environmental defender's office new south wales

Submission to the NSW Department of Environment and Climate Change and Water (DECCW) on the *Draft Report on Progress with Implementation of the New South Wales Regional Forest Agreements*

15 September 2009

The EDO Mission Statement

To empower the community to protect the environment through law, recognising:

- *the importance of public participation in environmental decision making in achieving environmental protection*
- *the importance of fostering close links with the community*
- *the fundamental role of early engagement in achieving good environmental outcomes*
- *the importance of indigenous involvement in protection of the environment*
- *the importance of providing equitable access to EDO services around NSW*

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Executive Summary

The Environmental Defender's Office of NSW (EDO) welcomes the opportunity to comment on DECCW's *Draft Report on Progress with Implementation of the New South Wales Regional Forest Agreements*. The EDO is a community legal centre with over 20 years experience specialising in public interest environmental and planning law. We have recently commented extensively on Regional Forest Agreements (RFAs) in our submissions to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* which we rely on in this submission. [1]

On a preliminary note, the EDO considers that the terms of reference for the review of NSW RFAs are too narrow. The review should have allowed for the reassessment and amendment of the RFAs to take into account changes in scientific evidence since the time that the documents were formulated, particularly in relation to climate change, water resources and the loss of biodiversity.

NSW forests that are managed under RFAs are home to many threatened species and endangered ecological communities. Our key position is that it is essential that these forests are managed in a manner that is consistent with the principles of ecologically sustainable development (ESD), including the conservation of biodiversity. NSW RFAs have up to this point been largely ineffective in ensuring the protection of forest species and forest habitats, despite the rhetoric of sustainable forestry.

The NSW RFAs intend to provide for environmental protection in respect of forestry operations through management prescriptions and through the CAR reserve system.[2] The EDO submits that the current CAR reserve system does not go far enough. Moreover, the management prescriptions for NSW RFA forests outside the reserve system are inadequate and fall well short of achieving the principles of ecologically sustainable development.

The EDO notes that both parties to the NSW RFAs, being the Commonwealth and NSW Governments, may agree to some minor modifications to incorporate the results of the review,[3] and we invite the parties to consider making changes to the NSW RFAs or to their subsidiary documents to effect the following key recommendations:

- The EDO submits that a new scientifically robust assessment of NSW RFA forests should be undertaken on the basis of sound ecological information and on-the-ground surveys to identify gaps in the reserve system;
- The EDO submits that more thorough scientific research and monitoring of the impacts of logging practices in RFA regions on biodiversity and threatened species is needed;
- The EDO submits that there needs to be increased research and analysis of the economic value of non-timber uses of forests, including their associated

- environmental and social values, to promote more accurate pricing of forest resources;
- The EDO submits that the second key element for achieving Ecologically Sustainable Forest Management in the NSW RFAs, currently "the development of internationally competitive forest products industries",[4] must be deleted or amended to recognise and promote the economic value of non-timber forest uses; and
- The EDO submits that the NSW RFAs and subsidiary implementation documents must address the impacts of climate change on forests, including impacts on biodiversity, water resources, and bushfire. Climate change considerations must constitute a key element of the review process.

The EDO provides comment on the following issues:

- CAR Reserve System
- Ecologically Sustainable Forest Management
- Environmental Pricing
- Exemption under EPBC Act
- Climate Change

1. CAR Reserve System

The CAR reserve system appears to be the predominant mechanism for achieving ESD of RFA forests, and the Draft Report states that more than 30% of forests are in reserves.[5]

Although the EDO welcomed the addition of new reserves to the conservation estate that the CAR process facilitated, we submit that the environmental assessment assessments that were conducted to determine which areas were to be reserved were flawed.[6] The assessments were insufficient and largely relied on existing information and outdated maps, rather than localised on-the-ground information. As a result, in many cases the science underpinning the assessments was uncertain and based on ad hoc and incomplete information.[7] In addition, the assessments were conducted based on stated boundaries, not ecological criteria.[8] The EDO considers that the lack of a scientifically robust assessment based on sound ecological information and on-the-ground surveys undermines the ability of the reserve system to protect threatened species and biodiversity.[9]

The JANUS criteria were a nationally developed standard for determining which areas of forest should be protected in reserves. States were required to conduct an assessment using the JANUS criteria as a prerequisite to the approval of RFAs. However, there were problems with the scope and accuracy of the assessment. These included the narrow conceptualisation of wilderness, the simplified systems used to classify forest types and the difficulties in determining adequacy.[10]

