



CLARENCE ENVIRONMENT CENTRE

South Grafton 2460

Web site: www.cec.org.au

SUBMISSION

to the

**Standing Committee on
Environment, Communications and the Arts**

on

**Independent review of the
*Environment Protection and Biodiversity Conservation Act 1999***

Prepared for Clarence Environment Centre
by John Edwards (Scientific Licence No. 11209)

August 3, 2008

Submission to the Independent Review of the Environment Protection and Biodiversity Conservation Act, 1999

Introduction

It is the opinion of the Clarence Environment Centre that an independent review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), is long overdue.

Last year's Inquiry into the operation of the EPBC Act identified the fact that "*there is a continuing decline in most of Australia's flora and fauna*". This can only indicate that, despite numerous Recovery and Threat Abatement Plans developed under various legislation designed to protect the environment, including the EPBC Act, are failing to achieve their key objective.

Our organisation has experienced first hand the failure of the Act to protect the environment in the past, particularly species of National Environmental Significance listed thereunder, and will refer to two case studies from our North Coast region of NSW as examples, the Coffs Harbour – Clarence Valley Regional Water Supply Project, and the Upper North East Regional Forest Agreement, 1999.

Areas provided for further consideration

These include:

- * the purpose of the Act;
- * the division and harmonisation of responsibilities for the environment between the Commonwealth and the states and territories;
- * the appropriateness of the current matters of National Environmental Significance as triggers under the Act and proposals for the inclusion of additional triggers;
- * alternative approaches to biodiversity conservation;
- * improved arrangements for performance auditing and compliance; including for Regional Forest Agreements and other bilateral agreements;
- * the scope for review of decisions made under the Act; and
- * opportunities for streamlining environmental regulation.

Executive summary.

In conclusion, the Clarence Environment Centre puts forward the following possible actions and changes in relation to the EPBC Act:

- We would like to see the automatic referral of threatened species listings from a State to Federal level, where those species occur only in the State where the determination is made. This move should see considerable savings, both in money and time, to both those making the nominations, and to the Federal Environment Department.
- Compliance monitoring being widened to incorporate the views other stakeholders, particularly those who have previously expressed concerns, or have reported breaches. There should be significant penalties for any consent breaches.
- A far greater emphasis on protecting threatened species and communities, as against financial and social considerations (Section 131.2.a, and 136.1.b). Currently there appears to be an enormous disparity, strongly weighted against environmental concerns. We believe there must be a mechanism whereby a dollar value is placed on the environment to compare fairly with social and economic costs on the triple bottom line.
- Recommend providing environment groups with funding to actively promote the protection of the environment and biodiversity at the grass roots level.
- It is our understanding that the listing of Key Threatening Processes does not require proponents or developers to adopt any of the recommendations made in Threat Abatement Plans. This must be reversed, and proponents compelled to adopt all recommendations.
- The Precautionary Principle does not receive the level of consideration it should. In many of the determinations explained in the Minister's Statement of Reasons for approving the Shannon Creek dam (see above), the Precautionary Principle was not invoked.
- The Minister informed us that species listed under international treaties such as Rainbow Bee-eater and Needle-tailed Swift were not able to be considered under the Shannon Creek Referral. There is an obligation under the Act (Section 28A.2.d) to take Australia's international obligations into account, but this consideration apparently doesn't go as far as considering the impacts on these species through the Referral process. These species need to be fully incorporated for protection under the Act.
- Species, populations, and communities determined to Matters of National Environmental Significance must be protected. Currently they are only protected if the impact of a development is deemed to be “significant”. With no definition of what constitutes “significant” impact, Developers' consultants can make their own determination. As stated above, any impact at all, on species facing extinction if trends are not reversed, is significant. The Act must be redrafted to reflect that fact so that it no longer serves as a licencing instrument to destroy Matters of National Environmental Significance.

1. The Purpose of the EPBC Act.

Broadly speaking, the purpose of the Act is identified in the name of the Act itself, to protect our environment and conserve its unique biodiversity. The official objectives are stated (No 3, page 1) in the Act. Those relative to this submission are:

- (a) to provide for the protection of the environment, especially those aspects of the environment listed as matters of national environmental significance; and
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
- (c) to promote the conservation of biodiversity; and
- (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and
- (e) to assist in the co-operative implementation of Australia's international environmental responsibilities.

In reality, implementation of the Act has largely seen it become a licensing instrument allowing the destruction of threatened species (Matters of National Environmental Significance) listed under the Act, while refusing to recognise flora, fauna, populations and communities listed only under State legislation. Many of those State listed species are endemic to that state, and contribute greatly to the more fragile component of total biodiversity which is supposedly protected under the Act.

To illustrate this we point to the referral of plans for the construction of the Shannon Creek dam near Grafton in 2005. The site was chosen despite having a 200% higher ecological value than two other short-listed sites (*Environmental Solutions Pty Ltd*, published in the 1999 EIS). A total of more than 40 threatened species were identified as being impacted by the proposal, 9 of which were listed under the EPBC Act or covered by international treaties administered under the Act.

The then Department of Environment and Heritage (DEH) determined that impacts to five listed species, the Spotted-tailed Quoll; Grey-headed Flying Fox; Long-nosed Potoroo; Swift Parrot; and Needle-tailed Swift, all known to frequent at the site, need not be taken into consideration because, ***“populations present would not be affected by the action”*** (#19, Minister's statement of reasons). The Scientific Committee had determined each of those species to be in decline and under threat of extinction through loss of habitat. Yet despite that, the permanent loss of some 250 hectares of native vegetation, including known habitat, was not considered by the Minister to be a threat.

Impacts to three threatened plant and one threatened fauna species were assessed under the referral,

- * *Melichrus hirsutus* (endangered shrub).
- * *Eucalyptus tetrapleura* (vulnerable tree).
- * *Angophora robur* (vulnerable tree).
- * *Brush-tailed Rock-wallaby* (endangered).

Details of the impacts on those threatened species, and consideration by the Minister, are contained in the Case Study at Appendix A. However, the Minister's decision to approve the project as presented, without requiring less damaging options, signed a death warrant for:

- * ***Melichrus hirsutus***: More than 20 specimens.
- * ***Angophora robur***: Well in excess of 800 specimens, possibly over 1000.
- * ***Eucalyptus tetrapleura***: Approximately 40 specimens.
- * **Brush-tailed Rock-wallaby habitat**. Approximately 20 hectares including refuge sites.

Recommendation: The Clarence Environment Centre believes the EPBC Act should be administered to protect threatened species, populations and communities. **Determinations to list species (“Matters of national environmental significance”) as threatened, have been made because if trends are not reversed, those species are likely to become extinct. Any approval by the Minister to destroy those species or their habitat, merely compounds the treats already facing those species, driving them ever closer to oblivion.**

“Significant impact” as a measure of threat must be deleted from the legislation when assessing the threat to species of national environmental significance, as there is no definition of what constitutes a “significant” impact. To species facing extinction, all impacts are significant. As was evidenced by the Shannon Creek dam case, there were alternative sites and courses of action available, but the Minister did not require those alternatives to be pursued, and instead granted approval to destroy thousands of threatened trees and shrubs that could otherwise have been saved, allowing already protected plants and habitat elsewhere to be used as an offset.

2. Division of responsibilities between the Commonwealth and the states:

One glaring example of this division is in the listing of threatened species. During the years leading up to the granting of approval for the Shannon Creek dam, the Clarence Environment Centre members were instrumental in discovering, describing, and naming a *Boronia* species (*Boronia hapalophylla*) that is now declared endangered under the TSC Act.

The *Boronia* is just one of three species that are endemic to the Shannon Creek area, occurring nowhere else in Australia, all three are listed as endangered under the TSC Act, two as a result of our nominations to the NSW Scientific Committee.

We forwarded the research material, used in our successful nominations, to DEH, along with details on another endangered species that occurs at Shannon Creek and is the only known population in NSW, for consideration as endangered species under the EPBC Act.

After hearing nothing for six months, our inquiries found that our nominations had been put to one side because they were not on the official form, and were therefore unacceptable. The then Minister Campbell apologised and offered to forward the necessary forms if we would like to renominate them. However, by that time consent for the Shannon Creek dam project had been granted, and despite having had the opportunity to save considerable numbers of threatened species by combining infrastructure to a common corridor, at no extra financial cost, **the Minister, and the EPBC Act had failed to protect a single specimen. Consequently we declined to pursue the matter further, suggesting it would be a waste of everyone's time.**

Recommendation: The Clarence Environment Centre suggests that mechanisms be put in place whereby any species that has been granted threatened species status at a State level, that are endemic to that State, be automatically added to the Federal list of threatened species.

3. Matters of National Environmental Significance – existing triggers for their consideration, and proposals for the inclusion of additional triggers:

As explained under Section 1 above, proposed destruction of Matters of National Significance only trigger the need to 'refer' the proposal to the Federal Minister for **approval**. The assessment of the proposal is undertaken by consultants employed by the proponent, with express instructions to get the development approved. With no in-depth independent assessment undertaken to check the facts on behalf of the Minister, it is left to community groups and individuals to undertake those assessments at considerable financial, and often psychological, costs to themselves.

As happened with the Coffs Harbour – Clarence Valley Regional Water Supply, not a single concern raised by the community was taken on board. Community members' submissions were actually assessed and responded to by the proponent's consultant in a report to the Minister, with no avenue for rebuttal by the submission writers. In that instance, the simple cost-saving option of combining infrastructure to a single corridor which would have saved innumerable threatened species, was never even considered, either because false and misleading information was provided to the Minister, or the Minister (or his representative) did not read or comprehend the submissions.

Recommendation: The Clarence Environment Centre considers it imperative that adequate resources be provided to the Department of Environment to enable robust spot checking of facts and figures provided by proponents. At the very least, those concerned enough to write submissions should be allowed the opportunity to argue their case face to face in court if need be.

