2315-7 (RO 2-4).

RO 1	0716762	5951572
RO 2	0717357	5951520
RO 3	0717275	5951287
RO 4	0717277	5951288

All these outcrops had no exclusion zones, and the exclusion zones and outcrops had been logged. The EPA did not visit the compartment and requested that FCNSW audit the compartment themselves. The outcome of the audit by FCNSW was that there was only one rocky outcrop breach (RO 2) in the area. In light of the level of occurrence of these breaches and the poor interpretation of the licence condition, SEFR disputes the finding of only one confirmed breach.

On completion of the EPA's investigation a warning letter was sent to FCNSW in regard to 5.11 and other breaches of the TSL in this compartment. FCNSW also undertook to develop a field guide, to assist SFO's and contractors, to identify and protect rocky outcrops in the field.

SEFR was concerned at the time that, after 10 years of this easily interpreted condition being in force,

[33] Letter, SEFR Report to Department of Environment and Climate Change Forestry Policy and Regulation, 21 April 2008.
[34] Letter, SEFR Report to Department of Environment and Climate Change Forestry Policy and Regulation, 22 August 2008.
[35] Letter, SEFR Report to Department of Environment and Climate Change Forestry Policy and Regulation 03 November 2008.

that FCNSW found it necessary to produce this field guide for SFO's and contractors.

RO 1

RO 1

RO 2

RO 4

Tantawangalo 2433

SEFR conducted an audit of this compartment over two days on the 24/4/10 and 25/4/10 and found the following breaches of 5.11.[36]

RO 1	0722305	5922145
RO 2	0722381	5922128
RO 3	0722522	5922269
RO 4	0722152	5923187
RO 5	0722145	5923029

Outcrops 1–4 were unmarked and had been logged. Machinery had been driven onto all of these outcrops. Outcrop 5 was located in an area of FMZ 3bc exclusion zone and was part of an outcrop greater than 0.5ha which requires a 40m exclusion zone around it. This exclusion zone protruded into the NHA and had been logged.

[36] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 25 April 2010.

With the size of these outcrops it is incredible that they were not identified by the SFO during marking up of the compartment, especially considering FCNSW producing a field guide. Outcrops 1 and 3 are approximately 0.26ha each, more than double the area requiring protection.

The EPA conducted an investigation into these breaches but unfortunately only looked at RO's 1–3. It is unclear why they did not investigate RO's 4 and 5 at the time, and subsequently said they will return to investigate these breaches, but unfortunately never did. The EPA did confirm that RO 1 and 3 were breaches and issued FCNSW with a warning letter. SEFR disputes the EPA's finding that RO 2 is not large enough to meet the condition.

RO 1

RO 2

RO 3

RO 4

Mumbulla 2133

On the 2/5/10, SEFR conducted an audit of this compartment and found an unmarked rocky outcrop at 0758594, 5946411 which has had its exclusion zone partly logged.[37] It is probable that the outcrop is greater than 0.5ha which requires a 40m exclusion, and therefore a larger area has been logged.

The outcrop is adjacent and part of a large area of mapped Inherent Hazard Level 4 (IHL 4),

[37] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 02 May 2010.

comprising a steep rocky escarpment with cliffs along the contour lines. While the area joining the two is only a few metres wide, it has greater than 70% rock.

Another audit on 8/5/10 also found an unmarked outcrop at 0759023, 5946020, which had its exclusion logged and part of the outcrop logged.[38]

The EPA investigated the first outcrop and declared that it was not a breach. SEFR disputed this result and undertook a second investigation on the 23/5/10 and resubmitted the breach report. It remains unclear as to the results of the EPA's investigation into these two breaches.

Mumbulla 2135

On the 8/5/10 an audit of this compartment was conducted, and an unmarked outcrop was found at 0756439, 5948237, which has had its exclusion and outcrop logged.[39] The EPA investigated this and other breaches of the TSL and subsequently issued FCNSW with a warning letter regarding 5.11.

Given that this, and 2133, were highly contentious compartments, it shows the complete lack of understanding and compliance of the TSL by FCNSW staff. Logging in 2135 was stopped shortly after this due to the whole compartment, and part 2133, being a gazetted Aboriginal place, which FCNSW failed to notice and which required additional approvals if the area was to be logged, and which FCNSW failed to obtain.

2133 exclusion logged

2135 outcrop logged

Tantawangalo 2434

SEFR conducted two audits of this compartment on the 13/9/10,[40] and 19/9/10,[41] and found the following rocky outcrops:

[38] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 10 May 2010.
[39] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 10 May 2010.
[40] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 15 September 2010.
[41] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 20 September 2010.

RO 1	0723073	5922772
RO 2	0723184	5922681
RO 3	0723161	5922547
RO 4	0722891	5922458
RO 5	0722976	5922393

All of these outcrops and exclusion zones have been logged and suffered damage from machines driving over them. RO 2 and 3 are part of a large, mapped outcrop greater than 0.5ha which requires a 40m exclusion zone around the outcrop. The SFO has marked the boundary of the mapped outcrop over the rocks of RO 2 and 3 and failed to identify that they are connected to the large, mapped outcrop.

Again, the failure of the SFO to identify these areas is of major concern and highlights the total lack of understanding of condition 5.11 by FCNSW staff during pre-harvest surveys and operational markup. The identification and exclusion of these areas would only have resulted in the loss of a few hectares of NHA and only a few cubic metres of sawlogs.

The EPA has investigated these breaches and a warning letter for all five breaches was issued.

RO 1 outcrop and exclusion logged

RO 3 outcrop and exclusion logged

Tantawangalo 2432

SEFR conducted two audits of this compartment on the 13/9/10,[42] and 19/9/10,[43] and found the following rocky outcrops:

RO 1	0722699	5921921
RO 2	0722675	5921811
RO 3	0722981	5921695

[42] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 13 September 2010.

[43] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 19 September 2010.

RO 4	0723094	5921574

As with Tantawangalo 2434, RO 1 is a continuation of an outcrop greater than 0.5ha located in the adjacent FMZ 3bc exclusion zone. The SFO has marked the FMZ 3bc boundary, walking over rocks, and failed to identify that it was part of the large outcrop. Even giving the SFO the benefit of doubt over whether the outcrop is part of the larger one, the area of RO 1 in the NHA is still greater than 0.1ha. Both the outcrop and 40m exclusion have been logged.