Further issues are whether the JANUS criteria have been adequately implemented, and whether the Commonwealth has omitted reserves areas meeting national estate or world heritage criteria.[11] For example, the initial application of the criteria in NSW identified over one million hectares of public land in north-west NSW required for addition to the reserve system to comply with the national reserve criteria.[12] However, the NSW Government only added 358,200 hectares to the reserve system as a result of lobbying by the forestry industry. Also, only 29% of priority fauna populations have fully achieved reservation targets in north-east NSW.[13] Hence, even though a scientific assessment was undertaken to determine the areas required for reservation, it was politics that determined the size of areas to be reserved in NSW.[14]

There is also evidence that conversion to conservation reserves will not in itself secure regional biodiversity in perpetuity. A major problem is the under representation of certain threatened landscapes and species in reserves.[15] Much of reserved lands are nutrient poor and elevated, which biases representation.[16] Other problems are the limited management of degraded forests within new reserves, and the elusive nature of balancing conservation and timber production. Adaptive management systems are required because forests are extremely complex and dynamic systems.[17] We note that the Draft Report does not appear to have grasped the complex and dynamic nature of forest ecosystems, stating that "forests are not rapidly changing systems…"[18]

The EDO submits that, for all of the reasons discussed above, there are sizable forest areas that should be, but are not, conserved within the reserve system. Therefore, we submit that a new and scientifically robust assessment of NSW RFA forests should be

undertaken, on the basis of sound ecological information and on-the-ground surveys, to identify these gaps.

2. Ecologically Sustainable Forest Management

Ecologically Sustainable Forest Management of both reserves and production forests is a key objective of the NSW RFAs. The key elements for achieving ESFM are:

(a) The establishment of a CAR Reserve System;
(b) The development of internationally competitive forest products industries; and
(c) Integrated, complementary and strategic forest management systems capable of responding to new information.

RFAs require ESFM plans, environmental management systems and cooperation among agencies on control of pests and noxious weeds, bushfire prevention and grazing management.[19] The Draft Report documents progress on initiatives towards sustainable management in NSW native forests in Chapter 4 (Milestones) and in Chapter 5 (monitoring of sustainability indicators).

ESFM differs from conservation of forests within the reserve system. The concept of ESFM is scientifically complex and involves the utilisation of forest resources while maintaining a range of forest values, including biodiversity, the productive capacity and sustainability of forest ecosystems, forest ecosystem health and vitality, and the promotion of long-term social and economic benefits. Central to ESFM is the aim to maintain or increase the full suite of forest values for present and future generations.[20]

The EDO submits that, despite the rhetoric around ESFM and the fact that the Draft Report indicates completion of a number of related milestones that relate to ESFM, forest management practices are not achieving ESD.

While the production of wood products produced from native forests across Australia has declined over the last decade by 10%,[21] there is evidence that logging remains a key threat to biodiversity. Kingsford et al have identified the loss and degradation of habitat as the first of the six major threatening processes driving biodiversity decline in Oceania, threatening more terrestrial species than any other process. In Australia about 70% of remaining forests are ecologically degraded from logging,[22] and this includes NSW forests.

More than 400 species of native mammals, birds, reptiles and amphibians – one-fifth of animals in these groups in Australia – live in the south-east of NSW, and 69 of these populations are endangered and vulnerable in the area covered by the Eden and Southern RFAs.[23] Commentators note that there are discrepancies between Forests NSW and the

information available from the National Parks and Wildlife Service (NPWS) regarding data on the numbers of threatened species in particular areas.[24] More thorough research of the flora and fauna in RFA areas is clearly needed, as well as more research and monitoring of the impacts of logging practices on biodiversity and threatened species.

In areas logged too heavily or frequently complex forest communities, over time, become transformed into predominantly single-species, similar aged regrowth forests. Such logging practices have a major impact on biodiversity and habitat, totally destroying the complexity of ecosystems, removing major elements and altering the basis of soils and microclimates. Little is known about the effects on invertebrates, but many observations of birds and mammals indicate a drastic reduction in the number of species present in these altered forests.[25]

There is also evidence that logging is having a severe impact in the Eden and Southern RFA areas on water flows in rivers and tributaries.[26] This is consistent with studies that have demonstrated that logging practices can have serious impacts on the hydrology of forest ecosystems and water quality in some areas, resulting in downhill movement of disturbed soils, muddying of watercourses and the silting of lakes and dams,.[27] Logging also results in forests dominated by perpetually young trees that have much higher transpiration rates than mature forests, three times as high. High transpiration rates in immature forests starve the soil, streams, lakes and other vegetation of their "normal" water supply for up to 150 years.