4. Alternative approaches to biodiversity conservation:

As stated earlier in this submission, the EPBC Act does not currently protect threatened species, or biodiversity, and in the majority of cases, simply provides developers with permission to destroy them.

Recommendation: The objective of the EPBC Act, first and foremost, should be to protect threatened species and biodiversity from destruction. Those species have already been identified as facing extinction if trends are not reversed. Threat Abatement Plans under the Act clearly identify the threatening processes, so -

* legislation should be formulated to prevent those threatening processes, and

* incentives should be put in place that encourages rehabilitation and reestablishment of native vegetation.

5. Improved arrangements for performance auditing and compliance; including for Regional Forest Agreements and other bilateral agreements:

We note with interest, the stinging assessment of the current arrangements in relation to the Regional Forest Agreements by the review panel headed by ANU's, Alan Hawke. His stinging attack identified that the agreements have done little to protect the environment from logging, *“were unaccountable, hard to measure and almost impossible to enforce.”*

Hawke's comments came hard on the heels of the NSW Auditor General's findings that on top of a \$14.4 million loss in the previous year, Forests NSW was cutting down trees at a much faster rate than they were regenerating. i.e **current operations are unsustainable**. The Greens' leader, Senator Bob Brown, described the RFAs as, *“a licence to slaughter endangered species which would see other operators put in jail.”*

Hawke also identified serious problems with implementing the EPBC Act under the current arrangement. This must change, and NSW's forests managers and operators held accountable for the biodiversity destruction that has, and still is occurring. Below is the summary of the Clarence Environment Centre's submission to the RFA Review (see full submission at Appendix B).

Recommendations

- The terms of Licence under the Threatened Species Conservation Act 1995, needs to be strengthened in order to properly protect flora and fauna.

- Ecologically Sustainable Forest Management must be more than a motherhood statement. Comprehensive baseline assessments of flora and fauna must be a prerequisite to logging, with mechanisms in place to measure the health and abundance of all flora and fauna in State forests over time. Likewise, regulations that ensure any observed detrimental environmental impacts are reversed.
- The declaration of reserves and exclusion zones should not abrogate Forests NSW's responsibility to rehabilitate and manage those reserves to maintain or improve biodiversity. Currently that is not occurring.
- Management of Bell Miner Associated Dieback (BMAD), must be a priority. Action should be immediately taken to prevent canopy reduction in excess of 30% during any forestry logging or thinning operations, to minimise impacts until such time as the problem is overcome.
- There should be an independent assessment of all changes to the Forest Resource Assessment and Management Evaluation System (FRAMES), and amendments to the IFOA, to ensure these changes have not been detrimental to the environment, or the long-term viability of the timber industry. Any changes found to have had detrimental ecological effects, must be reversed.
- Biodiversity protection must be taken seriously. By Forests NSW's own admission, biodiversity protection is of primary importance to the long-term survival the timber industry, and to mankind itself. That acknowledgment is not reflected on the ground, with biodiversity protection largely overlooked.
- Despite the IFOA Review being 4 years overdue, more than 10% of the Milestones have not been met (Appendix 1, Table B). Ecological sustainability is the area that has suffered most as a result.
- In relation to erosion and waterway pollution, forest managers must be required to adhere to all recommendations relating to logging steep slopes during wet weather; obtain all appropriate licences under the POE Act; be required to monitor water quality in all adjoining waterways during logging operations; and must refrain from logging in filter strips along creeks, drainage lines or depressions, mapped and unmapped. Any breaches of the Act must result in prosecution.
- The carbon cycle and climate change likewise must be taken seriously. Despite world-wide acceptance of the threats posed by global warming, climate change impacts receive no attention in the Draft Report. Good forest management has the potential for positive carbon outcomes, but forestry, as it is currently being undertaken, does not come close to achieving those outcomes.
- Social amenity is listed as a desired key outcome of the RFAs. In this respect it should be noted that the claimed aesthetic values have been greatly diminished with the introduction of sporting shooters into State forests. Most of those who have traditionally used State Forests for bush-walking, and other passive recreational pursuits, and knowing that untrained amateur hunters could be roaming the forests, are no longer prepared to risk their lives.
- Clearly, current sustainable timber certification is not translating into meaningful 'on the ground' improvement in forest management. We believe the Australian Forestry Standard and the Program for the Endorsement of Forest Certification Scheme do not meet basic requirements for a credible forest certification system, ie criteria reflecting the demands of governments, industry, NGOs and the marketplace. It is our belief certification should result from clear performance-based standards such as those adopted by the Forest Stewardship Council.

General Compliance Monitoring

In February 2006, the then DEH granted conditional consent to the building of the Shannon Creek dam, incorporating a raft of mitigation actions and ameliorative measures promised by the proponent.

On discovering what appeared to be widespread breaches of those mitigation measures once construction began, the Clarence Valley Conservation Coalition contacted the consent authority/proponent, Clarence Valley Council for an explanation.

In a written response Council's Assistant General Manager claimed: "*North Coast Water proposed alterations to Statement of Environmental Effects' mitigation measures which were agreed to by Clarence Valley Council in February 2006. North Coast Water advised the DECC of all proposed amendments.*". **Those changes were made after DECC and DEH had granted approval based on those conditions being fulfilled.**

Whether or not a similar advice was sent to DEH has yet to be determined (our inquiry has not been answered), However, DECC was not informed about any of the changes until a week before construction was scheduled to begin. Some changes, such as the scrapping of hygiene procedures to control the spread of the dieback pathogen, *Phytophthora cinnamomi*, and the undertaking not to transfer soil material off the site for the same reason, were not conveyed to DECC until some months **after** work had commenced. DEH was informed of that by way of a copy of the revised Plan of Management which was sent to Canberra **9 months after** work had commenced.

No less than 6 management plans were modified subsequent to approval being granted on the basis of the original Plans, most were not provided to DECC or DEH until after work had begun. This "thumbing the nose" at authority should be unacceptable. However, when breaches were reported to DEH, a tour of the site was conducted by the proponent alone, with no contact made to those reporting the complaints. Again, the word of the proponent was taken over that of private citizens whose concerns were overruled.

Recommendation: Serious on ground, unannounced compliance inspections, on a regular basis by experienced operators, would ensure a greater level of all-round compliance.

6. Scope for review of decisions made under the Act:

As stated above, the inability to be allowed to rebut the blatant misrepresentation, and patently misleading and erroneous comments of consultants employed by proponents, when assessing submissions from NGOs and private citizens, is frustrating in the extreme.

7. Opportunities for streamlining environmental regulation.

The term "streamlining" is synonymous with fast-tracking and reduction of environmental protection. While simplification of a system is desirable, the watering-down of protection for the environment should never be contemplated. In fact the reverse should apply.

In NSW "streamlining" has resulted in the infamous Part 3A amendments to the EP&A Act, and BioBanking which is seeing a net loss of biodiversity over the short to medium term, with only the possibility of stabilisation in the long-term. These types of proposals always originate with the developer, and should therefore be treated with extreme caution.

Thank you for the opportunity to comment
Yours sincerely
John Edwards (Honorary Secretary).

Appendix A

Case Study – The Shannon Creek dam (EPBC 2005/2191).

In 2005, then Department of Environment and Heritage (DEH) determined that impacts to 5 listed species, the Spotted-tailed Quoll; Grey-headed Flying Fox; Long-nosed Potoroo; Swift Parrot; and Needle-tailed Swift, all known to frequent at the site, need not be taken into consideration because, **“populations present would not be affected by the action”** (#19, Minister's statement of reasons). The Scientific Committee had determined each of those species to be in decline and under threat of extinction through loss of habitat. Yet despite that, the permanent loss of some 250 hectares of native vegetation, including known habitat, was not considered by the Minister to be a threat.

Impacts to three threatened plant and one threatened fauna species were assessed under the referral,

- * *Melichrus hirsutus* (endangered shrub).
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- * *Angophora robur* (vulnerable tree).
- * *Brush-tailed Rock-wallaby* (endangered).

Impacts on those threatened species, and consideration by the Minister resulted in the following:

- * ***Melichrus hirsutus*: (parts 21, 22, and 23, Minister's Statement of Reasons [SoR]).** In its submission, The Friends of Shannon Creek Action Group (FOSCAG) provided the Minister with GPS readings of all *M. hirsutus* at the dam's spillway site, and accurately measured actual areas of habitat to be lost through construction alone as 3 hectares. FOSCAG also provided GPS readings for another ten specimens that would be lost at a separate location, through inundation, adding a further 5 hectares of known habitat that would be lost. **FOSCAG provided these figures to dispute the proponent's view that the total area of known habitat amounted to just 1.32 hectares.**

Despite FOSCAG's evidence, the Minister accepted the proponent's word without question, and found (Part 23 of the SoR) that: *“..the remaining approximately 184 hectares of potential habitat for the Melichrus hirsutus would be in the Chambigne Nature Reserve and the Buffer Management Zone for the storage area. I found that the long-term protection and conservation of these compensatory habitat areas would mitigate and compensate for the impacts of the proposed action on Melichrus hirsutus.”*

That statement signed the death warrant for more than 20 endangered *Melichrus* shrubs.

- ***Angophora robur***

FOSCAG had fought hard to have all infrastructure associated with the dam, pipeline, power line, and access road, restricted to a single corridor. In the event of the road being placed along the preferred pipeline corridor, it would have entailed that corridor being widened causing an additional 2.8ha of forest clearing. This led to the Minister reasoning that (part 25): **“I found that an additional 2.8ha of *Angophora robur* would be cleared if the access road were co-located with the pipeline route.”**

The Minister totally ignored the fact that if co-location of the access road and pipeline had occurred, the entire 4.5km (**12 hectares**) of the separate road corridor would have been spared, thus saving approximately 8ha of known habitat containing over 450 specimens of *A. robur*, **all of which were destroyed as a direct result of the Minister's decision.**

When the road easement was finally cleared in September 2006, the promised **“15m width generally along its length”** (Access Road SEE, 2004) ended up being cleared through the area of *A. robur* habitat to a width of between 30 and 40 metres.