Part of RO 2 is located in the adjoining compartment. The SFO has marked only the compartment boundary and failed to identify that the outcrop is greater than 0.1ha. Both the outcrop and exclusion zone have been logged. RO 3 has been logged and RO 4 has had what should have been a 20m exclusion logged.

The EPA has investigated these breaches and a warning letter for all four breaches was issued.

Glenbog 2363

An audit by SEFR on the 3/10/10[44] found an unmarked rocky outcrop at 0719535, 5941292 with no exclusion zone that has been logged. Several snig tracks have been pushed through this outcrop, moving a large amount of rock. It is probable that the outcrop would have been far greater than what we have mapped, which is still greater than 0.1ha.

The EPA has investigated this and other TSL breaches and confirmed a breach of 5.11 and issued another warning letter to FCNSW.

2363-1 rocky outcrop logged.

Yambulla 450, 446, 444

[44] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 06 October 2010

On 3/11/10 SEFR conducted an audit of compartments 450 and 446 found the following breaches of condition 5.11:[45]

RO 1	0723863	5880190
RO 2	0724064	5879683

RO 1 located in compartment 450-1 is unmarked and approximately 0.25ha in area. The 20m exclusion zone has been logged. RO 2, in compartment 446, is an unmarked outcrop greater than 0.1ha that has no exclusion and the outcrop itself has been logged.

At the time of the audit, compartment 446-4 was active with approximately one third of the area logged. In the unlogged area SEFR found an unmarked outcrop greater than 0.1ha at RO3 0724965, 5878951. There were some trees marked for retention within what should have been a 20m exclusion zone suggesting that the SFO had not identified the outcrop, and it was to be logged.

Two adjoining compartments were to be logged, and numerous outcrops were observed by SEFR in these compartments. The harvest plans for all of these compartments show several mapped outcrops and large areas of rocky terrain. The breach report submitted to the EPA highlighted the probability of future breaches and requested urgent action to prevent these possible future breaches.

SEFR conducted a second audit of 446-1 on 2/6/11.[46] The focus of this audit was to see if there was any change in the identification of outcrops by FCNSW especially RO3 from the first breach report, 7 months previous. Unfortunately, there was no improvement and in fact there was a failure to identify mapped outcrops correctly.

RO3 logged after EPA notified.

Mapped 40m exclusion logged.

RO3 was found to be incorrectly marked with the edge of the exclusion located at the edge of the outcrop, not 20m from the edge, and so the exclusion zone had been logged. Another outcrop nearby was also incorrectly marked with the exclusion at the edge of the outcrop resulting in more exclusion

[45] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 04 November 2010.
[46] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 02 June 2011.

zone logging.

Of greatest concern during this audit was when we inspected the large mapped (40m exclusion zone) outcrop in 446-1. Again, there was a failure by the SFO to correctly identify the edge of the outcrop, and therefore the correct 40m exclusion zone. Along a large length, the exclusion zone was only marked 16-20m from the edge of the outcrop. This outcrop is easily identified and shows the incompetence of FCNSW staff to correctly identify outcrops.

SEFR undertook a third audit in January 2012, this time in adjoining compartment 444.[47] Again we found breaches of 5.11 of the IFOA. Outcrops and exclusion zones had been logged. A machine was almost parked on an outcrop. Like the previous audits a breach report was sent to the EPA.

The EPA had taken over 700 days for the 2/6/11 breaches, and over 450 days for the January 2012 breaches to finalise their investigation and respond to SEFR. EPA only conducted one field visit in April 2011, resulting in only one of SEFR's four outcrops in compartment 444 being inspected. The three outcrop breaches in the second report (2/6/11) were regarded as part of the one mapped outcrop. If that is the case it means that the mapped outcrop should be three times the size than that mapped. This brings into question the adequacy of FCNSW's pre harvest surveys and increases the severity of this breach. EPA also found one outcrop breach that SEFR had not found.

The EPA agreed with SEFR that outcrops and or exclusion zones had been logged. The EPA was going to issue FCNSW with two penalty notices but due to the length of the investigation these breaches were statute barred. The outcome of this investigation was an official caution for eleven breaches of 5.11 and a further 10 breaches of other prescriptions.

Tantawangalo 2405, 2407, 2408

In mid-2010 SEFR visited all the compartments in Tantawangalo and Glenbog that were on the Plan of Operations for that year looking for rocky outcrops. Compartment 2407 was inspected, and it was noted that this compartment and 2405 had undergone a thinning operation in 2006/7, in which FCNSW had failed to identify outcrops and had logged them.

When we received the harvest plan for 2405, 2407 and 2408 we again visited the compartments and found two more outcrops close to dump O in compartment 2405 that had been thinned in 2006/7. This confirmed our concerns that the planned logging operation would again impact on the outcrops. To this effect when it was noticed that logging had started, while in phone conversation with the acting manager of forestry in EPA, this concern was brought up and a subsequent email followed with GPS coordinates for an outcrop in 2407 and an accurate description of the two outcrops in 2405.

On the 20/11/12 SEFR went to these compartments and found that the two outcrops in 2405 near dump O had no exclusion and had been logged. The outcrop in 2407 was just starting to be impacted with a part of the 20m exclusion logged.

There was also a second crew, a thinning's crew working in compartment 2408-1, and another breach of logging an outcrop and 20m exclusion zone was found, along with the usual substandard marking of habitat and recruitment trees by FCNSW. On the 26/11/12 a formal breach report was sent to the

[47] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 18 January 2012.

EPA.[48]

In January 2013 SEFR conducted a second audit of compartment 2405 and found two more outcrops that had been logged. Again, another breach report was sent to the EPA regarding these breaches.[49]

Of serious concern is that this is the second area that the EPA has been pre warned of probable breaches of 5.11 and yet this has failed to protect these outcrops. This failure by the EPA and the fact that third party rights to take FCNSW to court are denied leaves little options for the protection of rocky outcrops.

On the 23 July 2013 we received a report from the EPA finalizing their investigation. It confirmed the presence of 3 outcrops with 8 instances of non-compliance. The EPA has issued FCNSW with 2 penalty notices and 6 official cautions.

Glenbog 2329, 2330, 2335

On the 6/9/13 and 7/10/13 SEFR conducted an audit of these compartments and again found breaches of the prescription for rocky outcrops. Of these breaches 3 were mapped outcrops that had insufficient exclusion zones, 1 mapped outcrop with was incorrectly marked and so the exclusion zone and part of the outcrop had been logged. Another 3 outcrops were unmapped and had their exclusion and outcrop logged.