In light of the above, the EDO submits that more thorough scientific research and monitoring of the impacts of logging practices in RFA regions on biodiversity and threatened species is needed. We note, for example, that the Draft Report acknowledges that data was not available to monitor the diversity of the understorey vegetation layer in the Southern region. Moreover, this indicator is not required to be monitored in the Eden and North East regions.[28]

3. Environmental Pricing

The RFA process is focused on the economic benefits of timber extraction and does not adequately promote the pricing of forest resources in a manner that assigns a proper economic value to the environmental costs of timber production. There is currently no imperative to value and compare the non-timber uses of forests, such as tourism, ecosystem services, water catchment and carbon sequestration.[29] Moreover, there is no pricing of the environmental externalities of harvesting operations. As a result, economic analyses of RFA operations remain biased towards timber harvesting.

The EDO submits that there needs to be increased research and analysis of the economic value of non-timber uses of forests, including their associated environmental and social values, to promote more accurate pricing of forest resources. As a result, the second key element for achieving ESFM in the NSW RFAs, currently "the development of internationally competitive forest products industries",[30] must be deleted or amended to recognise and promote the economic value of non-timber forest uses.

4. RFA Exemption under the EPBC Act

Under section 38 of the *Environmental Protection and Biodiversity Conservation Act* 1999 (*EPBC Act)*, the Commonwealth undertakes to refrain from exercising its environmental legislative powers for the duration of the RFAs (20 years), having 'accredited' the relevant state forestry practices and laws. While we acknowledge that the RFA exemption is outside of the scope of this review, it is important to bear the exemption mind when conducting the review of NSW RFAs.

As discussed above, there is no guarantee of best practice assessment in the case of RFAs. Therefore, we submit that the *EPBC Act* must apply to RFA forestry operations that are likely to have significant impacts on biodiversity and threatened species to introduce a measure of oversight.[31] Please refer to our *EPBC Act* submissions for more detail.

5. Climate Change

Climate change is a key threatening process that profoundly affects the world's biodiversity.[32] However, the Draft Report inexplicably does not discuss climate change issues nor does it assess the impacts of logging operations conducted in RFA areas on climate change. For example, while the Draft Report addresses fire as the major factor influencing the health and vitality of the forest ecosystem during the reporting periods, the report does not acknowledge that climate change will increase the incidents of forest fires, nor how this increased risk has been addressed. This may be a reflection of the fact that the NSW RFAs inherently do not address the impacts of climate change on forests.

As a result, the EDO submits that the NSW RFAs and subsidiary implementation documents must address the impacts of climate change on forests, including impacts on biodiversity, water resources, and bushfire. Climate change considerations must constitute a key element of the review process.