We estimate this additional clearing brought the total of destroyed *A. robur* to more than 600. Also the DA called for an 18m wide corridor to be cleared for underground pipeline and power supply. That corridor was cleared to a minimum 20m and close to 30m in some places. DEH appear to have accepted these excesses without question.

- ***Eucalyptus tetrapleura* (parts 27, 28 and 29)**

23 specimens of vulnerable Square-fruited Ironbark trees were identified along a 200m section of the proposed access road.

Again, had the road been co-aligned with the pipeline, all 23 could have been preserved. The simple moving of the road 30 metres to either side of the grove of Ironbarks would also have avoided the need to destroy them.

Despite FOSCAG putting these facts to the Minister, he approved their destruction finding (Section 28): *“that approximately 60ha of known and potential habitat of Eucalyptus tetrapleura would be cleared as a result of the access road and storage inundation”,* and that: *“the proposed access road would result in the clearing of an additional 0.9ha of Eucalyptus tetrapleura compared to co-locating the access road along the pipeline alignment.”*

A simple reference to Figure 2.15 (Vol. 3, SIS 2005) clearly shows there has not been a single recording of *Eucalyptus tetrapleura* within either the proposed compensatory habitat area or the dam's buffer zone, the only areas proposed for conservation. **The Minister failed to accept this fact, and instead claimed there is 1670ha of potential habitat in the vicinity.**

Subsequently, the said 0.9ha of *E. tetrapleura* containing the 23 specimens that was cleared for the proposed access road. The numbers that were cleared for the widening upgrade of Shannondale Road, an integral part of the proposed access, were not considered by the Minister.

The failure to consider those trees destroyed in the up-grade and the subsequent excessive clearing for the access road, saw approximately 40 Ironbarks needlessly destroyed, as a direct result of the Minister's decision.

- **Brush-tailed Rock-wallaby (Parts 30 – 35)**

The Shannon Creek dam has effectively divided the Rock-wallaby population at Shannon Creek. The State National Parks and Wildlife Service accepted the dam would result in a decline of the population, but determined this was not considered to be significant at a regional level. In 2009, the Brush-tailed Rock-wallaby Recovery Plan does no longer recognise the Shannon Creek population. **Seemingly, the DECC has written them off as likely to become locally extinct.**

FOSCAG disputed the proponent's claim of 400ha of potential refuge sites in the area, suggesting the area was closer to 40ha. A professional report by ecologist, Ben Lewis, supported this claim. **However, the Minister again chose to accept the proponent's word, and the Lewis Report was not even referenced in the list of documents assessed as part of the referral process.**

The Minister correctly acknowledged (part 33) that connectivity between the eastern and western escarpments will be reduced by dam infrastructure. However, his finding of, *“no confirmed evidence to date of any crossing by this species at any location along this corridor”*, was ridiculous. These animals had been seen crossing the valley at that point.

The current decline in Wallaby scats, identified by the monitoring program, must be accepted as evidence that these animals are already in decline as a consequence of the construction of the dam. **The Minister's consent must therefore be acknowledged as a major contributor to their possible demise at the local level.**

The following is FOSCAG's assessment of the 7 part tests as presented for the Shannon Creek dam case, where each response by the proponent, North Coast Water (NCW) is answered by FOSCAG.

IMPACTS UPON *MELICHRUS HIRSUTUS*, AN ENDANGERED PLANT SPECIES
EPBC Criteria within the Administrative Guidelines for Determining if an Action will
Significantly Impact Upon an Endangered Species

An action has, will have, or is likely to have a significant impact on a critically endangered or endangered species if it does, will, or is likely to: lead to a long-term decrease in the size of a population.

NCW's Response: *"It is possible that the proposal will lead to a reduction in the size of the population."*

FOSCAG's comment: The destruction of an unknown number of the species has already occurred across two components of the project. A further loss of up to 20 plants at the proposed dam site, spillway and inundation area, and removal of over five hectares of known habitat, cannot be seen as a possible reduction in population size.

An action that will reduce the area of occupancy of the species.

NCW's Response: *"The proposal will slightly reduce the area of occupancy of the species."*

FOSCAG's comment: Cumberland Ecology have made an inflated estimate of 186ha of habitat for *M. hirsutus* at Shannon Creek. Even if this unlikely figure was adopted, the area of habitat to be destroyed represents in excess of 5%. We suggest this is a significant reduction for a species that only occurs in one other small conservation reserve (refer species profile, SIS, Vol. 3)

An action that will fragment an existing population into two or more populations

NCW's Response: *"It is predicted the proposed action is relatively unlikely to fragment the population into two or more populations."*

FOSCAG's comment: It would be fair to say, at this point in time, that the population will not be fragmented. The assessment, *relatively unlikely*, may have something to do with the fact that the species was sighted, but never recorded, in at least two locations to the east of the dam site (pers com Dr Robertson, the author of the referral). Those plants seem to have now disappeared. Then again the reason for the term *relatively* may be related to the real threat to the species from *P. cinnamomi* infection or the effects of human-induced climate change.

An action that will adversely affect habitat critical to the survival of a species.

NCW's Response: *"The proposed action could spread *Phytophthora cinnamomi*, which may adversely affect habitat critical to the survival of the species."*

FOSCAG's comment: Apart from the direct destruction of 10ha of habitat, and the admitted potential for introduction of *P. cinnamomi*, there is also the potential impacts of human-induced climate change, which has yet to be scientifically tested.

An action that will disrupt the breeding cycle of a population.

NCW's Response: *"The proposed action is unlikely to interrupt the breeding cycle of a population."*

FOSCAG's comment: Should the root rot pathogen, *Phytophthora cinnamomi* become active within the Chambigne Nature Reserve, the disease has the potential to bring about the local extinction of the species. It is doubtful if the author actually understands the breeding requirements of *Melichrus hirsutus*.

An action that will modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline.

NCW's Response: “*The proposed action is unlikely to cause a significant decline of the species across its range*”

FOSCAG's comment: Again the terms 'unlikely' and 'significant' are used; the precautionary principle ignored. *Melichrus hirsutus* has been identified as belonging to a plant genus known to be susceptible to the pathogen, *Phytophthora cinnamomi*. Should the population become infected, there is little doubt that this rare species, endemic to Kangaroo Creek sandstone, will see a significant decline.

An action that will result in invasive species that are harmful to a critically endangered or endangered species becoming established in the endangered or critically endangered species' habitat.

NCW's Response:

The proposed action could spread Phytophthora cinnamomi, which may adversely affect habitat critical to the survival of the species. However, this is already established in the study area.

FOSCAG's comment: *Melichrus hirsutus* grows mainly throughout the Brown Bloodwood – Sandstone Mahogany Woodland, described in the SIS as community 10. The above statement, that the pathogen is already established in the area, is a deliberate deception suggesting the *Melichrus* population has already been exposed to the disease. The *P. cinnamomi* Plan of Management itself states (pages 3.11.- 3.12) that the Brown Bloodwood Woodland: “*is uninfected and no positive results were recorded.*” The POM, however, rates the risk to *Melichrus* as low (table 3.5). This analysis is curious in light of the fact that two other endangered species that share that habitat, *Bertya longistylar* (pending) and *Boronia hapalophylla*, are rated at high risk. We have already demonstrated that *P. cinnamomi* has the potential to significantly impact on this species, and suggest that the disease poses a very significant risk of harm.

* * * *

IMPACTS UPON *ANGOPHORA ROBUR*, A VULNERABLE PLANT SPECIES
EPBC Criteria within the Administrative Guidelines for Determining if an Action will
Significantly Impact Upon a Vulnerable Species

An action has, will have, or is likely to have a significant impact on a vulnerable species if it does, will, or is likely to: lead to a long-term decrease in the size of a population.

NCW's Response: *“The proposal may clear some individuals from an important population. However, the numbers cleared relative to the size of the population is small.”*

FOSCAG's comment: On top of the considerable numbers of the species already destroyed by pipe-laying operations, geotechnical investigations, and survey work, there could be as many as 1000 specimens of *A. robur* destroyed by future construction. There has been no attempt made to minimise that destruction by way of using common corridors for infrastructure. Future expected subdivision, facilitated by the provision of infrastructure, will see further destruction of the species, and fragmentation of its habitat.

An action that will reduce the area of occupancy of an important population.

NCW's Response: *“The proposed action will clear habitat and reduce the area of occupancy of an important population.”*

FOSCAG's comment: Agreed. Probably in excess of 100ha of habitat will be destroyed. This species has a limited range, growing only on scattered Kangaroo Creek sandstone outcrops between Glenreagh and Coaldale, a distance of only 60km.

An action that will fragment an existing population into two or more populations.

NCW's Response: *“Some elements of the proposed action (particularly the access road) will bisect patches of habitat. However, this is unlikely to ecologically isolate the patches of habitat on either side of the cleared area, as the width of clearing is relatively narrow.”*

FOSCAG's comment: There will be fragmentation, not only from the access road, but pipeline easement and a network of linking tracks and already existing cleared easements across the study area. Future subdivision will complete the destruction.

An action that will adversely affect habitat critical to the survival of a species.

NCW's Response: *“The proposed action is unlikely to adversely affect habitat critical to the survival of the species.”*

FOSCAG's comment: There is little habitat that can be described a critical to the survival of the species. However, the scale of destruction is a major concern when there are obvious actions that can be taken to reduce that impact.

An action that will disrupt the breeding cycle of a population.