RO 1	0717274	5946790
RO 2	0717024	5945822
RO 3	0716472	5946085
RO 4	0716354	5946014
RO 5	0716260	5946014
RO 6	0716338	5945457
RO 7	0716466	5945541

RO 6

[48] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 26 November 2012.

[49] Letter, SEFR Report to Department of Environment Climate Change and Water Crown Forestry Policy and Regulation, 06 February 2013.

Of great concern is that one of the unmapped outcrops, RO 5, is greater than some of the identified and mapped outcrops and is possibly greater than 0.5ha. Also, for one large mapped outcrop, RO 6, the SFO has been walking over it and marked the edge of the 20m exclusion on the outcrop. This surely has to be total incompetence by the SFO and again shows the complete disregard for these prescriptions by FCNSW.

With a day to spare before being statute barred from enforcement the EPA initiated a prosecution against FCNSW for outcrops RO4 and RO6 in the Land and Environment Court ('LEC'). The offence was pursuant to s 133(4) of the *National Parks and Wildlife Act 1974*.

> (4) The holder of a licence or certificate (whether issued under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*) shall not contravene or fail to comply with any condition or restriction attached to the licence or certificate under this Act or Part 6 of the *Threatened Species Conservation Act 1995*.

The main contention of the charge was that FCNSW had failed to comply with condition 5.2(a)(xiv) of the IFOA Threatened Species Licence (TSL):

a) An adequately trained person must conduct a thorough search for, record and appropriately mark the following threatened and protected species features during or before the marking-up of a compartment.

   xiv. Rocky outcrops and cliffs;

FCNSW had not conducted a thorough search for rocky outcrops in the area during markup of the compartment and had failed to identify and protect the rocky outcrop in question. FCNSW pleaded guilty to the offence for RO4 and the sentence was handed down on 5 October 2017, almost 4 years from when we submitted the breach report. They were fined $8000 for the offence and to pay the EPA's approximately $65,000 expenses.[50]

FCNSW were pleading not guilty to the offence for RO6 and a few months after the sentencing hearing after receiving updated prospects advice the EPA withdrew the case, claiming the advice indicated they would lose the case due to the "cascading effect of the IFOA conditions", if they don't find it during pre-harvest survey or markup they cannot be held responsible for not protecting it. It is our opinion, that this advice to the EPA is absurd or at least wrong. If it was indeed true then the whole construction of the IFOA was terminally flawed and it is unlikely that this has been corrected in the current CIFOA.

Badja 2021

SEFR undertook an audit of Badja 2021 on 2/12/13 and found that a mapped rocky outcrop had been logged along with its exclusion zone. The inspection identified 2 rocky outcrops that were probably one outcrop before being logged and having a snig track dozed between them. Also of concern was that a large amount of flagging tape that would have identified the outcrop was found in a pile on the ground, probably to hide the fact that the outcrop had been identified and logged. The location for these outcrops are RO 1 0727797, 5998092, and RO 2 0727845, 5998098. A breach report was sent.[51]

[50] *Chief Environmental Regulator of the Environment Protection Authority v The Forestry Corporation of New South Wales* [2017] NSWLEC 132 (05 October 2017) (Robson J).

[51] Spreadsheet, SEFR Report to Office of Environment and Heritage EPA Crown Forestry Policy and Regulation 03 December 2013.

There was also a verbal report about a possible cliff breach which after inspecting the area the EPA launched a prosecution for the same offence as that for the Glenbog prosecution. Unfortunately, this was the weakest breach that was found and on 16 February 2018 FCNSW were acquitted of the charge. The case was about the definition of a cliff, whether a very large single rock with cliff features met the definition which the judge decided was not the case. This loss by the EPA we feel weighed on the minds of those involved with the Glenbog prosecution and caused them to be totally risk averse and ultimately discontinuing the prosecution.

Tantawangalo 2425, 2427, 2428, 2430, 2431, 2432, 2433, 2434, 2435

In 2016 FCNSW started logging 9 compartments in Tantawangalo SF and between November 2016 and January 2017 SEFR submitted 5 breach reports with a total of 61 breaches of the IFOA of which 25 breaches related to rocky outcrops. Due to capacity constraints and "burden of proof" difficulties the EPA only focused on rocky outcrop breaches and 7 other breaches.[52]

After taking 2 years investigating these breaches we received an outcome letter from the EPA on 21 December 2018 stating that "Following a thorough investigation, the EPA have arrived at the determination that undertaking any enforcement action for these matters is not viable".[53] They then went on to blame the way the IFOA was written having significant ambiguity in how they can be interpreted despite having not tested this in court. Again, they seem to be of the opinion that the TSL is constructed in such a way that the licence conditions are interpreted to be 'cascading' and that:

> This means that the courts would likely determine that if a rocky outcrop feature is not identified by the Forestry Corporation of NSW (FCNSW) during the required surveys and searches in that area, then it is unreasonable to expect that that feature is required to be protected (as it was not known to be there).[54]

This is merely advice from one person, and remains completely untested. There is a real question as to whether a judge would make the same finding. It would be a big call by a judge to rule in that way as it would create a precedent for defence against just about any breach of the TSL, "we looked but did not see it".

Considering the number of breaches reported it was disappointing to find out after 2 years that FCNSW had received a warning letter in regards to 8 breaches only, being;

- Failing to make the harvest plan available to the public on time and not including the operation in the monthly report.
- Pushing a 100m long snig track through part of a stream exclusion zone and a rocky outcrop exclusion zone.
- 6 instances of logging debris being allowed to accumulate more than 1m high around retained hollow bearing trees, recruitment trees and dead stags.

IFOA/CIFOA Rocky Outcrop Prescription Failure

As can be seen from the above there has been a total failure by FCNSW for compliance with rocky outcrop conditions and a failure by the EPA to regulate FCNSW effectively. The lack of enforcement over so many years has had a positive feedback to ongoing non-compliance, warning letters and official

[52] Letter, EPA to SEFR DOC19/135465 20/2/2019.
[53] Letter, EPA to SEFR DOC18/487471 21/12/2018.
[54] Ibid.

cautions are meaningless to FCNSW. A huge obstacle to enforcement is that it is one government department versus another, with lots of internal "play nice" policy and protocols to abide by, which is another compelling reason to repeal s69ZA of the Forestry Act 2012. The EPA Forestry Unit has also been completely under resourced, which has been a deliberate tactic to stymie compliance activities. Just recently the EPA seems to have grown some backbone and are becoming more forceful in their dealings with FCNSW, this is a step in the right direction but more still needs to happen.

