Public Comment submission on the draft report on progress with Implementation of NSW Regional Forest Agreement(s).

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

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

This assessment is of the ongoing operations of the RFA forestry management regime and is the result of personal monitoring since the *Forestry and National Park Estate Act 1998* (NSW) was witnessed being voted through the NSW Legislative Council by the Labour government and Coalition opposition of the day. That evening marked the point where the community lost the right to effect what happened to its native forest environment. These submissions are based on extensive research and on-ground auditing and monitoring of the application of the Regional Forest Agreement regime on unprotected native forest mainly in the Southern and Eden regions, but also the whole of New South Wales, Victoria, and Tasmania since the year 2000.

The Regional Forest Agreement 'negotiations' were flawed. Scientists became increasingly concerned when a political decision was made to further modify the RFA measures so that scientifically-based criteria were no longer independently applied as a first step in establishing an 'Ecological Bottom Line.' This was a crucial decision as it was very unlikely that any RFA would deliver Ecologically Sustainable Development, as the modified criteria allowed ecological values to be traded off against economic and social values. The principles of ESD are now widely accepted after their introduction in 1992 through the signing of the Rio Declaration- the *Convention on Biological Diversity.* Commonwealth, State and Local governments became bound by the *Intergovernmental Agreement on the Environment 1992,* which contains the ratified principles. These principles are being systematically ignored by the RFA regime.

The RFA 'negotiations' were also flawed from a conflict dispute resolution perspective. When the level of compromise is not active, if the negotiations satisfy processes not outcomes, if the relevant stakeholders have not been identified accurately, if the stakeholders do not have authorisation to speak on behalf of others or make decisions, then the process is flawed. This was the case with the RFA. The RFA process was a political attempt to quash conflict but as the Nature Conservation Council is not authorised to speak for anyone other than itself and is not considered the 'peak environmental group' by anyone other than legislators, the process was doomed to fail. Environmentalists energies

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

Environmental issues have a strong moral dimension. Environmental destruction and pollution is immoral and unethical. Mediation suggests that environmentalists should abandon their moral judgements and principles and acknowledge that the position of industrial polluters are as legitimate as their own. The assumption that business and environmental interests are fundamentally compatible is erroneous. In denying that there are any serious moral issues involved in the forestry dispute the mediation of the dispute involving moral principles or values promotes a moral irresponsibility.

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

The process appeared to be negotiation but the outcomes were finally announced by the Government.

We call for the Independent Assessor of the review to have full and frank regard for the urgency of environmental management brought about by climate change and rampant degradation of the native forest estate.

> With Australia's existing plantations able to meet virtually all our wood needs, whether for domestic consumption or export, native forests are available for immediate climate change mitigation.

We believe that current State management has gone beyond its scope as a public duty, has broken it's pact with it's citizens and is needing immediate reform. We suggest indigenous ownership of all public native forest, complete stop on private land deforestation, complete transfer of wood products reliance to plantation timber industry and salvage recycled hardwood timber industry output, a single authority for national native forest stewardship modelled on the New Zealand example and an immediate nation-wide program of catchment remediation and native habitat reforestation. We assert that urgency is needed in the forest reform outlined.

We maintain that the pretence of implementing Ecologically Sustainable Forest Management has failed, is corrupt, and has not delivered on obligations. These unacceptable outcomes are at the expense of the current and future generations and are to the detriment of our unique flora and fauna. Currently on the South Coast of New South Wales thousands of hectares of native forests are being clear felled every year. The Forestry Commission, trading as Forests NSW,

terms for this practice varies from 'Australian Group Selection' to 'Modified Shelter Wood,' yet they all amount to clearfelling or patch clearfelling on the ground. Old-growth, rainforest and mature age forests are being logged at an unsustainable rate. Eighty percent of trees felled are turned into woodchips, either at the Eden chipmill or at the various saw mills on the South Coast and then trucked down to the chipmill. To meet wood supply commitments, the native forest managed by Forests NSW is being cut faster than it is growing back. FNSW have continuously logged over quota since the implementation of the RFAs.