NCW's Response: *“The proposed action is unlikely to disrupt the breeding cycle of an important population.”*

FOSCAG's comment: Agreed, although it is doubtful the author is qualified to comment on this aspect of plant behaviour. The other potential impacts of micro-climatic change and infection by *Phytophthora cinnamomi* are also factors that have not been adequately addressed.

An action that will modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline.

NCW's Response: *“The proposed action is not likely to cause a significant decline in the abundance of the species.”*

FOSCAG's comment: The proposed destruction and fragmentation of habitat has to be seen as destroying, removing and decreasing the availability or quality of the habitat. Whether or not this level of destruction, coupled with future subdivision in the immediate vicinity, and the potential for impacts through attack by *Phytophthora cinnamomi*, will lead to a decline of the species, only time will tell. The threats however, are significant and the precautionary principle should apply.

An action that will result in invasive species that are harmful to a vulnerable species becoming established in the vulnerable species' habitat.

NCW's Response: *“The proposed action could spread *Phytophthora cinnamomi*, which may adversely affect habitat critical to the survival of the species. However, this is already established in the study area.”*

FOSCAG's comment: The pathogen is already in the area, however, the *P. cinnamomi* Plan of Management clearly states the habitat for much of the *A. robur* is not infected. There is no evidence to suggest the pathogen has not been recently introduced, which would account for the lack of obvious deaths among most species.

An action that interferes substantially with the recovery of the species.

NCW's Response: *“The proposed action is unlikely to interfere substantially with the recovery of this species. Rather, it will benefit the species by providing additional conserved habitat that will be conserved in the long term.”*

FOSCAG's comment: While long term conservation of habitat is applauded, this measure is more than balanced by the probable damaging effects of subdivision which is expected to occur across the remaining 2,000 hectares that is currently prime habitat. Noting also that the area proposed for compensatory habitat is already habitat, and the only area proposed for rehabilitation is a 20ha valley floor which cannot be described as ideal habitat for *A. robur*.

**An important population is one that is necessary for a species' long-term survival and recovery. This may include populations that are:
key source populations either for breeding or dispersal,**

NCW's Response: *“The population/s of *Angophora robur* in the project area are large and important populations for breeding/maintenance of the species.”*

FOSCAG's comment: Agreed; all the more reason not to impact the species unnecessarily.

**An important population is one that is necessary for a species' long-term survival and recovery. This may include populations that are:
populations that are necessary for maintaining genetic diversity.**

NCW's Response: *“The population/s of *Angophora robur* in the project area are large and would make a significant contribution to the genetic diversity of the species. However, the species is well represented in the local area, including nearby conservation reserves such as Chambigne and Koukandowie Nature Reserves.”*

FOSCAG's comment: Agreed, but hardly justification to unnecessarily destroy up to 1,000 trees.

An important population is one that is necessary for a species' long-term survival and recovery. This may include populations that are: populations that are near the limit of the species range.

NCW's Response: *“This species occurs in a relatively narrow geographic area and as such the populations are near the limit of the range.”*

FOSCAG's comment: *Agreed.*

* * * *

**IMPACTS UPON *EUCALYPTUS TETRAPLEURA*, A VULNERABLE PLANT SPECIES
EPBC Criteria within the Administrative Guidelines for Determining if an Action will
Significantly Impact Upon a vulnerable Species**

An action has, will have, or is likely to have a significant impact on a vulnerable species if it does, will, or is likely to: lead to a long-term decrease in the size of a population.

NCW's Response: *“The proposal may clear some individuals from an important population. However, the numbers cleared relative to the size of the population is small.”*

FOSCAG's comment: Again it has to be stressed that numbers have already been destroyed by pipeline construction. Those trees, in most cases were never identified prior to destruction. If the proponent had chosen to share the access road with the pipeline easement, all 50 specimens to be destroyed by road construction, would be preserved.

An action that will reduce the area of occupancy of an important population.

NCW's Response: *“The proposed action will clear habitat and reduce the area of occupancy of an important population.”*

FOSCAG's comment: Agreed. Probably in excess of 20ha of habitat will be destroyed. This species has a limited range, growing only around the Grafton area.

An action that will fragment an existing population into two or more populations.

NCW's Response: *“Some elements of the proposed action (particularly the access road) will bisect patches of habitat. However, this is unlikely to ecologically isolate the patches of habitat on either side of the cleared area, as the width of clearing is relatively narrow.”*

FOSCAG's comment: There will be fragmentation, not only from the access road, but pipeline easement, and a network of linking tracks and already existing cleared easements across the study area. Future subdivision, a threat that is completely ignored, will complete the destruction.”

An action that will adversely affect habitat critical to the survival of a species.

NCW's Response: *“The proposed action is unlikely to adversely affect habitat critical to the survival of the species.”*

FOSCAG's comment: The above response is being made scores of times annually as developments slowly eat away habitat for all threatened species. This trend has to be halted, and the question asked; at what point will this destruction of habitat adversely affect the species' survival? That point will be reached only after the species' protection is progressively upgraded to endangered and critically endangered, and is facing a real threat of extinction. As far as this proposal is concerned, there is little habitat that can be described as currently critical to the survival of *E. tetrapleura*. However, the scale of destruction is a major concern when there are obvious actions that can be taken to reduce that impact.

An action that will disrupt the breeding cycle of a population.

NCW's Response: *“The proposed action is unlikely to disrupt the breeding cycle of an important population.”*

FOSCAG's comment: Agreed, although it is doubtful the author is qualified to comment on this aspect of plant behaviour. The other potential impacts of micro-climatic change and infection by *Phytophthora cinnamomi* are also factors that could disrupt the breeding cycle, but have not been adequately addressed.”

An action that will modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline.

NCW's Response: *The proposed action is not likely to cause a significant decline in the abundance of the species."*

FOSCAG's comment: The proposed fragmentation of habitat has to be seen as destroying, removing and decreasing the availability or quality of the habitat. Whether or not this level of destruction, coupled with future subdivision in the immediate vicinity, and the potential for impacts through attack by *Phytophthora cinnamomi*, will lead to a decline of the species, only time will tell. The threats however, are significant and the precautionary principle considered.

An action that will result in invasive species that are harmful to a vulnerable species becoming established in the vulnerable species' habitat.

NCW's Response: *"The proposed action could spread *Phytophthora cinnamomi*, which may adversely affect habitat critical to the survival of the species. However, this is already established in the study area and *Eucalyptus tetrapleura* is likely to be resistant to this pathogen."*

FOSCAG's comment: The pathogen is already in the area, however, *Eucalyptus tetrapleura* may not be showing any symptoms because the pathogen has only recently been introduced and drought conditions in recent times have been less than ideal for its impact to be observed. There is no evidence to suggest the pathogen may have been at the site for decades as claimed in the SIS.

An action that interferes substantially with the recovery of the species.

NCW's Response: *"The proposed action is unlikely to interfere substantially with the recovery of this species. Rather, it will benefit the species by providing additional conserved habitat that will be conserved in the long term."*

FOSCAG's comment: While long term conservation of habitat is applauded, this measure is more than off-set by the probable damaging effects of subdivision which is expected to occur across the remaining 2,000 hectares of currently prime habitat. It should be noted that no specimens of *E. tetrapleura* have been identified by the proponent within any areas proposed to be retained for conservation, i.e. the proposed buffer zone and compensatory habitat area.

An important population is one that is necessary for a species' long-term survival and recovery. Including: key source populations either for breeding or dispersal

NCW's Response: *"The population/s of *Eucalyptus tetrapleura* in the project area are large and important populations for breeding/maintenance of the species."*

FOSCAG's comment: Agreed; all the more reason not to impact the species unnecessarily. These supposedly large populations have not been sighted by FOSCAG, and all occur within areas that the proponent has identified as surplus to requirement and will be sold, and probably subdivided.

An important population is one that is necessary for a species' long-term survival and recovery. Including: Populations that are necessary for maintaining genetic diversity.

NCW's Response: *"The population/s of *Eucalyptus tetrapleura* in the project area are large and would make a significant contribution to the genetic diversity of the species."*

FOSCAG's comment: We challenge the claim of 'large populations'. However, those populations that have been identified all occur in areas identified as surplus to NCW's requirements. There are few if any *E. tetrapleura* growing within those areas identified for retention by the proponent.

An important population is one that is necessary for a species' long-term survival and recovery. This may include populations that are: near the limit of the species range.

NCW's Response: *“This species occurs in a relatively narrow geographic area and as such the populations are near the limit of the range.*

FOSCAG's comment: *Agreed.*

IMPACTS UPON BRUSH-TAILED ROCK-WALLABY A VULNERABLE SPECIES
EPBC Criteria within the Administrative Guidelines for Determining if an Action will
Significantly Impact Upon a Vulnerable Species

An action has, will have, or is likely to have a significant impact on a vulnerable species if it does, will, or is likely to: lead to a long-term decrease in the size of a population.

NCW's Response: *“The proposal will remove some foraging habitat and a small amount of shelter habitat for this species. However, the majority of the habitat for this species will be untouched.”*

FOSCAG's comment: A critical crossing point between the only two opposing escarpment habitats, including refuge sites on either side of Shannon Creek, will be replaced by an intricate barrier of infrastructure. The core habitat that will remain will enjoy water-front vistas, and suffer the loss of dozens of hectares of important browse. There may not be any short term reduction in numbers, however, the long-term prognosis is possible extinction as the remaining inviable population slowly succumbs to predators.

An action that will reduce the area of occupancy of an important population.

NCW's Response: *“The proposal will remove some foraging habitat and a small amount of shelter habitat for this species. It is possible that the development could slightly reduce population size although this is considered to be unlikely.”*

FOSCAG's comment: As above.

