



An opportunity for genuine reform:
Replacing the Regional Forest Agreements

A submission to the 2007 – 2012 RFA Review



The Wilderness Society has 40,000 members and 350,000 supporters across Australia, and was founded in Tasmania in 1976.



Environment Tasmania is Tasmania's peak conservation group, and represents over 20 environment organisations.



The Australian Conservation Foundation is Australia's oldest national conservation body, with over 200,000 supporters.

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June 2015

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Executive Summary

The Wilderness Society, Environment Tasmania and the Australian Conservation Foundation welcome the opportunity to provide comment on the Review.



IMAGE: Styx Valley | Rob Blakers

The Regional Forest Agreements (RFAs) provide the legal framework and apportion responsibilities for regulating logging between the Commonwealth and the states. They apply over most regions containing substantial areas of publicly-owned native forests.

The ten 20 year RFAs expire between 2017 and 2021, with the Tasmanian RFA (TRFA) expiring in 2017.

The current Tasmanian review addresses the period 2007 – 2012. This third five-yearly review period requires the making of recommendations on the replacement of the RFA. It is expected the process for replacement adopted in Tasmania will be proposed by the Commonwealth to be repeated in other regions. While RFA reviews primarily assess compliance with a range of indicators, this submission takes a global view of the success of the Tasmanian RFA in meeting its stated objectives and those of the foundational National Forest Policy Statement.

This approach has been taken as while the administrative and process based indicators are generally met, these indicators measure compliance with processes and clauses that in many cases are unable to meet the broader intent of the RFA to maximise social, environmental and economic benefits from Australia's forests.

In essence, boxes are being ticked, but the achievement of community needs such as protection of environmental values, industry growth and development, and secure employment are failing to a substantial extent.

In regards to nature conservation, this is emblematic of the general failings of both state and Commonwealth laws in actually delivering protection of the continent's natural values, in this case in Australia's forests. The chief environmental failing of the RFA is the construction of a legal fiction that environmental values are being adequately protected, whilst lacking mechanisms to ensure that environmental values are genuinely protected in the forests.

The current review provides an opportunity to take stock of the effectiveness of the RFAs, and to fully consider what changes are required to deliver for the community and the various sectoral interests the RFAs have sought to balance.

Unfortunately, indications to date are that the Commonwealth and Tasmanian Governments have pre-ordained the outcome to extend the Tasmanian RFA with no substantial analysis or change. We would submit that a more fundamental assessment is justified.

2. Recommendations

1. Transparent and comprehensive review and assessment:

1.1 A comprehensive assessment should be conducted to incorporate improvements in scientific knowledge and changes in industry context that have occurred since 1997. Such an assessment should include participatory involvement of stakeholders.

1.2 The process to review, replace, or extend the TRFA should involve a comprehensive analysis of the Agreement's effectiveness in meeting the objectives of the TRFA and the National Forest Policy Statement, and relevant Commonwealth law, particularly the *Environmental Protection and Biodiversity Conservation Act (EPBC Act)*.

2. Threatened species and protected areas:

2.1 A comprehensive assessment is conducted to identify improved management methods and protected areas required to adequately protect Tasmanian and Commonwealth-listed threatened species.

2.2 The effectiveness of threatened species protections and management under the TRFA should be thoroughly reviewed, with forest operations and management required to meet *EPBC Act* requirements and ensure the viability of populations of species are maintained.

2.3 The areas currently known as 'Future Potential Production Zone Land' should be converted to formal protected areas under the *Nature Conservation Act*.

3. EPBC Act monitoring, performance and compliance:

3.1 The effective blanket exemption or accreditation from the *EPBC Act* for forestry operations conducted in RFA regions under s.38 should be removed.

3.2 Any replacement mechanism should be legislated, provide Commonwealth powers equal to those in non-RFA regions, measure performance against the Act, be able to respond to new information, and be cancelled in the event of systemic non-compliance. The Commonwealth should maintain compliance enforcement, sanction, and approval powers under the *EPBC Act*.