We believe this to be immoral and uneconomic. We call for forestry operations in areas covered by RFAs to be subject to an independent environmental assessment that is scientifically sound and rigorous. The scientific processes in the RFAs were politically compromised. Established criteria for forest conservation were not fully applied. There are large areas of high-value conservation forest that would have been reserved if the RFA criteria for forest conservation had been fully applied. In fact if properly done all the Eden forests would have been reserved for conservation.

We believe the Draft Report to be erroneous and limited in many material aspects, and is indicative of how the RFA regime has performed thus far.

The *Regional Forest Agreement for Southern 2001* cl38 states that:
within each five year period, a review of the performance of the Agreement will be undertaken
and
the mechanism for the review is to be determined by both parties before the end of the five year period and the review will be completed within three months.
We assert that the review reporting approach adopted is perverse, capricious, and lacking in material substance. If the scope or terms of reference are too narrow in a process, the process will be flawed and a successful outcome cannot be reached. The current RFA policy is irrational and must be subject to reform as a matter of urgency.

We discredit the Draft Report statement:
If a milestone was due during the first five years, but was completed by 30 June 2008, it is discussed as completed (e.g. even if it was completed after the first review period).
This statement is erroneous and unsatisfactory in both timeline and content.

> To tell deliberate lies while genuinely believing in them, to forget any fact that has become inconvenient, and then, when it becomes necessary again, to draw it back from oblivion for just so long as it is needed, to deny the existence of objective reality and all the while to take account of the reality which one denies—all this is indispensably necessary.

We rate the extent to which milestones and obligations have been met, the results of monitoring of sustainability indicators, and the performance of the Agreement as disingenuous and exceedingly below satisfactory. We assert that

the performance of the Agreement in meeting its specific milestones has been an abject failure, consistently late, and professionally inadequate.

We rate the allegations of openness and transparency of the RFA regime as verging on the corrupt, if not gross negligence. We refer the Independent Assessor to the Freedom of Information court actions of *Watt v Forestry Commission* and *Digwood v Forestry Commission.*

We determine there is a dis-connect within the RFA regime such that the native forest timber industry has exerted undue influence to ensure desirable outcomes for its shareholders at the expense of the current and future generations of the State. We believe this to be immoral.

We welcome the national park additions to date as a progressive step but consider that the world-class benchmark was set by New Zealand in 2002, and that Australia has been tardy and negligent in it's attempts at meeting this world standard.

We believe the RFA process constitutes an abandonment by the Commonwealth of its responsibilities for forests. Under s38 of the *Environment Protection Conservation and Biodiversity Act 1999* (Cth) the Commonwealth undertakes to refrain from exercising its environmental legislative powers for the duration of the Agreement (2023).

RFAs were endorsed by the Commonwealth on the basis that the States had conducted a thorough environmental assessment of their forests, which they had not. The data was either flawed or non-existent. Areas that fell under these RFAs were made exempt from the EPBC Act on the basis that environmental assessments had already been undertaken and that environmental considerations were contained in the RFAs, which they are not. As an example, in Victoria members of the Victorian government bureaucracy removed crucial chapters of a state government commissioned report *Ecological Survey Report No.46 - Flora and Fauna of the Eastern and Western Tyers Forest Blocks and Adjacent South-Eastern Slopes of Baw Baw National Park, Central Gippsland, Victoria* which recommended the protection of the Baw Baw plateau and escarpments. The removal of these chapters ensured that one of the worlds most significant ecosystems remained available for clear fell logging.

We call for an immediate enactment of clause 8 of the RFAs giving effect to ending the RFAs as the mode of native forest mismanagement.

Ecologically sustainable development

Before we proceed erroneous and mistaken definitions of ESD must be clarified. The definition of *ecologically sustainable development* had its origins in the report of the World Commission on Environment and Development, *Our Common Future.* Development was defined as sustainable if:

"It meets the needs of the present without compromising the ability of future generations to meet their own needs."

In the international community the term is *sustainable development.* In Australia Bob Hawke had need to place the word *ecological* in front of the phrase as developers believed they now had carte blanche to demolish the environment. Thus the term is now defined in Australia as development that is *ecologically* sustainable.

The RFAs state that their purpose is to:

provide for the ecologically sustainable management and use of forested areas in the regions.