An action that will fragment an existing population into two or more populations

NCW's Response: *“The Shannon Creek Storage will inundate the upper Shannon Creek valley and is likely to have an impact upon the connectivity of habitat for Brush-tailed Rock-wallaby. However, areas downstream (to the north) of the proposed storage will remain as areas where this species can move between escarpment areas. As such the development is not expected to separate the existing population into two discrete smaller populations.”*

FOSCAG's comment: As stated above, a critical crossing point between the only two opposing escarpment habitats, including refuge sites, on either side of Shannon Creek will be replaced by an intricate barrier of infrastructure. A revegetation plan proposed for an area to the north of the dam will prove ineffectual as a wallaby crossing as there is no suitable habitat, refuge sites or other populations of Rock-wallabies that is connected to either end of that proposed 'escape route'.

An action that will adversely affect habitat critical to the survival of a species.

NCW's Response: *“The proposed action will result in some clearance of habitats including foraging and to a lesser extent shelter habitats. However, the great majority of habitat will be retained for this species and the cleared habitat is not expected to significantly affect the survival of the species.”*

FOSCAG's comment: The proponent's response fails to answer the question as to whether critical habitat will be removed. The Warrumbungle Rock-wallaby Recovery Plan (DEC) clearly describes cliff habitat with ledges, and jumbles of fallen rock with a maze of escape tunnels, as habitat critical to the Rock-wallaby's survival. Habitat answering that exact description will be destroyed or inundated at Shannon Creek. The wording of the above response: *“the cleared habitat is not expected to significantly affect the survival of the species”*, does suggest there will be some affect on the wallaby's chances for survival.

An action that will disrupt the breeding cycle of a population.

NCW's Response: “The proposed action is unlikely to disrupt the breeding cycle of a population, modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline.”

FOSCAG's comment: The proposed segmentation of the Chambigne Nature Reserve is likely to result in an inviable population (refer Lewis report, 2004. Attachment 5).

An action that will modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline.

NCW's Response: “*The proposed action is not likely to cause a significant decline in the abundance of the species.*”

FOSCAG's comment: As above. Habitat, critical to the movement of wallabies across Shannon Creek, will be removed. The current population will be segregated (refer Lewis report, 2004)

An action that will result in invasive species that are harmful to a vulnerable species becoming established in the vulnerable species' habitat.

NCW's Response: “*The proposed action has potential to increase access to the site by foxes, which are a major threat to Brush-tailed Rock Wallabies. However, this has been taken into account during the original EIS/SIS for the project and a Threatened Species Management Plan and Vertebrate Pest Management Plan are now in place. Foxes and Brush-tailed Rock-Wallabies are both being monitored and fox control will be implemented as required.*”

FOSCAG's comment: Although fox spoor has been identified at the site during recent monitoring, no action has yet been taken to address the problem. Construction compounds and a ready source of food scraps, along with access roads, will attract foxes in increasing numbers. The advent of tourists after construction will continue that trend. Their effective control may not be possible, and then only at the expense of native species such as Quoll, which receives no consideration in this referral.

An action that interferes substantially with the recovery of the species.

NCW's Response: “*The proposed action is unlikely to interfere substantially with the recovery of this species. Rather, it will benefit the species by providing additional conserved habitat that will be conserved in the long term.*”

FOSCAG's comment: While long term conservation of habitat is applauded, this measure is more than off-set by the probable damaging effects of subdivision which is expected to occur across the remaining 2,000 hectares, introducing dogs and feral species even closer to Rock-wallaby populations. Provision of small amounts of compensatory habitat, which is already serving as habitat, will be no use to the Chambigne Nature Reserve population that will be unable to access the area, due to the barrier effect of the dam and infrastructure.

An important population is one that is necessary for a species' long-term survival and recovery. Including: Key source populations either for breeding or dispersal,

NCW's Response: *“The population of Brush-tailed Rock-Wallaby that occurs in the study area is part of a larger occurrence that extends to the south and north through other areas of Kangaroo Creek Sandstone landscape. This is a sizable population and should be considered important for the species in north-eastern New South Wales.”*

FOSCAG's comment: The above response is meaningless. Brush-tailed Rock-wallaby populations to the north and south are disconnected from that at Shannon Creek. That population will be divided by the project, which will probably result in two separate sub-populations, the viability of which has not been investigated and must be considered in extreme doubt.

An important population is one that is necessary for a species' long-term survival and recovery. Including: Populations that are necessary for maintaining genetic diversity.

NCW's Response: *“The population of Brush-tailed Rock-Wallaby is likely to contribute to the genetic diversity of this species, but the species is widespread and the population is one of a number of populations within northern New South Wales.”*

FOSCAG's comment: Again, the response is meaningless. Throughout the 2005 SIS the Rock-wallaby population at Shannon Creek is described as an important population.

An important population is one that is necessary for a species' long-term survival and recovery. This may include populations that are: Near the limit of the species range.

NCW's Response: *“The species is not at the geographic limit of its range.”*

FOSCAG's comment: Agreed.

* * * *

Appendix B.

**Copy - Clarence Environment Centre's Submission to
Review of the Regional Forest Agreements, July 2009.**

SUBMISSION

on

A Draft Report on Progress with Implementation of the New South Wales Regional Forest Agreements (RFAs)

Introduction

The Clarence Environment Centre has had a long involvement with forest issues dating back 20 years in a region that had been built on the back of the timber industry for over 150 years. Unfortunately, that industry has caused irreparable harm over that period, driving iconic species such as Red Cedar and Hoop Pine to near extinction. Therefore, it was with a great deal of optimism that we viewed the signing of the Regional Forests Agreements (RFA) in the late 1990s, seeing them as the start of a new era in sustainable timber harvesting, providing long-term security for the industry while conserving biodiversity.

It soon became apparent that all was not well. Log sizes harvested from State forests rapidly declined, and logging cycles were dramatically reduced as Forests NSW attempted to fulfill unrealistic timber supply contracts. The forests' health likewise fell into rapid decline, with exotic weed and native vine infestations, encouraging a newly emerging dieback associated with Bell Miners (BMAD) to take a serious toll on much prized wet forest species in the north of the State.

Reports began coming in of unacceptable levels of logging, up to 60% of basal volume every 9 or 10 years; inadequate protection of threatened species habitat; widespread needless destruction of threatened species themselves; destruction of habitat trees wherever the opportunity presented; logging in unmapped drainage lines, and of forest communities that were patently incorrectly mapped by an ineffective GIS system.

The inability of the Department of Environment and Climate Change (DECC), or the Federal Environment Department, to act on reports from a concerned public, coupled with laws precluding any third party challenge to what is going on, signals the need for urgent change. However, the promised five-yearly review into the Integrated Forest Operations Agreement (IFOA)(Upper North East due in 2005) has been delayed for an unacceptable four years.

Earlier this year, our concerns finally received official confirmation with the State's Auditor General slamming the operations of Forests NSW on the North Coast, claiming that, not only had the organisation lost \$14.4 million in the previous year, but that trees were being cut down at a much faster rate than they were regenerating. **Current operations are unsustainable.**

Hard on the heels of the Auditor General's findings came those of a review panel headed by ANU's, Alan Hawke, and commissioned by the Federal Environment Minister, Peter Garrett. Hawke's stinging attack identified that the agreements have done little to protect the environment from logging, "*were unaccountable, hard to measure and almost impossible to enforce.*" The Greens' leader, Senator Bob Brown, described the RFAs as, "*a licence to slaughter endangered species which would see other operators put in jail.*"

The Clarence Environment Centre notes the comment (page 4) that: "*The review **will not lead to renegotiation** of the agreements. However, both parties **may agree to some minor modifications.**" While we will not comment on economic sustainability we will gladly accept this opportunity to make comment on what we see as a complete failure of the much vaunted Ecologically Sustainable Forest Management (ESFM), which underpins the RFAs. We will also comment on the dubious certification system that enables Forests NSW to make the near fraudulent claim, world-wide, that their timber products come from sustainably managed forests. **To that degree we hope there will be scope for both parties to agree to major changes to the RFAs. They are certainly needed.***

Summary

- The terms of Licence under the Threatened Species Conservation Act 1995, needs to be strengthened in order to protect flora and fauna, not simply provide a licence to destroy them.
- Ecologically Sustainable Forest Management must be more than just a motherhood statement. Comprehensive baseline assessments of flora and fauna must be a prerequisite to logging, with mechanisms in place to measure the health and abundance of all flora and fauna in State forests over time, and rules that ensure any observed detrimental environmental impacts are reversed.
- The declaration of reserves and exclusion zones should not abrogate Forests NSW's responsibility to rehabilitate and manage those reserves to maintain or improve biodiversity. Currently that is not occurring.
- Management of Bell Miner Associated Dieback (BMAD), must be a priority. Action should be immediately taken to prevent canopy reduction in excess of 30% during any forestry logging or thinning operations, to minimise impacts until such time as the problem is overcome.
- There should be an independent assessment of all changes to the Forest Resource Assessment and Management Evaluation System (FRAMES), and amendments to the IFOA, to ensure these changes have not been detrimental to the environment, or the long-term viability of the timber industry. Any changes found to have had detrimental environmental effects, must be reversed.
- Biodiversity protection must be taken seriously. By Forests NSW's own admission, biodiversity protection is of primary importance to the long-term survival the timber industry, and to mankind itself. That acknowledgment is not reflected on the ground, with biodiversity largely overlooked.
- Despite the Review being 4 years overdue, more than 10% of the Milestones have not been met(Appendix 1, Table B). Ecological sustainability is the area that has suffered most as a result.
- In relation to erosion and waterway pollution, forest managers must be required to adhere to all recommendations relating to logging steep slopes during wet weather; obtain all appropriate licences under the POE Act; be required to monitor water quality in all adjoining waterways during logging operations; and must refrain from logging in filter strips along creeks, drainage lines or depressions, mapped and unmapped. Any breaches of the Act must result in prosecution.
- The carbon cycle and climate change likewise must be taken seriously. Despite world-wide acceptance of the threats posed by global warming, climate change impacts receive no attention in the Draft Report. Good forest management has the potential for positive carbon outcomes, but forestry, as it is currently being undertaken, does not come close to achieving those outcomes.
- Social amenity is listed as a desired key outcome of the RFAs. In this respect it should be noted that the claimed aesthetic values have been greatly diminished with the introduction of sporting shooters into State forests. Most of those who have traditionally used State Forests for bush-walking, and other passive recreational pursuits, are no longer prepared to risk their lives knowing that untrained amateur hunters could be roaming the forests.
- Clearly, current sustainable timber certification is not translating into meaningful 'on the ground' improvement in forest management. We believe the Australian Forestry Standard and the Programme for the Endorsement of Forest Certification Scheme do not meet basic requirements for a credible forest certification system, ie criteria reflecting the demands of governments, industry, NGOs and the marketplace. It is our belief certification should result from clear performance-based standards such as those adopted by the Forest Stewardship Council.