4. Tasmanian forest management legislation, regulation and practice:

4.1 The effective 10% limit on harvest exclusions under the Forest Practices Code duty of care provisions and Agreed Procedures should be removed from all policy documents and resources for compensation made available for private landholders.

4.2 The outcomes required by management tools supporting the Forest Practices Code, such as the Threatened Fauna Advisor, should be made mandatory.



IMAGE: Clearfell in the Styx Valley | Vica Bayley

3. RFA purpose and objectives

The stated Purpose of the Tasmanian RFA is:

Providing long-term stability of forests and forest industries.

The RFAs sought to meet a number of objectives. For example, the Tasmanian RFA sought to:

Establish a framework for the management and use of Tasmanian forests which seeks to implement effective conservation, forest management, forest industry practices.

This included, among others, objectives to:

- *provide certainty for conservation of environment and heritage values through the establishment of a Comprehensive, Adequate and Representative (CAR) reserve system*
- *provide for the ecologically sustainable management and use of forests in Tasmania*
- *provide for future growth and development of Tasmanian Industries associated with forests and timber products*
- *provide for certainty of resource access to the forest industry.*

The National Forest Policy Statement (NFPS) — the guiding document for the RFA framework — also contains a number of National Goals. Regarding conservation:

The goals are to maintain an extensive and permanent native forest estate in Australia and to manage that estate in an ecologically sustainable manner so as to conserve the full suite of values that forests can provide for current and future generations. These values include biological diversity, and heritage, Aboriginal and other cultural values.

The following issues demonstrate a substantial policy failure against these objectives.

4. Keeping forest values for future generations

There are multiple examples in Tasmania where conservation values in Tasmania's forests are being negatively and permanently impacted by current forest management practices. Examples are provided below.

Consequently, it can be demonstrated that the stated conservation objective of the NFPS to 'conserve the full suite of values that forests can provide for current and future generations' is not being met in practice. Similarly, the TRFA objectives to 'provide for the ecologically sustainable management and use of forests in Tasmania' and 'implement effective conservation... measures' are not being met.

There are a number of structural problems that are allowing this situation to occur:

1. There is a substantial practical gap between the environmental performance of forestry operations conducted in Tasmania under RFA-accredited state regulation, and Commonwealth environmental law.
2. Tasmanian forest management frameworks have substantial constraints that prevent effective protection of environmental values. This includes few in any effective measures to enforce compliance to protect environmental values beyond often inadequate minimum standards.
3. The assessments under which current practices and regulations were formulated are 20 years old. Despite some improvements, sound research, and the dedicated efforts of regulatory, government and non-government staff and scientists, Tasmanian forest management frameworks have proven consistently in need of improved data. When new information is available, the frameworks have proven to be inflexible in adequately incorporating that information in a manner that effectively protects the environment.

4.3 Full implementation of landscape-scale protections, particularly the biodiversity landscape planning guideline, should be undertaken.

4.4 Ensure processes for formal participation of stakeholders, including appeals, in the assessment and approval of logging operations.

5. Research and monitoring:

5.2 The monitoring of environmental, employment, industry and other metrics under the RFA or replacement framework should include measuring effectiveness in achieving outcomes, as opposed to the current approach that measures only compliance with administration, legal and implementation process.

5.2 A consistent program of research should be undertaken to address gaps in the monitoring of RFA (or replacement framework) outcomes, and to develop improvements in the achievement of environmental, social and economic outcomes.

6. Climate change:

6.1 The impacts of current and future climate change and natural disturbance should be accounted for in a revised Tasmanian forest management framework, both in regards to ecological values and the timber resource.

6.2 The value of forests as carbon stores and sinks should be explicitly addressed in a revised Tasmanian forest management framework in line with the Tasmanian Forest Carbon Study.

7. Timber resource and industry development

7.1 The Commonwealth should prioritise the establishment of policy to support investment in fit-for-purpose plantation sawlog products, with appropriate social and environmental safeguards.

7.2 The Commonwealth should prioritise the establishment of policy to support research and development and investment in value-adding.