One of the premises for the remake of the IFOA in 2018 was to make the conditions more enforceable without weakening the environmental protection afforded by the conditions. Sadly, for rock outcrops and the species dependant on them, the new condition in the CIFOA has completely gutted the scope of outcrops captured by this condition. This has obviously come from FCNSW to counter their failure at complying with the old condition.

The condition is basically the same as the previous one and so there has been no improvement in enforceability, if ever there was a problem which we dispute. The big change is in the definition of a rocky outcrop, a sub-clause has been added being;

> (b) in that area there are less than 50 trees per hectare (on average), which are greater than 30 centimetres at stump height; and

This is all about allowing FCNSW to access more timber than under the previous condition. This addition means that most of our previous breaches would now not be considered breaches. This is a complete capitulation by the EPA to FCNSW. Before the figure of 50 was approved the EPA said they would consult with SEFR regarding what the figure should be. This consultation failed to happen and so behind closed doors the fate of rocky outcrops were consigned to oblivion.

The previous condition also required outcrops that were greater than 0.5ha to have a 40m exclusion zone around them as opposed to a 20m exclusion. The new condition, again giving FCNSW access to more timber at the expense of environment protection, only allows for a 20m exclusion zone no matter how large an outcrop is.

Also of concern is that the new CIFOA does not seem to address the issue of the any 'cascading' of the conditions, if there were any previously. The CIFOA does not appear to be any better or differently constructed legally than the previous IFOA.

Sustainable Yield

FCNSW claim that they operate under Ecologically Sustainable Forest Management ('ESFM') and one of the main principles of ESFM is the concept of sustainable yield. This is defined in the CIFOA as;

> The long term estimated wood yield from forests that can be maintained from a given region in perpetuity under a given management strategy and suite of sustainable use objectives, as determined using the processes described in NSW Regional Forest Agreements, and as amended from time to time.

FCNSW models sustainable yield over a 100-year period using the Forest Resource and Management Evaluation System (FRAMES) modelling system. The key components of the FRAMES modelling system include:

- a Geographic Information System (GIS) recording harvest areas, forest types and management activities
- inventory data

- growth and yield simulator models
- a yield scheduler

After the devastating fires of 2019–20, FCNSW produced a report on the environmental impacts and implications for timber harvesting in NSW State Forests.[55] This report quantified the area impacted for harvestable forest in each forestry region by the fires. For the Eden region 80.4% of the harvestable area was impacted with 36.1% being high severity fire. For the South Coast sub-region 93.8% of the harvestable area was impacted with 51.1% being high severity fire.

The unprecedented impacts on the harvestable area of State Forests from the 2019/2020 bushfires have triggered the need for a review of sustainable yield by FCNSW.[56] This review they have produced does not meet the standards required and we do not agree with the results of the review, especially for Eden and South Coast regions.

One of the key components of FRAMES is accurate inventory data to feed into the system. Due to the risk to staff traversing burnt forests inventory plots in burnt forests have not been remeasured to ascertain the impact of the fire. This is a crucial flaw in the Sustainable Yield Review and until such time as updated inventory data is made available to FRAMES the results cannot be relied upon.

The last section of the Sustainable Yield Review says the next review is due in 2024 and that in the meantime inventory will be updated substantially. This needs to happen well before then, to carry on blindly to the real impacts of the fires is not compatible with ESFM.

Eden outcome

It is extremely hard to work out what the "actual" sustainable yield is from the review. In the executive summary are the following tables:

Table 1: Overview of fire impact on short-term wood supply for NSW RFA regions

Annualised sustained yield for first three reporting periods			
RFA region	Year range	High-quality logs (m^3)	Modelled Reduction due to fire Impacts %
North East	2020 - 2031	230,000	4%
Eden	2020 - 2034	22,700	13%
South Coast	2020 - 2034	35,000	30%
Tumut	2020 - 2034	25,800	27%

Table 2: Sustainable yield of high quality logs and other wood products in NSW RFA regions for the five year period 2020-2024.

Sustainable Yields for 2020 - 2024		
RFA region1	High quality logs (m^3)	Non-high quality logs (tonnes)
North East	230,000	569,000
Eden	25,000	160,000

[55] Forestry Corporation NSW, *2019–20 Wildfires Environmental Impacts and Implications for Timber Harvesting in NSW State Forests* (June 2020).
[56] FCNSW, *2019–20 Wildfires NSW Coastal Hardwood Forests Sustainable Yield Review* (December 2020).

Southern South Coast sub-region	35,000	231,000
Southern Tumut Coast sub-region[2]	20,400	48,000
Southern Tumut Coast sub-region Fire Salvage[3]	125,000	

Table 1 shows a figure of 22,700m^3 each year for 2020-2034 but Table 2 then suggests that 25,000m^3 for the first 4 years is the sustainable yield. Further on in the review the section for the Eden region wood supply models has the following figure:

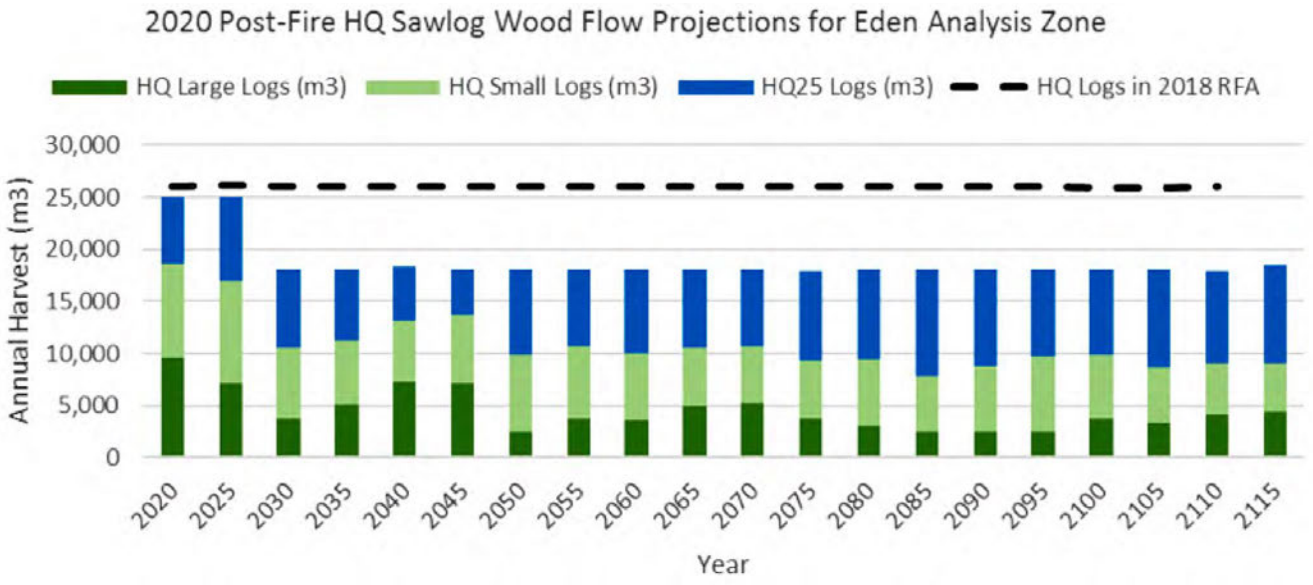

Figure 20: Post-fire high quality (HQ) log wood flow projections for the Eden Region.

Below figure 20 it says the following:

> "A key challenge for the Eden resource is the likelihood that sawlog quality trees impacted by the hotter fires classified as RAFIT classes four and five will degrade to pulp after 10 years due to fire-triggered damage. To counter this impact, a strategy to harvest higher quantities of the severely burned resource over these first two periods (10 years) has been modelled. The level of high-quality sawlog cut in these early periods was modelled to match the wood supply agreement levels, at 25,000 m3 per year. After 10 years, the cut is reduced to the long-term sustainable level of 18,000 m3 per year."

And further on:

> "The wood flow model presented here does not follow a classic non-declining yield profile, as the two initial periods (10 years) are harvested at a higher rate than the remaining 90 years of the model. This strategy is driven by a focus on harvesting and regenerating severely fire-affected sites where the timber is expected to degrade over the course of the next 10-15 years. As such, the strategy allows the best possible recovery of high-quality timber from the forest and consequently the initial 10-year wood supply is above long-term sustainable yield."

It seems that the actual sustainable yield is 18,000m^3 for the Eden region and yet FCNSW are going to ignore this and for purely resource recovery reasons harvest above sustainable yield at 25,000m^3. This

is a breach of the RFA cl 46 and CIFOA protocol 31.4 (7) which both say that timber volumes must align with sustainable yield. Nowhere does it say that sustainable yield can be adjusted to suit the agenda of FCNSW. Sustainable yield should be the non-declining yield over 100 years not some arbitrary figure to match wood supply agreements.

With 80% of the harvestable area affected by fire and 36% by high severity fire one would think that the impact on sustainable yield would be far greater than what FCNSW are putting forward in the review.

South Coast outcome

For the South Coast region, it appears that the new sustainable yield is 35,000m^3, reduced by 30% from the previous 50,000m^3 from the 2018 review. While this is a more realistic result than the Eden region, we are still concerned that it is an overestimate. The fact that over 90% of the forest was impacted by the fires and 51% had high severity fires, a reduction of only 30% seems too little.

ESFM or Ecologically She's Finished Mate

Following the devastating 2019-20 fires, FCNSW accepted the need for additional mitigation measures for logging operations and applied for Site-Specific Operating Conditions (SSOC's) from the EPA. Compliance with the SSOC's was questionable with many breaches found in the logging operations in the South Coast region, despite the SSOC's being negotiated between FCNSW and the EPA. FCNSW have since walked away from applying for SSOC's and have reverted to the CIFOA with some extra minor voluntary but not enforceable conditions.

The 2019-20 fires have severely impacted the forests of NSW to the point where it is untenable to carry on with business as usual, which is the opposite to what FCNSW would like people to believe. It needs to be noted that the views of FCNSW as well as research and reviews undertaken by them suffer from bias as their jobs are reliant on business as usual, they have a vested interest in continuing.

Following FCNSW's 2019-20 Wildfires Environmental impacts and implications for timber harvesting in NSW State Forests report from June 2020, which concluded that logging can resume under the CIFOA without SSOC's, the EPA engaged Dr Andrew Smith to undertake a Review of CIFOA mitigation conditions for timber harvesting in burnt landscapes.[57]

The Smith review comes to a completely different conclusion than FCNSW's review of post fire harvesting. Dr Smith assesses not only the CIFOA but also the SSOC's and finds that even with the additional SSOC's they are not enough to mitigate the impacts of logging. Dr Smith offers some key recommendations and notes that:

> "Unless these conditions are met, it is unlikely that proposed harvesting in burnt forests will meet the requirement of Ecologically Sustainable Forest Management, or adequately address the precautionary principle as necessitated by the absence of post-wildfire and long term post-harvest monitoring data on biodiversity."

If logging is going to continue then as a bare minimum Dr Smiths recommendations must be enacted to mitigate the damage caused by forestry operations. The recommendations are:

1. That timber harvesting be excluded from all mapped unburnt and lightly burnt forests within

[57] Smith A.P. *Review of CIFOA standards for mitigating logging impacts in burnt NSW Forests* (2020)

state forests for a minimum period of 20 years.

2. That all timber harvesting be limited to a maximum average 50% of compartment area (with a maximum of 75% within individual compartments) and maximum 50% of the total local landscape Area.
3. That the pattern of harvesting at the compartment and landscape scales be modified to ensure that all retained forest patches > 5 ha in size are connected by permanent corridors and that all gaps in corridors created by roads, rivers and other non-forest areas do not create barriers to glider movement and dispersal.
4. That fire refuge areas be modelled and mapped across all compartments and landscape areas to identify and protect those areas of each forest type within each compartment considered least likely to burn or with the lowest burn frequency, and where such areas will initially (for the next 20 years) include all areas unburnt or lightly burnt in the 2019/20 fires.
5. That intensive harvesting (all forms of logging that remove more than 40% of the natural (unlogged) tree stem basal area) be limited to Blackbutt and Alpine Ash forest types, and the size of harvesting patches be limited to "gaps" of 10 hectares or less where gaps are defined as areas wholly surrounded by either unlogged forest or low intensity logged forest (forest that retains 60% or more of the natural tree basal area across all tree size classes.
6. That harvesting intensity under selective harvesting in all DSF be limited to retention of 60% or more of the natural stand basal area across all medium and large tree size classes to ensure that biodiversity is maintained within the net harvest area.
7. That all compartments are subject to comprehensive pre-logging surveys at least once every logging rotation to gather all essential information for application of mitigation conditions and that post logging surveys are undertaken at repeat intervals of 1 to 10 years after harvesting at a minimum representative selection of sites sufficient for statistical analysis and feedback for adaptive management at compartment and landscape scales.