Terms of Licence Under the Threatened Species Conservation Act 1995

The Terms of Licence under the TSC Act, which is administered by the now Department of Environment and Climate Change (DECC), is proving to be ineffectual in protecting threatened species. The contributing factors are:

- Imprecise wording of the document, that allows various interpretations.
- The licence allows the destruction of threatened species, with no offsets required.
- The licence allows the destruction of habitat trees despite the action being declared a Key Threatening Process under the Act, and recovery plans for all tree hollow dependent threatened species (at least 30 in the North Coast Region alone) requiring such trees to be protected.
- There is hopelessly inadequate compliance monitoring by DECC, and investigation of breaches generally only occurs when members of a concerned public report them. Even then, those reports are often not investigated on site by DECC, but are forwarded to Forests NSW for comment.
- With frequent structural changes within, and amalgamations of, government departments, we now have a core unit of ex Department of Land and Water Conservation staff and even ex foresters, working within DECC, providing a “fox in charge of the hen house” scenario. A recent check of the Compliance Register at Forests NSW's Regional Office in Coffs Harbour (a document that must be on display for public viewing), revealed it had not been updated in 8 months, and numerous reported breaches by independent citizens prior to that date not recorded.
- While the TSC Act does allow for prosecutions for breaches, such action seldom, if ever, occurs under the IFOA Licence.

Ecologically Sustainable Forest Management

One of the key objectives of the RFAs is: ***“To manage all native forests in an ecologically sustainable way.”*** To illustrate the failure of this objective, we present the findings of a recent investigation undertaken by the Clarence Environment Centre at Clouds Creek State Forest south of Grafton, where we found -

- **frog surveys were undertaken in the driest March period in decades.** The IFOA recommends surveying immediately after rain. Despite being supposedly targeted, a number of threatened frog species were understandably not identified. The subsequent discovery of those endangered frogs occurring at the site was left to inexperienced, unqualified local residents,
- **ultrasonic bat call detection was undertaken during daylight hours**, when those bats do not emerge until after sunset,
- that **no target surveys were made for threatened Quoll**, despite previous logging surveys confirming the species occurred there,
- the finding that there was only, *“1 KOALA scat record detected in cpt D-69”* This is followed by the notation that there were, *“17 previous KOALA records in and within 100m of cpts D 68 , 69.”* Remarkably, **there is no comment or attempt to explain why the numbers of records have dropped so dramatically** since the 1997-8 survey,
- that despite Hastings River Mouse being known to occur in neighbouring State forests, surveys were only required *“when the modelled habitat is greater than or equal to the agreed threshold of 10 ha species model present within the Net Harvest Area (NHA) or within 50 m of the NHA in each cpt.”* Questioned about the meaning of this, DECC's Director, Resource and Conservation Unit, Ian Cranwell claimed (May 19) that habitat is the key, explaining that: *“Experienced surveyors may conduct a **“Rapid Visual Assessment”** to fulfil this requirement. As HRM habitat is quite distinct, FNSW regularly relies on this technique to satisfy the survey requirement.”*

We believe the claim that HRM habitat is 'quite distinct' is erroneous. DECC's own "Threatened Species of the Upper North Coast of NSW" manual, describes the species' habitat as: "*A variety of dry open forests with dense low ground cover and a diverse mixture of ferns, grass sedges, and herbs. Access to seepage zones creeks and gullies is important as is permanent shelter such as rocky outcrops and hollow logs. Nests may be in either gully areas or on ridges and slopes.*" **Clearly, the HRM habitat is extremely variable, and any casual glance (rapid visual assessment), cannot possibly determine whether or not the species actually occurs,**

- the harvest plan records Nil roost sites for microbat species, suggesting no survey was undertaken to find them. Every tree hollow is a potential roost, and with literally dozens of bat species occurring on the NSW north coast, the chances of any suitable hollows not containing a colony of bats is remote.

The Environment Centre's assessment found:

- **Unmapped drainage lines** everywhere, and **that they are being logged** despite the Agreement requiring those areas to be protected.
- **Old-growth, hollow-bearing trees felled** for no apparent reason.
- Identified **endangered frog habitat destroyed**.
- **Dense vine thickets that have formed as a direct result of the 1998 logging**, under which there is **no regeneration at all** (poor levels of regeneration was identified in the Harvest Plan).
- **Clearly marked habitat and recruitment habitat trees with bark stripped off** by careless machine operators, while others have had all surrounding trees logged **leaving them exposed, unsupported, and vulnerable to the elements**.

We expressed other major concerns. Firstly there is no requirement to undertake general fauna surveys, only targeting those species that are known to occur locally through the NSW Wildlife Atlas records. Clouds Creek is within the range of numerous threatened ground-based mammals. Those that could well occur in those wet sclerophyll forests, but receive no mention, include:

- Endangered Black-striped Wallaby - *Macropus dorsalis*.
- Vulnerable Brush-tailed Phascogale - *Phascogale tapoatafa*.
- Vulnerable Common Planigale - *Planigale maculata*.
- Vulnerable Eastern Chestnut Mouse - *Pseudomys gracilicaudatus*.
- Vulnerable Eastern Pygmy Possum – *Corcatetus nanus*.
- Vulnerable Long-nosed Potoroo – *Potorous tridactylus*.
- Vulnerable Parma Wallaby – *Macropus parma*.
- Vulnerable Red-necked Pademelon – *Thylogale stigmatica*.
- Vulnerable Rufous Bettong – *Aepyprymnus rufescens*.

The absence of official records does not preclude the possible occurrence of these species. It should be mandatory for FNSW to undertake thorough surveys of all fauna, threatened or otherwise.

There is currently no requirement, or mechanism in place for FNSW to record or report trends in numbers of threatened species from one harvest period to the next. **How is it possible therefore, to determine whether their operations are ecologically sustainable? Put simply – they cannot. Even if no sightings are recorded for a species in a pre-harvest survey, when the species was known to occur previously, there is no obligation to pass on that information, other than to record "Nil" sighting (possibly by the apparently acceptable "rapid visual assessment" method).**

One of the most disturbing aspects of the Clouds Creek operation is that, on top of the 1998 over-logging, is FNSW's breach of Section 23, Part 2 which states: *“In planning the location and order of proposed logging operations under subclause (1), SFNSW must, as far as is reasonably practicable, disperse those operations over the Upper North East Region and over time, so as to reduce any cumulative impacts of logging operations in any part of the Region.”*

At Clouds Creek, we understand that continuous logging is planned for no less than 8 adjoining compartments, 68, 69, 70, 78, 79, 80, 111, and 113. To compound this, logging is also occurring on private land adjoining compartment 69, with the contractor planning to move on to another adjoining property once the current operation is completed (over 150 hectares in all). This private native forestry has presumably been approved by another State Government agency regulated by the same Department responsible for forestry operations, Primary Industry.

These compartments, much of which is now categorised as High Conservation Value Old Growth, were subjected to what can only be described as an orgy of logging in 1998 to successfully remove as much timber as possible before the RFAs came into force and those forests placed off limits. Now, just ten years later, an average of 40% of basal volume of what is left (to a maximum of 60% in places), is being removed.

Current logging is not a thinning operation, but single tree selection as the harvest plan (#3242) clearly states. A highly disturbing revelation however, is the directive (page 4) that: ***“Trees with diameter at breast height over bark <20cm must not be selected for harvesting under Single Tree Selection.”*** While the fact that trees measuring 20cm, which are little more than saplings, are being logged, we were shocked to find that this is allowed under the IFOA.

In this forest, tree stumps from previous logging regularly measure to 2m diameter. Any suggestion that what has, and still is happening, at Clouds Creek is ecologically sustainable, must be dispelled.

Management of Reserves and exclusion zones

We note another Key Objective is: *“to protect environmental values and a world-class system of national parks and other reserves”*. In NSW, many of these protected areas remain under the management of Forests NSW and consist of rainforest, high conservation old growth forest, rocky outcrops, wetlands, and creek and drainage line exclusion zones.

Currently the bulk of these supposedly protected areas are completely ignored in terms of management of weeds or rehabilitation that should have occurred after the final logging. Again at Clouds Creek, Compartment 68 provides a prime example of this failure. Much of the 162 hectares was subjected to exceptionally heavy logging in 1998 despite its being mapped as old growth.