8. The Tasmanian Aboriginal Community

8.1 In agreement with the Tasmanian Aboriginal community and respecting the rights and aspirations of the Tasmanian Aboriginal community, the Tasmanian and Commonwealth Governments should establish appropriate mechanisms for the handback and/or Aboriginal management and/or co-management of state forest and protected areas with support for protection of natural values.

8.2 Resources and training should be provided to support management of Tasmanian Aboriginal owned or managed land returned through such a process.



IMAGE: Clearfell in the Styx Valley | Geoff Law

4.1 Protecting values under Tasmanian legislation

The RFA effectively accredits Tasmania's forest practices system, including legislation, policies, codes of practice and general management documents, as appropriate to implement and achieve Ecologically Sustainable Forest Management.

Protection of forests values occurs through the CAR reserve system — formal protected areas, private land conservation, and informal reserves in production forest — and a set management practices for logging operations conducted under the Forest Practices Code ('the Code').

Despite reviews in 2009 and 2015, the creation of an overarching Guiding Policy, the implementation of planning tools such as the Threatened Fauna Advisor, and further proposals for planning tools such as the Biodiversity Landscape Planning Guideline, the application of the Code continues to be inadequate to protect conservation values, including matters of national significance. The likely impending failure of Forestry Tasmania's initial efforts to achieve world-leading Forest Stewardship Council certification under the current implementation of Tasmanian forest management systems provides further evidence of this inadequacy.

While fundamental changes to the Code are required for a truly world's best practice system, the inadequacy of the Code in ensuring ecologically sustainable forest management and protection of values could be substantially addressed through the following changes.

In effect, the duty of care provisions, through a document quietly agreed between two regulatory authorities, have been fundamentally altered from an environmental protection tool to one that facilitates damage to forest values.

Duty of care:

The 'duty of care' requirements in the Code provide for harvest exclusions in a logging coupe. However, the 2014 Forest Practices Authority (FPA)-Department of Primary Industries, Parks, Water and Environment (DPIPWE) Agreed Procedures,¹ and the associated abolition of compensation for private landholders for exceeding duty of care thresholds, effectively limits the area of a coupe that can be excluded from harvesting to 10%.²

The DPIPWE can override situations where the FPA, or experts commissioned by the FPA or DPIPWE, identify that more than 10% of an area should be excluded from logging to protect environmental values.

As EDO Tasmania has observed:

The policy of not allowing these thresholds to be exceeded compromises the achievement of conservation outcomes where larger areas must be retained in order to protect threatened species or vegetation communities.

1 http://www.fpa.tas.gov.au/_data/assets/pdf_file/0010/57718/FPA_and_DPIPWE_agreed_procedures_2014.pdf.

2 Or 5% for non clearfell operations.

In effect, the duty of care provisions, through a document quietly agreed between two regulatory authorities, have been fundamentally altered from an environmental protection tool to one that facilitates damage to forest values. There is a clear danger that this approach becomes entrenched and does long-term damage to the protection of endangered species and other forest values.

The effective 10% limit placed on harvest exclusions by the application of the duty of care provisions of the Code, as defined under current agreements between the FPA and the DPIPWE, should be removed.

Removal of the thresholds should be supported by increased resources available to compensate private landowners who are restricted from clearing their property due to threatened species protection.

End 'get out of jail free cards' in implementing planning tools:

The protections and prescriptions required by planning tools such as the Threatened Fauna Advisor should be compulsory for Forest Practices Plans (FPPs). That is, any provisions that allow DPIPWE or the FPA to approve FPPs with outcomes below that prescribed in planning tools should be abolished.

A system that routinely provides 'get out of jail free cards' where environmental protections can be ignored or overridden by departmental staff with little public scrutiny or accountability is clearly failing to deliver ecologically sustainable forest management. These failures were recently revealed through Right to Information requests, wherein three logging coupes expert advice regarding the protection measures for the Swift Parrot was ignored by DPIPWE staff and logging was approved.