The definition currently in place is contained within the *Protection of the Environment Administration Act* at s6(2):

Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

b) In the application of the precautionary principle, public and private decisions should be guided by: (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and (ii) an assessment of the risk-weighted consequences of various options,

c) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

d) conservation of biological diversity and *ecological integrity*—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration.

There is much uncertainty on the effects of climate change but one of the certainties is that deforestation is one of the biggest causes.

The loss of natural forests around the world contributes more to global emissions each year than the transport sector. Curbing deforestation is a highly cost-effective way to reduce emissions; large scale international pilot programmes to explore the best ways to do this could get underway very quickly.

The Stern Review goes on to state in Annex 7f:

Deforestation is the single largest source of land-use change emissions, responsible for over 8 GtCO2/yr in 2000. Deforestation leads to emissions through the following processes:

The carbon stored within the trees or vegetation is released into the atmosphere as carbon dioxide, either directly if vegetation is burnt (i.e. slash and burn) or more slowly as the unburned organic matter decays. Between 1850 and 1990, live vegetation is estimated to have seen a net loss of 400 GtCO2 (almost 20% of the total stored in vegetation in 1850). Around 20% of this remains stored in forest products (for example, wood) and slash, but 80% was released into the atmosphere. The removal of vegetation and subsequent change in land-use also disturbs the soil, causing it to release some of its stored carbon into the atmosphere. Between 1850

and 1990, there was a net release of around 130 GtCO2 from soils.

Also a definition of CAR is in order. The original definition was:

> Comprehensiveness which refers to the extent to which a reserve system contains samples of the major forest ecosystem types in a region.
> Adequacy entails a suite of considerations that enable an evaluation of the extent to which the long term ecological viability of conservation values is ensured.
> Representativeness assesses the extent to which the variation and diversity within each major forest ecosystem is protected.

There is a definite disjunction between what the native forestry industry believe is 'best practice', and what independent scientists, academics and eighty percent of the community believe is sustainable. FNSW seem to be oblivious to the word 'ecologically'.

Milestone Tally:

Completed - 12
Completed Late - 7
Not Required Yet - 3
Late - 12
Late/Not Done - 25

Therefore, in percentage totals:

Late/Late/Not Done 63%.
Completed/Completed Late 32%.

Conclusion

The disclaimer at the beginning of the document entitled the Draft Report is apt:

> *While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of NSW and the Commonwealth of Australia, its agents and employees, do not assume any responsibility and shall have no liability, consequential or otherwise, of any kind, arising from the use of or reliance on any of the information contained in this document.*

SEFR asserts that 'reasonable effort' for establishment of fact has not been taken by the drafters of this document. Our conclusions based on the reading of this Draft report are:

That the RFAs did not consider the critical issues of climate change or water and are therefore inadequate instruments to determine forest management.

The Regional Forest Agreements are severely inadequate to protect forest species and forest habitats. The conservation targets of almost all nationally-listed fauna species and many nationally-listed flora species were not achieved through the RFAs and substantial additional conservation action is still required to meet minimum benchmarks. Using the NSW Government's own conservation analysis and data

produced during the Comprehensive Regional Assessment, it is evident that only one of the twenty nationally-listed forest fauna species met their conservation targets after the RFAs and many nationally-listed flora species have fallen dramatically short of their targets. The number of threatened and endangered species has risen since the RFAs were signed and many threatened and endangered flora and fauna species are at extreme risk from current logging operations. Current logging practices do not adequately protect Australia's native flora and fauna.

In the south east of NSW, covered by the Eden and Southern RFAs, the annual net areas logged have rapidly increased and yields have fallen. In other words, the industry is having to log ever greater areas to maintain the same levels of production. This is not sustainable. Demonstrably unsustainable timber volumes were committed for twenty years, and these even extend beyond the term of the RFAs. The 'FRAMES' industry modelling system used to derive these volumes substantially over-estimated available timber volumes. Consequently, after the twenty year period of the RFAs, there will be a dramatic short-fall in timber. Royalties in South East NSW are now less, in real terms than they were fifteen years ago and Forests NSW is making less in royalty revenue than it expends in managing woodchipping operations. The industrial logging practices in Australia's native forests by the Forestry Commission trading as Forests NSW under the Regional Forest Agreements is unsustainable, economically, culturally and environmentally. The outcomes of the RFAs are not sustainable, even from a timber perspective.