With the signing of the RFAs all but 19 hectares is now considered to be of high conservation value. In reality, much of the area now consists of regrowth *Acacia*, with large areas swamped with Giant Water Vine (*Cissus antarctica*). While the condition of those supposedly protected areas are not reported, the condition of the 19 hectares remaining for logging is reported, confirming (page 3) that: *“Heavy competition from wattle species appears to have hindered the development of Eucalypt regeneration...”*

This is the direct result of the over-logging in 1998, and this is reflected across all Clouds Creek State Forest's compartments. **No rehabilitation of any sort has occurred within the reserved areas, which are now falling victim to Bell Miner Associated dieback. This has to change.**

Despite the fact that there has been little regeneration in compartment 68, logging has now resumed, and almost half of the paltry 336m³ of timber the compartment is expected to yield, will come from the harvest of seed trees, and recruitment habitat trees left from the previous harvest.

Bell Miner Associated Dieback (BMAD).

It is good to see acknowledgment (page 9) of the fact that “*Bell miner associated dieback is a complex phenomenon...*” and that “*This problem increased over the reporting period and is of particular concern in the North East regions.*” Late last year, the NSW Scientific Committee determined 'Forest eucalypt dieback associated with over-abundant psyllids and Bell Miners' to be a Key Threatening Process under the TSC Act.

The dieback is commonly referred to as Bell Miner Associated Dieback (BMAD), and the determination makes some very worrying observations including: “*Mapping of affected areas has been most intensive in the Kyogle region where helicopter surveys indicated that almost 20% of 100,000 ha of susceptible forest types were affected by dieback attributable to this cause (State Forests of NSW, 2004). Of the affected area, approximately one third (6511 ha) has been assessed as 'severe', with 'many dead trees, severe thinning of crowns, low stocking rate of susceptible species and greatly increased mesophyllic ground story vegetation including weeds such as Lantana'. It has been estimated that 2.5 million hectares of forest in NSW has the potential to be affected (Wardell – Johnson et al. 2006)*”.

It should be stressed that the Forest Department's BMAD survey is now 4 years old, and the situation has deteriorated steadily in the interim, with new outbreaks being reported on a regular basis along the entire East Coast of NSW, and is now also being found to be impacting dry forests.

The Scientific Committee accepts that: “*At present, no single cause explains this form of dieback.*” However, the Committee does identify that: “*Over-abundant psyllid populations and Bell Miner colonies tend to be initiated in sites with high soil moisture and suitable tree species where tree canopy has been reduced by 35 – 65% and which contain a dense understorey.*”

Again we point to Clouds Creek State Forest to illustrate our point. That forest matches the above description, but FNSW plans to log an average 40% basal volume across the net harvest area. despite knowing that BMAD, which is already occurring at Clouds Creek, is triggered by canopy clearing in excess of 35%.

Officers of FNSW claimed to be unaware of the Committee's findings. **We believe the TSC Act's declaration of the dieback as a key threatening process must be taken into consideration when planning logging operations, and no canopy reduction beyond 30% be allowed.**

Forest Resource Assessment and Management Evaluation System (FRAMES)

In relation to FRAMES (page 7), we note that “*by the end of 2006 Forests NSW completed a broad series of improvements to its FRAMES modelling.*” We are told these models have “*been simplified to improve robustness with respect to implementation and testing*” but are given little by way of explanation as to why those changes were needed.

We are suspicious of changes that are made without public consultation. Over the 9 years since the signing of the RFAs, there have also been numerous “amendments” to the IFOA, none of which have improved environmental outcomes. A typical example would be the reduction of protection for drainage lines, with a halving of the width of protected filter strips.

We are expected to believe these changes to the FRAMES modelling were needed because previous modelling provided unrealistic and inflexible product categories. Questions arise:

- as to how this unrealistic modelling was adopted in the first place,
- why was there a need to restructure the strategic net area management toolkit,
- what are the appropriate silvicultural intensities that required changes to the model in order to achieve them, and why,
- why was there a need to shift from Spectrum/StandSim to Woodstock for yield scheduling analysis of the outputs from REDEN (an inventory-plot management and yield simulation system)? Did the former system show adverse results?
- And with all of these changes, was the Federal Environment Minister informed, or did Forests NSW just make the changes off its own bat?

We are also told that: “The improvements to FRAMES and sustainable yield calculations up to 2002 were reviewed by Professor Vanclay of Southern Cross University in 2002. Professor Vanclay's wild assertions about the impacts of the Private Native Forestry Code of Practice, hardly lends weight to the supposed “improvements” to FRAMES. At a forest industry sponsored public meeting in Grafton in mid 2008, the Professor is on record as claiming that, if implemented, the Code would “lock up” 80% of all privately owned forests. This statement alone suggests his ability to objectively undertake such a review is questionable.

The claim that “*resource analysis work has focused on short-to-medium-term timber-availability issues*”, is a concern. However, from our observations of North East Forests it is clear there is little point in assessing **long term** wood supply, because at present rates of logging, there won't be any long-term wood supply.

Biodiversity protection

There is an acknowledgment (page 109) that: “*Biodiversity is ‘the variety of all life forms – the plants, animals and micro-organisms – the genes they constitute and the ecosystems they inhabit’ (MIG 1998).*

Added to that is an acceptance that: “*The maintenance of the variety of living things and the interactions between them and their environment are what make an ecosystem sustainable and healthy. By protecting and enhancing biodiversity, ecosystems as a whole can better respond to disturbance and external impacts/influences.*”

And finally the recognition that: “*A decline in species diversity (flora and fauna) reduces the ability of an ecosystem to function, which in turn reduces productivity and sustainability.*”

So why does Forests NSW ignore these simple statements of fact? As already stated, flora and fauna surveys are inadequate, habitat trees are destroyed wherever possible, and recruitment trees are taken in subsequent logging. Recommendations about the need to reduce canopy opening in relation to BMAD are ignored, they appear to oppose nominations for threatened species listing as a matter of principle, and ongoing amendments to the IFOAs (e.g. reduction in width of protected filter strips) continue to whittle away at environmental protection.

The Draft Report claims that: “*By monitoring any change in the diversity of forest areas, agencies have a means of identifying the impacts of current practices and forest uses. This is achieved by measuring change in forest cover (growth stage, type and extent), the location of forested areas and their proximity to other forest areas (connectivity or fragmentation), the diversity of plants and animal species and the status of these species.*”

However, we can find no evidence that this is occurring in any meaningful way. A study by Forests NSW in the Eden district on the effects of fire on diversity (Burning for Biodiversity or Burning the Biodiversity - T.D Penman, D.L. Binns, R.P. Kavanagh), concluded that fire was good for biodiversity, but failed to survey the occurrence of any life forms other than plants. The apparent assumption that if floristic diversity is healthy, then the rest will take care of itself, is badly flawed.

A large percentage of Australia's fauna are tree-hollow dependent, the decline of hollow-bearing trees through burning, or any acknowledgment that tree hollows are important, received no mention whatever in the report.

By Forests NSW's own admission, biodiversity protection is of primary importance to the long-term survival the timber industry, let alone to mankind itself. Biodiversity protection must be taken seriously.

Failure to Achieve Milestones (Appendix 1, Table B).

It is clear from Table B that Forests NSW considers threatened species and high conservation value forest protection to be low on their list of priorities.

Milestone No 18, under the Upper North Coast Forest Agreement is that “*New South Wales to complete and publish plans of management for areas dedicated under the National Parks and Wildlife Act 1974 (NSW), by 1 January, 2005*”. According to the May 2009 Interim Report, that requirement is still “*Underway*”. **This is now 4½ years overdue!**

Milestone No 23, “(Att 2 table 1) *New South Wales to develop recovery plans for species listed in table 1 of attachment 2 within five years of signing*”. Again this task is only “*underway*” in May 2009. Also **4½ years overdue!**

Milestone No 35, “(Att 6 point 2(d)). *New South Wales to document and publish a description of the NSW forest management system covering public and private lands In time for the first five-yearly review*”. While it could be argued that this might be completed by the time the first 5 yearly review is completed, the **Review too is 4½ years overdue and the description of the NSW forest management system is still listed as “Underway”.**

Milestone No 8, “(Att 6 point 2(f)). *New South Wales to table in each House of Parliament an annual report on the New South Wales Upper North East Regional Forest Agreement and Lower North East Regional Forest Agreement in accordance with the Forestry and National Park Estate Act 1998 (NSW) which will include an ESFM report and the outcomes of compliance with any integrated forestry operations approval for the regions, **annually***” If we have read this correctly, we must conclude that the claim this is “*Underway*” that Forests NSW has not tabled a single annual report since the RFA signing.

Milestone No 26, “(Att 8 1(a) *NSW NPWS will develop an environmental management system for lands dedicated under the NPW Act, by April 2004.*” The fact that this is still “*Underway*” and **therefore over 5 years overdue**, comes as no surprise, as in our opinion **there is no obvious environmental management.**

Milestone No 59, “(Att 8 1(q) *NSW will develop a model to predict recruitment and maintenance of habitat trees over time, by the end of 2010*”. While this requirement is not yet due, **the whole habitat tree model is a shambles, recruitment habitat trees are routinely logged** during the next logging cycle, and **habitat trees are bulldozed on a regular basis** using OH&S as an excuse. Many of the coastal forests have hardly any hollow-bearing trees left, thanks to previous forestry practices of ridding forests of trees that are non-productive in terms of timber.

Milestone No 49 “(Att 12 part E 22 Dot 5) Undertake additional inventory plot measurement consistent with FRAMES principles to improve the accuracy of volume estimates at the regional level”. This is also “**Underway**” but no time frame is shown. **Given the NSW Auditor General's assessment (April 2009) that trees in the North Coast are being logged faster than they are regenerating (unsustainable levels!),** it would be understandable if there is some reluctance to publish this inventory measurement.