It is highly likely that these failures are systemic, as in any situation where conservation planning measures cannot be met, the proximate regulator, the FPA, has no capacity to ensure protections are implemented or plans not approved. In these situations, there is no constraint on DPIPWE staff implementing the politicised directions of the government of the day. When the Government defines its interest as largely oppositional to environmental protections, such as the clearly held view of the current Tasmanian Government, the concept of ecologically sustainable forest management becomes untenable. The current system also locks out public participation, ensuring no mechanisms for public accountability.

Landscape-scale protections: The Commonwealth funded RFA Priority Species Project conducted by

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the FPA has identified gaps in the Tasmanian forest practices system regarding landscape-scale protection and mature habitat protection. These systemic gaps have resulted in an 'ad-hoc', coupe-by-coupe implementation of biodiversity conservation, with on-ground results being difficult to monitor.

In response, the FPA, after years of research, developed and trialled the Biodiversity Landscape Planning Guideline (BLPG),³ a tool which 'takes the ecological principles of biodiversity conservation and translates them into goals and management targets, which can be achieved through one or more specific actions'.⁴ Clearly, the need for such a tool confirms the current inadequacy of the forest practices system in delivering ecologically sustainable forest management.

The BLPG proposes firm mature habitat targets at the landscape-scale, including for the purpose of assisting protection of wide-ranging fauna species that may not be adequately catered for under existing coupe-by-coupe prescriptions.⁵ The primary objective of the BLPG is to:

*Contribute to the maintenance of habitat for RFA priority species at multiple spatial and temporal scales in areas covered by the Tasmanian forest practices system.*⁶

3 The guideline is a major output of the project entitled 'Developing a framework for the conservation of habitat of Regional Forest Agreement priority species and a strategic plan for the swift parrot (Lathamus discolor)'. This project was jointly undertaken by the Forest Practices Authority (FPA) and the Department of Primary Industries, Parks, Water and Environment (DPIPWE). Part two of the project was carried out by FPA, to develop a strategic landscape approach to the management of habitat for RFA priority species (termed the 'RFA priority species project').

4 Forest Practices Authority 2012, *Biodiversity landscape planning guideline: a framework for managing biodiversity values, including RFA priority species, across the landscape in areas covered by the Tasmanian forest practices system*, a report to the Commonwealth Government and the Forest Practices Authority, July 2012, p12

5 Koch, Chuter, (2013) *Trialling implementation of the Biodiversity landscape planning guideline: results for three forest blocks*, report to the Federal Government and the Forest Practices Authority, March 2013. Forest Practices Authority Scientific Report 18, p9

6 Forest Practices Authority 2012, *Biodiversity landscape planning guideline: a framework for managing biodiversity values, including RFA priority species, across the landscape in areas covered by the Tasmanian forest practices system*, a report to the Commonwealth Government and the Forest Practices Authority, July 2012, p11

These species include a number of mature forest-dependent endangered species, such as the Swift Parrot and Masked Owl.

Five additional planning tools were identified to support full implementation of the guideline, including a tool to ensure mature habitat is protected at a landscape-scale:

Careful management of mature forest is therefore required to ensure that these features are available for native species both now and into the future. Given the diversity of species that depend on mature forest features, management of mature forest needs to be applied across different spatial scales (e.g. at the landscape and coupe scales).⁷

Full implementation of landscape-scale protections, particularly the BLP, should be undertaken. Where forest areas can be effectively managed under protected area regimes, these sites should be reserved to contribute to landscape-scale protections. A program of research should continue to be funded to ensure gaps in conservation are continually addressed. Any TRFA replacement or review process should ensure these actions are implemented.

As discussed above, the current forest management system in Tasmania contains a number of fundamental flaws that prevent the adequate protection of forest values. Despite this however, Tasmanian legislation, regulation and practice is deemed sufficient to meet Commonwealth environmental law under the TRFA.

In effect, s.38 of the *EPBC Act* provides what is variously viewed as effective exemption, or a licensing agreement, for forestry operations in RFA regions. The 2008 Hawke Review⁸ into the *EPBC Act* argues that, 'the establishment of RFAs (through comprehensive regional assessments) actually constitutes a form of assessment and approval for the purposes of the Act'.