The following are just some of the conclusions that Dr Smith came to in the review:

> 3. Fauna populations surviving in fire refuges are likely to survive and expand outwards over the next 10-120 years in large unlogged forest reserves. The time required for recovery of threatened and sensitive species after average fires ranges from around 10 - 120 years. Recovery times are likely to be around 10 years for the Hastings River Mouse, 20+ years for the Long-nosed Potoroo and Southern Brown Bandicoot, up to 45 years for the Koala, 20-120 years for the Greater Glider and Yellow-bellied Glider
>
> 16. Fauna populations surviving in fire refuges in state forests are at risk of elimination by timber harvesting under the normal Coastal Integrated Forestry Operations Approvals (CIFOA) which could prevent recovery, and cause catastrophic population decline in species such as the Koala, Greater Glider and Yellow-bellied Glider.
>
> 7. The standard CIFOA does not guarantee delivery of ecologically sustainable management as required under the objectives of the *Forestry Act 2012* and is likely to cause a significant impact on threatened species under the NSW *Biodiversity Conservation Act 2016* and the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*.
>
> 8. Site-specific Operating Conditions (SSOCs) developed by the EPA to manage environmental risks associated with timber harvesting in burnt landscapes to supplement standard Coastal Integrated Forestry Operations Approvals (CIFOA) will have little or no benefit as their time

frame of application is too short.

10. In general, as a precautionary principle, it can be assumed that species of native fauna and flora are adapted to, and able to sustain viable populations, under scales and patterns of fire and logging that do not exceed the scale and pattern of natural disturbances occurring after severe wildfire. Current CIFOA fall well short of constraining timber harvesting to the scale and pattern on natural disturbance.

It is clear that current logging operations do not adhere to the principles of ESFM and are therefore in breach of the Forestry Act 2012 and must be halted immediately. As already stated, if logging is going to continue then as a bare minimum Dr Smiths review must form the basis for forestry operations going forward.

Section 69ZA

Due to s 69ZA of the *Forestry Act 2012* (NSW) the EPA is the only body that can bring FCNSW before the courts. Through the operation of this provision NSW is the only State in which citizens cannot bring action in court against the Forestry Corporation and their authorised contractors.

Since 1998 through s 40 of the *Forestry and National Park Estate Act 1998* (NSW) ('FNPE Act') now s 69ZA of the *Forestry Act 2012* (NSW), no proceedings can be brought by citizens against the Forestry Corporation NSW and their authorised contractors on breaches of law in RFA/IFOA areas.

In this way, proceedings may not be brought under ss 219, 252, and 253 of the POEO Act. While unsatisfactory, this is not the problematic subsection.

Under s 69ZA(2) proceedings may not be brought under a provision of an Act that gives a right to institute proceedings in a court to remedy or restrain a breach,

a) if the breach or threatened breach is a breach of the *Forestry Act*, IFOA, licence with defences available,[58] a Forest Agreement, or
b) a breach of an Act that gives any person a right to institute proceedings which includes a statutory provision, if the breach relates to forestry operations to which an IFOA applies.[59]

In this way, if in an IFOA area, citizens cannot obtain injunction or remedy for the environmental damage caused by FCNSW and their authorised contractors in court for a breach of any Act.

It is likely that re-enactment in 2012 of s 69ZA trespassed on personal rights and liberties under s 8A(1)(b)(i) of the *Legislation Review Act 1987* (NSW). The NSW legislature were advised of this, and the Committee also advised as such.

The main arguments given by the Forestry Commission/government for restricting access to justice are that in doing so it would cause a flood of litigation, frivolous or vexatious lawsuits, and increased costs for FCNSW. However, like most claims by FCNSW, the floodgates argument holds no water. There were only 8 cases brought against FCNSW in the ten year period prior to s 40's enactment

The Law Reform Commission found that these 'flood gate' claims were unfounded and indeed over the

[58] *Terms of Licence Under the Threatened Species Conservation Act 1995 for the South Coast Sub-Region of the Southern Region* Appendix B.
[59] *Forestry Act 2012* (NSW) s 69ZA(2)(a)–(d).

past ten years the relaxing of standing has not resulted in a rush of litigation.[60] On the issue of vexatious or frivolous claims the report stated:
The Courts . . . possess a number of powers which can be used to prevent frivolous claims being made: for example, the power to strike out a vexatious claim and the power to declare individual litigants vexatious. Similarly, there is no evidence that the phenomenon of a large number of plaintiffs, all suing on the same course of action, will arise frequently if standing is widened.[61]

Another stated reason behind the legislative exemptions was because the environmental impact statement ('EIS') processes were costly, time consuming and became increasingly more difficult for the Forestry Commission to comply with. Protests were also very costly and time consuming for the police and the State.[62] The government attempted to deal with the conflict by imposing these restrictions on civil litigation but:
Since the contradictions remain the same and the legislation is merely an overlay it is likely to give rise to further conflicts at a later date.[63]

When the FNPE Act s 40/s 69ZA was introduced assurances were given that the EPA would continue to have enforcement and compliance powers, and 'continue to use them to ensure that the licences are adhered to.' However, there were no prosecutions in the Southern Region for 13 years, until 2011, despite thousands of breaches. It is possible that the department has suffered from 'capture', through the whole of government approach. However, it is more likely that the inadequate staffing numbers have ensured that many illegal activities remain outside the gaze, with the result being that FCNSW and their authorised contractors are under-regulated.