[1] ANEDO Submission to the Inquiry into the operation of the Environmental Protection and Biodiversity Conservation Act 1999 September 2008 at 46-49, ANEDO Submission to the 10 year review of the Environmental Protection and Biodiversity Conservation Act 1999 – Interim Report 10 August 2009 at 5. ANEDO Submission to the 10 year review of the Environmental Protection and Biodiversity Conservation Act 1999 January 2009 at 25.
[2] Australian Government and NSW Government *Draft Report on Progress with Implementation of the New South Wales Regional Forest Agreements* (May 2009) at 2.
[3] *Regional Forest Agreement for the Eden Region* (1999), clause 8; *Regional Forest Agreement for North East NSW* (2000), clause 8; *Regional Forest Agreement for Southern NSW (*2001), clause 8.
[4] *Regional Forest Agreement for the Eden Region* (1999), clause 42; *Regional Forest Agreement for North East NSW* (2000), clause 44; *Regional Forest Agreement for Southern NSW (*2001), clause 42.
[5] Draft Report at 2 and Milestone 21 at 42.
[6] ANEDO *Submission to the Inquiry into the operation of the Environmental Protection and Biodiversity Conservation Act 1999* September 2008 at 46.
[7] Hollander, R "Changing Place?: Commonwealth and State Government performance and regional forest agreements" (2004) Paper presented to the Australasian Political Studies Association Conference, University of Adelaide; Redwood J "Sweet RFA" (2001) 26 *Alternative Law Journal* 255; McDonald, J "Regional Forest (DIS) Agreements: The RFA Process land Sustainable Forest Management" [1999] *BondLRev* 20; (1999) 11(2) *Bond Law Review* 295.
[8] Hollander, R, "Changing Place?: Commonwealth and State Government performance and regional forest agreements" (2004) Paper presented to the Australasian Political Studies Association Conference, University of Adelaide.
[9] See also ANEDO *Submission to the Inquiry into the operation of the Environmental Protection and Biodiversity Conservation Act 1999* September 2008 at 47.
[10] Hollander, R, n x; Mackey, B "Regional Forest Agreements – business as usual in the Southern Region?" (1999) 43(6) *National Parks Journal* 10.
[11] McDonald, J "Regional Forest (DIS) Agreements: The RFA Process land Sustainable Forest Management" [1999] *BondLRev* 20; (1999) 11(2) *Bond Law Review* 295, at 308.
[12] Pugh, D "Establishing a CARR reserve system in North-East New South Wales" (1998) Nature Conservation Council and North East Forest Alliance.
[13] Flint, C, Pugh, D, Beaver, D (2004) "The good, the bad and the ugly: sience, process and politics in forestry reform and the implications for conservation of forest fauna in north-east New South Wales" in *Conservation of Australia's Forest Fauna* (2nd ed) 2004, Royal Zoological Society of New South Wales at 222-225.
[14] *Ibid.*
[15] McAlpine et al "Conserving forest biodiversity across multiple land ownerships: Lessons from the Northwest Forest Plan and the Southeast Queensland regional forests agreement (Australia)" (2007) 134 *Biological Conservation* 580: note that this article examines biodiversity conservation in the context of the management of production forests under the Queensland RFAs.
[16] Kingsford et al "Major Conservation Policy Issues for Biodiversity in Oceania" (2009) 23; 4 *Conservation Biology* 834.
[17] McAlpine et al "Conserving forest biodiversity across multiple land ownerships: Lessons from the Northwest Forest Plan and the Southeast Queensland regional forests agreement (Australia)" (2007) 134 *Biological Conservation* 580: note that this article examines biodiversity conservation in the context of the management of production forests under the Queensland RFAs.
[18] Draft Report at 104.
[19] *Eden RFA*, clauses 42-46; *NE RFA*, clauses 44-48; *Southern RFA*, clauses 42-47.
[20] Park, H "Fragments of Forest Management, A Private Practice: An Assessment of the Implementation of the Regional Forest Agreements on Private Land in the Southern and the Eden Regions of NSW" [2006] 10(2) *The Australasian Journal of Natural Resources Law and Policy* 183.
[21] Australian Government, Bureau of Rural Sciences *Australia's forests-at-a-glance 2009* at 45-46.
[22] Kingsford et al "Major Conservation Policy Issues for Biodiversity in Oceania" (2009) 23; 4 *Conservation Biology* 834.
[23] These include the Tiger Quoll, Southern Brown Bandicoot, Broad-headed Snake, Sooty Owl, Glossy-black Cockatoo, Yellow-bellied Glider, Green and Golden Bell Frog and Regent Honeyeater. The Koala, Longfooted Potoroo, Sooty Owl and possibly the Barking Owl are on the verge of extinction in the Eden region as a result of logging practices there.
[24] The Greens *Saving Southeast NSW Forests* at 8.
[25] The Greens *Saving Southeast NSW Forests* at 7.

[26] Cornish, PM & Vertessy RA "Forest age-induced changes in evapotranspiration and water yield in eucalypt forest" (2001) 242(1-2) *Journal of Hydrology* 43 and Roberts S, Vertessy RA & Grayson R "Transpiration from Eucalyptus sieberi forests of different age" (2001) 143 (1-3) *Forest Ecology and Management* 153.
[27] The Greens *Saving Southeast NSW Forests* at 9.
[28] Draft Report at 100.
[29] Regarding carbon sequestration see SERCA *Submission on Draft Terms of Reference of the NSW Forest Agreements and Intergrated Forestry Operations Approvals Five Year Review* 17 December 2008, at 1.
[30] *Regional Forest Agreement for the Eden Region* (1999), clause 42; *Regional Forest Agreement for North East NSW* (2000), clause 44; *Regional Forest Agreement for Southern NSW (*2001), clause 42.
[31] ANEDO *Submission to the Inquiry into the operation of the Environmental Protection and Biodiversity Conservation Act 1999* September 2008 at 48-9.
[32] Kingsford et al "Major Conservation Policy Issues for Biodiversity in Oceania" (2009) 23; 4 *Conservation Biology* 834.