However, this accreditation operates in the absence of fit-for-purpose monitoring or performance requirements, or Commonwealth compliance powers. The attached EDO Tasmania report *State Forests, National Interests* also concludes that the accredited Tasmanian system fails to substantially meet Commonwealth standards in seven key areas, with the consequence that:



IMAGE: Masked Owl | Mike Eden

The exclusion of forestry operations under the RFA regime from the operation of the EPBC Act may compromise the protection of matters of national environmental significance and threaten Australia's ability to comply with international obligations.⁹

There is also substantial evidence nationally listed threatened species are not being effectively protected under the TRFA framework (see Swift Parrot case study).

Crucially, the Federal Court has determined that Commonwealth agreement between that matters of national environmental significance (MNES) are being protected through RFAs is sufficient to ensure this *EPBC Act* exemption can be applied, *regardless of whether* MNES are being protected in practice. Under the RFAs, it is implied that the protection of MNES is to be achieved through the mechanism of the CAR Reserve System.

As the 2006 Weilangta Federal Court decision determined, however, the CAR system does not need to protect MNES in practice for the RFA exemption from the *EPBC Act* to be applied. An agreement between Tasmania and the Commonwealth that a CAR reserve system is protecting a MNES (in the Weilangta case three federally listed threatened species) is sufficient to allow the exemption from Commonwealth environmental law to operate.¹⁰

The Hawke Review characterised this problem as being that 'the approval has continued to operate irrespective of the extent to which the commitments contained within the agreements have been implemented, particularly in relation to environmental outcomes'.