Regulatory systems rely upon the enforcement of statutory requirements. When there is little or no enforcement contraventions go unpunished, and the incentive for compliance is nil.[64] When penalties are low, and the possibilities of being found out are light, people take the risk that they will not be caught.[65]

Climate Change
There is much uncertainty on the effects of climate change but one of the certainties is that deforestation and forest degradation is one of the biggest causes.
The loss of natural forests around the world contributes more to global emissions each year than the transport sector. Curbing deforestation is a highly cost-effective way to reduce emissions; large scale international pilot programmes to explore the best ways to do this could get underway very quickly.[66]

---

[60] Chief Justice Brian Preston, Environmental Dispute Mechanisms Lecture, Australian National University, 2009.
[61] See Australian Law Reform Commission 1996, Overview 1–2, <http://www.austlii.edu.au/au/other/alrc/publications/reports/27/27.pdf>; see also ALRC, *Beyond the Doorkeeper – Standing to Sue for Public Remedies* (Report No. 78) 1995, [xxi].
[62] See Ajani J, *The Forest Wars*, Melbourne University Press, 2007.
[63] Bottomely S, and Parker S, *Law in Context*, (Federation Press, 1997) 81.
[64] A Macintosh, 'Why the Environment Protection and Biodiversity Conservation Act's Referral, Assessment and Approval Process is Failing to Achieve its Environmental Objectives' (2004) 21 *Environment and Planning Law Journal* 288, 302.
[65] G Bates, *Environmental Law in Australia* (2016).
[66] The Stern Review on the Economics of Climate Change, <http://webarchive.nationalarchives.gov.uk/+/http:/www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm>

In the RFA CRA process millions of taxpayer dollars were funnelled into consultants and workshops to produce a plethora of reports aiming to provide an 'up-to-date snapshot' of the whole issue of native forest conservation and timber production. The timeframe for the CRAs meant that comprehensiveness became a misnomer and the quality of the reports produced left much to be desired from a scientific and social point of view. Besides the fact that all reports begin with a disclaimer that the information therein cannot be relied upon as factual, the key conclusion from the bulk of the reports was that there was not enough scientific knowledge available about forests. For example:
The modelling project has highlighted some significant areas or species where there still exist gaps in quality data. In the future, it is recommend that further effort is put into systematic targeted surveying of these priority species to enable better presence-absence modelling.[67]

And:
The previous report concluded that the methodology for estimating the effects of logging management on catchment water yield provided a reasonable 'best guess' that was unlikely to be much improved even with the expenditure of considerable effort. This statement applies equally well to this study. Within the limitations of current data availability the methodology represents the current best understanding of the different factors that influence water quantity and quality from forested catchments. However, the absolute magnitude of the estimates are subject to considerable uncertainty.'[68]

The CRA reports make no mention of climate change, even though nine years earlier the Intergovernmental Panel on Climate Change completed its report on the greenhouse effect.

The effects and rate of human-induced climate change have increased dramatically since the RFAs were signed in 1998. Climate change was not considered at all during the CRA process. Further, the significant carbon and water storage aspects of native forests have been inadequately or not addressed at all.

Climate change will dramatically increase other threats to species in the region, through increased spread of invasive species, increased fire frequency and severity, increased spread of forest dieback, and reduced stream flows. The cumulative impact of all these threats, plus industrial logging activities operating under an exemption to the EPBC Act and the RFAs, have resulted in a major impact on nationally-listed species.

Conditions placed on logging to ameliorate impacts as a result of the RFAs are increasingly inadequate as climate change escalates. Forest authorities accounting and information systems fail to assess the true value of carbon and water resources that are stored in native forests. The value of these stored resources far exceed the royalties received from logging activities, even when carbon is conservatively valued at a price of $20 a tonne. The RFAs are the result of a flawed and scientifically unsound process that privileged economic concerns over the environment.

Given what is now known, and all that is still yet to learn, about native forest ecosystems and about the effects of climate change, the non-enactment of the precautionary principle verges on the criminal.

[67] 'Modelling Areas of Habitat Significance for Vertebrate Fauna and Vascular Flora in the Southern CRA Region' project number NS 09/EH February 2000 NSW NPWS.
[68] ESFM Project: 'Water Quality and Quantity for the Southern RFA Region' project number NA 61/ESFM November 1999 Sinclair Knight Merz.

Maintaining the Global Forest Carbon Pool

At least the new CIFOA mentions this issue. The Government's land-use policy frame is fundamentally erroneous. Native forests, the less efficient resource for forestry industry competitiveness, are tagged for wood production with lost opportunities for the job they do best: carbon storage. Plantations, the less efficient and less reliable resource for carbon storage, are tagged for carbon storage with lost opportunities for the job they do best: wood supply.[69]

Both the State and Federal Governments have expressed the need to have full and frank regard for the urgency of action on climate change. One of the activities that must change is the degradation of the native forest estate. With Australia's existing plantations able to meet virtually all our wood needs, whether for domestic consumption or export, native forests are available for immediate climate change mitigation.[70]

Conditions placed on logging native forests to ameliorate impacts as a result of the RFAs are increasingly inadequate as climate change escalates. Forest authorities' accounting and information systems fail to assess the true value of carbon and water resources that are stored in native forests. There is no reporting on total native forest ecosystem biomass, the figures provided are for plantations only. The value of these stored resources in native forests far exceed the royalties received from logging activities, even when carbon is conservatively valued.

Brendan Mackey et al states:

> Forest protection is an essential component of a comprehensive approach to mitigating the climate change problem for a number of key reasons. These include: For every hectare of natural forest that is logged or degraded, there is a net loss of carbon from the terrestrial carbon reservoir and a net increase of carbon in the atmospheric carbon reservoir. The resulting increase in atmospheric carbon dioxide exacerbates climate change.[71]

And

> The remaining intact natural forests constitute a significant standing stock of carbon that should be protected from carbon emitting land-use activities. There is substantial potential for carbon sequestration in forest areas that have been logged if they are allowed to re-grow undisturbed by further intensive human land-use activities. Our analysis shows that in the 14.5 million ha of eucalypt forests in south-eastern Australia, the effect of retaining the current carbon stock (equivalent to 25.5 Gt CO_2 (carbon dioxide)) is equivalent to avoided emissions of 460 Mt CO_2 yr for the next 100 years.[72] Allowing logged forests to realize their sequestration potential to store 7.5 Gt CO_2 is equivalent to avoiding emissions of 136 Mt CO_2 yr-1 for the next 100 years. This is equal to 24 per cent of the 2005 Australian net greenhouse gas emissions across all sectors; which were 559 Mt CO_2 in that year.[73]

The report goes on to state:

---

[69] J Ajani, 'Australia's Transition from Native Forests to Plantations: The Implications for Woodchips, Pulpmills, Tax Breaks and Climate Change' (2008) 15 *Agenda: A Journal of Policy Analysis and Reform* 3.