Private lands were not assessed as part of the RFAs, but they are being logged by FNSW with very weak regulation at an alarming rate under an EPBC Act exemption. Current prescriptions and legislation to protect native forests on private land are extremely inadequate.

Other authorities' catchment planning agencies have almost unanimously concluded that forests are more valuable left standing in catchments than sold as timber.

The almost complete consensus of public opinion is the requirement to leave the land in a better state than it was found and to eliminate or drastically reduce all native forest logging immediately**.** In concurrence with the Stern Report and the Mackey Report, action to avoid further deforestation should be an urgent priority. Accordingly, if no action is taken, the health of native forests and therefore the Australian public will be severely detrimentally affected.

The RFAs have not been properly implemented, review timeframes have not been met and key components have not been conducted. The conditions on

logging under legislative regimes, on which the RFAs rely to deliver 'ecologically sustainable management', are inadequate, frequently breached and very poorly enforced. In addition, third party appeal rights have been removed in NSW and there is no avenue for the community to enforce the law directly, despite the transparent failure of the NSW Government to enforce it properly itself.

There was a need to monitor post-approval of harvest plans to assess the actual impact of operations, and to have ensured that conditions of approval were complied with. Insufficient resources were directed towards non-compliance activities and, as a result, there was no systematic monitoring of logging operations. There should have been vigorous processes for the monitoring of all operations and this should have been supported by appropriate funding. This should have been implemented and regulated by an independent authority.

Government owned and managed native forest logging practices have resulted in illegal logging, destruction of old-growth trees in special protection zones and multiple breaches of procedure. There should be no exemption for RFA forestry operations which are demonstrably unsustainable, for which key agreements relating to sustainability reviews have been ignored and/or wood supply contracts signed outside the timeframe of the RFAs.

SEFR do not support exclusions for particular activities or areas, unless there is genuine duplication of assessment requirements, and it is guaranteed that best practice assessment will occur. This is not the case under the RFAs.

We call for a judicial inquiry into the nature, extent and effect of any unlawful or otherwise inappropriate logging or workplace practice including any practice or conduct relating to, but not limited to;

(i) the *Forestry Act 1916,* the *Forestry and National Park Estate Act 1998,* the *Integrated Forestry Operations Approvals,* the *Regional Forest Agreements* or other laws relating to forestry.

(ii) fraud, corruption, collusion, anti-competitive behaviour, coercion, violence, false and misleading statements.

The nature, extent and effect of any unlawful or otherwise inappropriate practice or conduct relating to;

(i) failure to disclose or properly account for practices and financial transactions

(ii) inappropriate management, use or operation of industry funds for redundancy or any inappropriate use of funds, given that Forests NSW native forest sector is currently running at over fourteen million dollars in the red.

The inquiry should inquire into whether any practice or conduct that might have constituted a breach of the law should be referred to the relevant Commonwealth or State agency.

If FNSW can prove it has adhered to the RFAs and IFOAs management obligations then the RFAs must be inadequate and flawed instruments with

which to protect the environment and the communities interests. If, on the other hand, the RFAs are found to be delivering positive environmental outcomes then FNSW must be found to be mismanaging the native forest estate to a serious degree.

Forests NSW as the agency of the RFAs has shown itself to be a complete economic and environmental failure ergo the RFAs are not "durable," the obligations and commitments that they contain are not ensuring effective conservation and therefore the RFAs are a complete failure.

The RFA regime has effectively postponed inevitable environmental protection measures for ten years. As a matter of urgency these measures can no longer remain in limbo. There are significant economic, environmental and social benefits to support ending native forest logging and to ensure a swift transition of logging operations into the existing plantation estate.

The legislators have not enacted the legislation, the regulators have not regulated and the workers are not complying, thus we call for clause 8 of the RFAs to be triggered immediately, giving effect to ending the RFAs as the mode of native forest management.

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