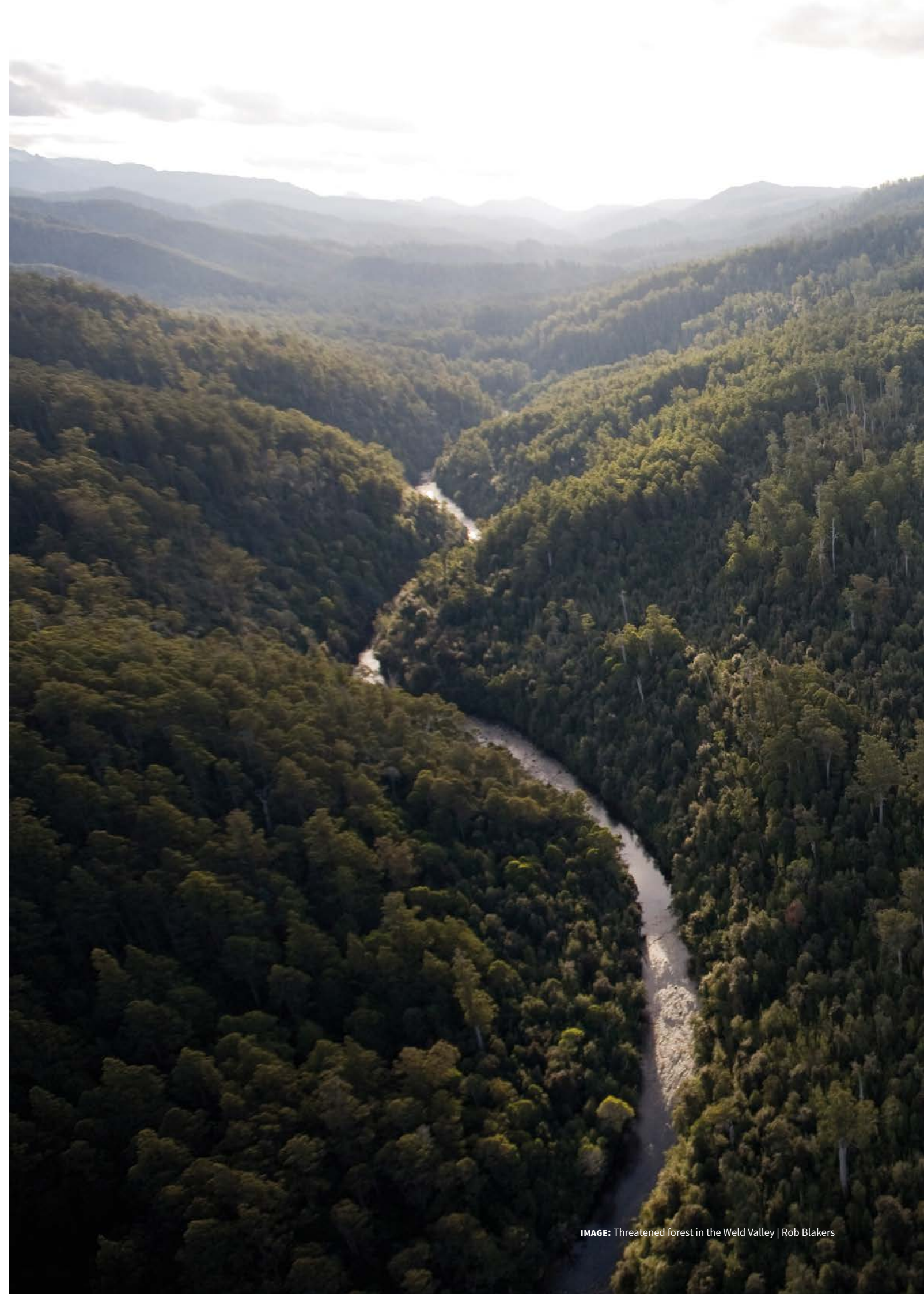


IMAGE: Threatened forest in the Weld Valley | Rob Blakers

7 Ibid.
8 <http://www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/final-report.pdf>, Chapter 10

9 EDO Tasmania (2015) *State forests, National Interests: A Review of the Tasmanian RFA*, p5
10 EDO Tasmania (2015) *State forests, National Interests: A Review of the Tasmanian RFA*

4.2 Fit for purpose conservation assessment and monitoring

The accreditation of the RFAs and state legislation as satisfying EPBC requirements is based on static, 20 year old assessments.¹¹ Substantial critique exists of the adequacy of these assessments and their implementation — for example, participating scientist Professor Jamie Kirkpatrick’s critique that Tasmanian RFA process resulted in a ‘large distance between the [conservation] outcomes and of the indicative targets expressed in the original Commonwealth criteria’.¹²

In the 20 years since the Tasmanian Comprehensive Regional Assessments have been conducted, there have been substantial advances in conservation science. This includes a significant focus on bioregional management and landscape connectivity, advances in monitoring and remote sensing techniques, an increased understanding of habitat requirements for some species, significant developments in understanding and managing fire, and the growing importance of climate mitigation, resilience and adaptation.

Similarly, increasing and emerging threats, such as climatic change, increased fire risks, species population loss, invasive predators, and disease have impacted or are likely to increasingly impact ecological systems and processes in Tasmania’s forests. Forest tenure, management, and timber resource availability have also changed substantially.

In regards to both Commonwealth and Tasmanian responsibilities in ensuring proper management of the forest estate, we contend that it would be irresponsible to extend the TRFA for 20 years based solely on the administrative compliance process required under the 2007-2012 review.

In regards to the *EPBC Act*, there is no explicit performance intent or design in the TRFA to allow verification that MNES are being protected, or that the performance requirements of the Act are being complied with. The Hawke Review identified this fundamental failure as resulting in an inability to ‘verify whether core environmental commitments or license conditions of the RFAs are being met’ placing

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the ‘credibility and sustainability of RFAs... at risk’.¹³ The review also recommended regular monitoring and auditing ‘to meet the agreed conditions of approval’.¹⁴

Limited data is available to assist in verifying as to whether the ‘core environmental commitments of the RFAs’ are being met. What data is available has often been the result of committed civil servants, foresters, regulators, scientists or interested community members and organisations seeking to triage impacts on the most immediately vulnerable natural values.