[70] J Ajani, 'Time for a Coherent Forest Policy - Finally' (2008) Centre for Policy Development, <http://cpd.org.au/2008/10/time-for-a-coherent-forest-policy-finally/>.

[71] R T Kingsford et al, 'Major Conservation Policy Issues for Biodiversity in Oceania' (2009) 23(4) *Conservation Biology* 834

[72] Gigatonne (Gt) equals one billion or 1.0 x 109 tonnes; Megatonne (Mt) equals one million or 1.0 x 106 tonnes.

[73] R T Kingsford et al, above n 71.

> We can no longer afford to ignore emissions caused by deforestation and forest degradation from every biome (that is, we need to consider boreal, tropical and temperate forests) and in every nation (whether economically developing or developed). We need to take a fresh look at forests through a carbon and climate change lens, and reconsider how they are valued and what we are doing to them.[74]

In NSW forest degradation in 2006 created over 17% of NSWs greenhouse gas emissions.[75] Ending native forest logging would assist in reducing the greenhouse gas emissions of the State.

The clearing of native forests and woodlands and their degradation - mainly through logging - generates a conservatively estimated 18 per cent of Australia's annual greenhouse gas emissions.[76]

Professor Peter Wood and Professor Judith Ajani indicate that at CO_2 prices of just ten to fifteen dollars per tonne, which is less than the Garnaut Review's recommended starting price for carbon pollution permits, hardwood plantation owners will receive more money from growing carbon than wood.[77] The Australian Greens included in their 2010 election campaign a platform of a $23 per tonne carbon tax levied on the heaviest polluters, as an interim measure 'to a functional and effective emissions trading scheme'.[78]

Australia is very fortunate, by letting previously logged native forests regrow to their natural carbon carrying capacity, the ANU scientists estimate that they would soak up around 7500 million tonnes of CO_2-e over the coming one hundred to two hundred years.[79]

At COP21 in Paris in 2015 international governments including Australia, recognised and acknowledged the key role that resilient forests and landscapes play in climate change mitigation. While imperfect and incomplete, because their role in combatting climate change was formally recognised, in some ways this was a pivotal moment for forests.

Paris Agreement Art 5 provides:

1. *Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1(d), of the Convention, including forests.*
2. *Parties are encouraged to take action to implement and support, including through results based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks…*

What this means is that Australia will not be able to continue to get away with using dodgy accounting rules to reach emission reduction targets for much longer. Granting exemption for the environmental

---

[74] Ibid 13.
[75] Department of Climate Change, *Australia's National Greenhouse Accounts 2006 State and Territory Greenhouse Gas Emissions, (*2008) 17.
[76] M Blakers, 'Comments on Garnaut Climate Change Review: Issues Paper 1 Land-Use – Agriculture and Forestry' (2008).
[77] P J Wood, J Ajani, Submission to the Commonwealth Government, *Carbon Pollution Reduction Scheme Green Paper + Addendum*, 2008.
[78] *Green Voice*, Winter Edition 2010, 4.
[79] Ajani J, above n 69.

degradation would indicate that the Commonwealth is complicit in that degradation.

Conclusion

The rate of native forest logging had exceeded levels which could be permanently sustained. Now after the fires it is obvious that there is no long-term future in logging of native forest. This logging is not sustainable, it destroys the ecological integrity of the forests and contributes significantly to the catastrophic effects of climate change.

Due to failure to enact principles of ESFM, principles of inter-generational equity and current logging activities it is difficult to argue that maintaining environmental values at or above target levels can be achieved. Given current knowledge on causes and effects of climate change it would be difficult to argue that continuance of logging could maintain these levels given the amount of environmental harm caused. Certainly, with regard to climate change and extinction of species it would be very difficult to argue that logging was 'for the common good'.

In the meantime, if logging is to continue s 69ZA must be repealed. Thus far legislative instruments regulating conservation have proved inadequate to meet standards of nature conservation. Regulatory response has proved inadequate to deter offenders. The combination of non-compliance, inadequate legislation and lack of appropriate regulatory response could ensure that extinction of species is a certainty.

Current logging legislated regimes do not adequately protect Australia's native flora and fauna. The threat of native forest logging must be considered a matter of national significance. The Regional Forest Agreements are severely inadequate to protect forest species and forest habitats. The conservation targets of almost all nationally-listed fauna species and many nationally-listed flora species were not achieved through the RFAs and substantial additional conservation action is still required to meet minimum benchmarks. Using the NSW government's own conservation analysis and data produced during the CRA, it is evident that only one of the twenty nationally-listed forest fauna species met their conservation targets after the RFAs, and many nationally-listed flora species have fallen dramatically short of their targets. The number of threatened and endangered species has risen since the RFAs were signed and many threatened and endangered flora and fauna species are at extreme risk from current logging activities.

In the south east of NSW, covered by the Eden and Southern RFAs, the annual net areas logged have rapidly increased and yields have fallen. In other words, the industry is having to log ever greater areas to maintain the same levels of production. Demonstrably unsustainable timber volumes were committed for twenty years, and these even extend beyond the term of the RFAs. The FRAMES industry modelling system used to derive these volumes substantially over-estimated available timber volumes. Consequently, after the twenty year period of the RFAs, there is a dramatic short-fall in timber. Royalties in South East NSW are now less, in real terms than they were fifteen years ago and Forestry Corporation NSW is making less in royalty revenue than it expends in managing woodchipping activities.

The industrial logging activities in Australia's native forests by Forestry Corporation NSW under the RFAs is unsustainable, economically, culturally and environmentally. The outcomes of the RFAs are not sustainable, even from a timber-production perspective.

State and Federal Governments must have full and frank regard for the urgency of action on climate

change and biodiversity protection by ending the rampant degradation of the native forest estate.

Political will is crucial to improving and ensuring that measures taken have positive outcomes for conservation that are long-lasting. As there has been little or no compliance and continuous over-logging, the only positive outcome for conservation would be to end native forest logging. The challenge now for public native forest conservation is to pressure political will to transfer all State owned land to National Parks co-managed with traditional owners.

In light of this report's findings South East Forest Rescue calls for complete transfer of native forest wood product reliance to the plantation timber industry and salvage recycled hardwood timber industry output, an immediate nation-wide program of catchment remediation and native habitat re-afforestation, and until then, repeal s69ZA of the *Forestry Act 2012* and no exemptions under the EPBC Act for logging/woodchipping native forest for FCNSW.

Nullica SF 2005