Milestone No. 55 “(Att 12 part E 23) NSW will undertake independent audits of the progress of the sustainable wood supply strategy, to be completed in time for the 2nd and 3rd five yearly reviews”. **This effectively allows Forests NSW to delay publishing damning reports on the current unsustainable logging levels, and the steady decline in forest health for up to 15 years.**

Erosion and Pollution

Under “**Soil and water resources**” we are told that: “*Soil and water resources are **generally (?)** being managed in a sustainable manner. All areas of state forests are assessed for soil erosion hazard before harvesting commences as part of the harvest planning process. Internal and external audits check compliance against licences, codes and guidelines with respect to soil and water quality following the construction of roads and harvesting operations.*”

While this sounds impressive, **under the IFOA Forests NSW can overrule recommendations not to log certain forests with steep terrains during the wet season (refer to Clouds Creek logging of Compartment 86 in January-April 2009, the wettest season in decades).** Not only can Forests NSW ignore these recommendations, **but can also opt not to apply for pollution licences** under the POE Act, presumably because DECC might refuse to grant such a licence. They can do this, secure in the knowledge that no water quality testing is going to be done, **despite forests such as Clouds Creek lying within the Coffs Harbour - Clarence Valley regional water supply catchment.**

Water quality must be taken seriously. In our opinion forestry managers must be required to:

- Adhere to all recommendations relating to logging steep slopes during wet weather.
- Obtain for all appropriate licences.
- Be required to monitor water quality in all waterways adjoining logging operations.
- Refrain from logging in filter strips along creeks, drainage lines or depressions, mapped and unmapped, and:
- Any breaches of the POE Act must result in prosecution.

The Carbon Cycle and Climate Change

We believe the comment under “*Contribution to carbon cycles*” **is one of the most deceptive statements in the Report.** By claiming “*NSW public forests are contributing to the maintenance of global carbon cycles.*” And that, “*Over 7 million tonnes of carbon were sequestered from the Forests NSW softwood plantations and over 3 million tonnes from the hardwood plantations*”, **it seeks to portray the industry as carbon positive. Nothing can be further from the truth.**

Throughout the Draft Report, there is no mention of the carbon released through:

- mechanical operations in the forests, both logging, silvicultural, road-building and transport,
- mechanical operations at the mill and transport for distribution, often overseas,
- the burning of waste at the mill (up to 15%),
- the burning of logging residues in the forests (often the result of arsonist activity),
- the burning of vegetation removed in operations described as “disturbance to encourage regeneration”,
- the trees damaged during logging operations. Large limbs are broken off and are burned with other residues,
- other trees debarked by careless operators that subsequently die and eventually succumb to fire.

Finally, there is no acknowledgment that many wood products, such as paper, particle boards, and some ply products, have a very short carbon life (<5 years, Southern Cross University), that CO² being released in a few short years after production.

The Draft Northern Rivers Regional Biodiversity Management Plan, which is also out for public comment, clearly identifies climate change as having a major future impact on native flora and fauna. Many predict that up to 30% of all life forms on the planet will become extinct as a direct result of climate change.

As a result the Management Plan identifies much of the State Forest Estate's highland forests as “moist montane forest fauna refugia”, and almost all forests are identified as “fauna corridors” critical for migration of species in the face of global warming.

Despite these predictions, apart from an acknowledgment (page 150) that carbon emissions is a contributor to climate change, and that Anthropogenic Climate Change is a Key Threatening Process (Appendix 6), the entire document fails to address the problem.

It is essential that forest managers, a) accept the reality and the enormity of climate change and, b) plan for the long term changes the planet will suffer. **Forestry, as it is currently being undertaken, is highly carbon negative, and this must change.**

Social benefits and negative outcomes

There appears to be a further attempt at deception under the heading “**Social and economic values**” where, probably because Forests NSW has no method of estimating visitation levels to their forests, the Report quotes DECC's National Parks' visitation numbers, claiming: *“Over 3.7 million visits were recorded to DECC reserves in the Southern and Eden regions during 2003–04. Over this same period a total of 1.3 million visits were made to DECC reserves in the UNE region and 534,721 visits made to DECC reserves in the LNE region.”*

Even the total employment numbers include DECC's, in an apparent reluctance to reveal how few jobs are directly generated by state forest operations.

It should also be noted that the claimed aesthetic values have been greatly diminished with the introduction of recreational shooters into State forests. Most of those who have traditionally used State Forests for bush-walking, and other passive recreational pursuits, are no longer prepared to risk their lives knowing that untrained amateur hunters could be roaming about the forests.

Forests NSW ecologists have reported several instances where they have encountered shooters in a forest when neither party was aware the other was present. Unofficially Forests NSW staff are opposed to sporting shooting taking place, as it is only a matter of time before someone is killed.

Shooters have been allowed into State forests under the guise of feral animal control, but there is no mechanism in place to determine the effectiveness of this activity. In fact anecdotal evidence suggests shooters are spreading “game animals” for more convenient hunting in locations where they have not previously occurred.

Sustainability certification

(Compiled by Simon Harmon for the Clarence Environment Centre, March 2009)

Implementation and Effectiveness of the Australian Forestry Standard.

Claims by the industry and government that forestry operations in NSW state forests are certified as attaining Ecologically Sustainable Forest Management (EFSM) must be treated with caution.

Background

The Australian Forestry Standard (AFS) was established as a joint initiative between the Primary Industries Standing Committee and the forestry industry, and managed by a company, AFS Limited, specifically created for the purpose in July 2003. Funding is provided by Commonwealth, State and Territory Governments, and peak forest and timber industry bodies.

*** Note: PEFC Mutual Recognition**

There has been an aggressive marketing push by the European based PEFC. (Programme for the Endorsement of Forest Certification Scheme) to officially sanction other certification schemes under the PEFC brand. *The owners of AFS Limited have attained certification under the PEFC.* The PEFC was originally created to meet the demands of small forest owners. The original intention of the PEFC is being undermined by vested interests.

The AFS Limited is a public company that owns the Australian Standard and manages the Australian Forest Certification Scheme. AFS Limited is comprised of members from the forest and wood products sector, government and trade unions. The organization is open to other community groups. However, some of Australia’s peak environment groups walked away from participation in the establishment of the code for the AFS when it became apparent that the other stake holders intended to use the certification process to sanction the “status quo” of forest management.

The Clarence Environment Centre believes that the adoption of the AFS/PEFC by industry is not translating into meaningful 'on the ground' improvement in forest management. We also believe the AFS/PEFC does not meet the basic requirements for a credible forest certification system, ie criteria reflecting the demands of governments, industry, NGOs and the marketplace.

The basic requirement for a credible forest certification system is an *Independent third party* written assurance that a product, process or service conforms to specified requirements.

To be effective forest certification must:

- be based on ***objective, comprehensive, independent and measurable performance standards*** – both environmental and social;
- be based on an ***equal and balanced participation of a broad range of stakeholders;***
- be based on a ***labelling system that includes a credible chain of custody;***

- be based on *reliable and independent third party annual field audits*;
- be *fully transparent* to the parties involved and the public;
- take place at the *forest management unit (compartment) level*;
- be applicable globally and to all forms of forest types to avoid distortion in the market place.
- be based on *reviews and improvements to ESFM*;
- be based on *performance* and not just system standards.

Standards fall into two categories. System standards and performance standards.

1. System standards specify the management systems that must be in place within an organisation to ensure its consistent management quality, environmental and social performance. System standards can help organisations understand and improve their performance. They do not specify any minimum level of performance. Instead, they require forest management organisations to set their own performance targets and to use the management system to ensure they are reached. For example, a system standard may require biodiversity to be monitored. It doesn't require how much biodiversity loss is unacceptable - it only requires a monitoring system to be in place. This Standard type could be described as a system of "motherhood statements."
2. Performance standards specify the level of performance or results that must be achieved in the real world. For example, a performance system standard may specifically require that biodiversity is fully maintained in a forest compartment.

To be meaningful Certification should be based on high *performance based standards*. Of the dozens of forest certification schemes worldwide, only the Forest Stewardship Council has a clear performance-based standard. A comparison of the FSC and the AFS/PEFC models **clearly shows the latter fails to:-**

- provide clear minimum environmental and social thresholds,
- allow for *equitable and balanced participation and decision making*,
- include a *credible* chain of custody as a basis for product labelling,
- require a *truly* independent *third party* assessment and annual field audits
- provide *transparency* to the public and the parties involved,
- require forest management unit level certification.
- require a *performance* based commitment from managers towards improving forest management.

The AFS/PEFC is not an over arching performance-based standard. – it does not offer an assurance to consumers that the product is genuinely sourced from sustainably managed forests.

The PEFC certifies logging operations in the last remaining old-growth forests in Europe. The AFS/PEFC has no comprehensive requirements for certification: eg - no State Forests in upper N.E NSW were seen by a certifier.

The AFS/PEFC has unbalanced voting rights: two groups - government and industry interests dominate all decisions.

The AFS/PEFC claims compliance with ISO 14001. This international agreement defines requirements for system standards, not performance standards. From a scientific perspective there is no clear performance based definition of 'ecologically sustainable' forest management.

The World Bank states that Certification Schemes must be designed to avoid a conflict of interest. The AFS does not meet this requirement. The AFS also fails to adequately address the requirement to maintain the conservation of biological diversity, ecological functions, the maintenance of critical forest areas and other critical natural habitats affected by the operation. In addition the AFS fails in the area of meaningful participation of local people and communities; indigenous peoples, NGO's representing consumer, producer, and conservation interests; and other members of society.

We feel that certification is being used as a quick fix for failing forest management. It's an elaborate greenwashing campaign. The ineffectual AFS/PEFC certification scheme along with Government's inadequate RFA and IFOA legislation is not producing outcomes even remotely close to genuine ecologically sustainable forestry management in upper N.E NSW state forests.

Claims that products labelled by the AFS/PEFC come from 'sustainably-managed' forests are misleading. The AFS/PEFC is dominated by vested economic interests and is not performance based.

We thank you for the opportunity to comment, and sincerely hope these comments will be taken seriously.

John Edwards
Honorary Secretary