Often this has been by necessity restricted to highly vulnerable species facing immediate threat, often with highly limited ranges, or iconic species where there are particularly high levels of community concern such as the Tasmanian Wedge-tailed Eagle and the Swift Parrot. For other species, such as the Masked Owl, data is largely insufficient to verify whether the species is adequately protected under current forest management arrangements

Monitoring of the effectiveness of the TRFA and accredited Tasmanian forest management frameworks in protecting natural values suffers greatly from a lack of a coordinated and comprehensive approach. While recognising the adequacy of compliance monitoring systems, the FPA has noted that ‘the approach to monitoring the effectiveness of the management strategies for biodiversity is less systematic, with many projects initiated in an ad hoc fashion in response to management issues’.¹⁵



IMAGE: Along the road line in former state forest, included in 2013 World Heritage extension, Upper Florentine | Rob Blakers

In regards to threatened species, the FPA notes as a matter of priority that:

*Monitoring species trends is baseline information that is essential for determining the long-term, comprehensive implications of landscape management... [while] for many species comprehensive management will be beyond the scope and capacity of the forest practices system alone... we recommend that all organisations in Tasmania involved with managing native biodiversity (including forestry organisations) should establish a coordinated approach to species trend monitoring across the state.*¹⁶

Positive recent efforts by the FPA have resulted in a more coordinated approach,¹⁷ including efforts to ensure multi-scale monitoring. While this represents progress, projects continue to often be reactive, and although there may be applications possible to allow assessment of whether Commonwealth standards are being met, there appears to be no specific design intent to allow such assessment to be undertaken.

To resolve the failure of monitoring in regards to *EPBC Act* requirements, the Hawke Review recommended¹⁸ legislated mechanisms to ensure performance can be measured on an ongoing basis,¹⁹ including consistent and independent auditing between the five year review periods, and the ability for the Minister to respond to site-specific and new information,²⁰ including the ‘condition and extent of listed communities, species and critical habitat’.

The Review recommended the RFA exemption continue only if such legislated reporting and performance requirements were being demonstrated to be met.²¹ No improvements of this nature have been made, and, crucially, performance requirements for the continuation of approval have not been set out in the *EPBC Act* itself. The 15 year RFA Review provides an opportunity to remedy this situation.

11 Clauses 28 of the TRFA refers to the Agreement removing any further requirements for environmental impact assessment under the precursor to the *EPBC – the Environmental Protection (Impact of Proposals) Act 1974*: 28. The Commonwealth confirms: that subject to clause 43 activities covered by this Agreement will not require any further assessment or approval under the *Environment Protection (Impact of Proposals) Act 1974 (Cwth)*.

12 Kirkpatrick (1998) *Nature Conservation and the Regional Forest Agreement Process*, Australian Journal of Environmental Management, 5, p31

13 <http://www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/final-report.pdf>, Chapter 10

14 Like other activities assessed and approved under the Act, RFAs should be regularly monitored and audited to ensure they continue to meet the agreed conditions of that approval. The weakness in this area needs to be rectified, Hawke Review, 10.11, p197

15 Koch, Chuter, and Munks, (2011), *Developing a framework for the conservation of habitat of RFA priority species – Monitoring the effectiveness of forest management prescriptions for the conservation RFA priority species: current progress and future work*, report to the Federal Government and the Forest Practices Authority, 6 November 2011. Forest Practices Authority scientific report 14, p11

16 Koch, Chuter and Munks (2011) *Developing a framework for the conservation of habitat of RFA priority species Monitoring the effectiveness of forest management prescriptions for the conservation RFA priority species: current progress and future work*, Report to the Federal Government and the Forest Practices Authority, Forest Practices Authority scientific report 14.

17 Forest Practices Authority (2014), *Monitoring the effectiveness of the biodiversity provisions of the Tasmanian Forest Practices Code: 2013–14 summary report*. September 2014, report to the Board of the Forest Practices Authority and the Secretary of the Department of Primary Industries, Parks, Water and Environment. http://www.fpa.tas.gov.au/_data/assets/pdf_file/0011/101612/FPA_report_2013-14_Monitoring_the_effectiveness_of_the_biodiversity_provisions_of_the_Tasmanian_Forest_Practices_Code.pdf

18 Hawke Review, 10.21 *In order to demonstrate that environment protection outcomes are being achieved in RFA forests, the RFA reviews need to focus on the performance of RFAs in achieving their objectives, including protecting biodiversity, and not just report on processes under the agreements. Reviews should specifically address relevant matters of national environmental significance (NES) and report on verifiable information*

19 Hawke Review, 10.30

20 Ibid.

21 Hawke Review 10.22 *The Act should be amended so that the special treatment of RFAs under the EPBC Act continues only if the conduct and reporting of agreed RFA obligations and commitments... is satisfactory. The performance requirements for continuation of the approval under s.38 of the Act should be set out in legislation.*



Swift Parrot (*Lathamus discolor*) case study

Much of the protection of threatened species under the RFA is based on the implicit assumption that habitat can be damaged in one area of a forest estate, but retained in other areas in quantities sufficient to ensure the viability of species populations. However, inadequate protection targets, previous habitat loss or population decline, ecological requirements of species, changed environmental conditions, or new threats can render such an approach inadequate for protecting a species.

For example, the assumption of protecting limited areas of habitat has been identified as an inadequate basis for managing wide-ranging fauna, including the Swift Parrot.²² Improvements in mature habitat protection, particularly for hollow-dependent species, have been identified as being required in Tasmania for this species. This was confirmed through a major review of the regulatory system and its ability to meet Commonwealth and RFA requirements, and subsequent research and development of planning tools by the FPA.²³

There are several federally listed threatened species in Tasmania that rely on hollow bearing mature forest at a landscape-scale, including the endangered Swift parrot and Masked Owl, while other listed species such as the endangered Grey Goshawk and the vulnerable Spotted-tail Quoll also have mature habitat preferences and dependencies. A lack of data also hampers knowledge of the requirements of a range of other threatened species.

When examining the potential impact of threatening processes that can be prevented or mitigated by direct human intervention, it is important to recognise the actual meaning of a species being listed as endangered under the *EPBC Act*.

An endangered listing refers to a species that is 'facing a very high risk of extinction in the wild in the near future'. This sets a high bar in regards to the

responsibilities of both land managers of habitat and regulators of any activities that threaten that habitat.

Any management approach that makes unjustified assumptions regarding habitat impacts for endangered species potentially contributes to increasing extinction risk.

Given the substantial knowledge base regarding the Swift Parrot, this species has been chosen to illustrate the failures of the management applied under RFA-accredited Tasmanian legislation to meet Commonwealth performance requirement. These issues apply equally for species where less data exists.

The Swift Parrot migrates between spending winter on the Australian mainland and summer breeding in Tasmania. Its food source is a limited number of *Eucalyptus* species. In Tasmania, it primarily depends upon *Eucalyptus globulus* and *E.ovata*, and its migration and breeding patterns are erratic, in part due to flowering of its feed-tree species.

The species relies on mature, hollow bearing forest for breeding, in close proximity to heavily flowering foraging habitat.²⁴ While its range is relatively broad, the paucity of suitably flowering foraging and breeding habitat at any one time, and heavy fragmentation of habitat means suitable habitat areas are important across the landscape.

In Tasmania, suitable habitat is concentrated in the south and east, including within substantial areas of production forest, in areas such as Bruny Island, Weilangta, and areas of the southern forests such as

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22 Saunders, Debbie; Brereton, Raymond; Tzaros, Chris; Holdsworth, Mark and Price, Rob. (2007) Conservation of the Swift Parrot *Lathamus discolor* - Management Lessons for a Threatened Migratory Species [online]. Pacific Conservation Biology, Vol. 13, No. 2, 2007: [111]-119. Availability: <http://search.informit.com.au/documentSummary;dn=801714574883941;res=IELNZA> ISSN: 1038-2097

23 'Developing a framework for the conservation of habitat of Regional Forest Agreement priority species and a Strategic Species Plan for the swift parrot (*Lathamus discolor*).' <http://dpiwwe.tas.gov.au/Documents/Part-1-Strategic-Species-Plan-for-the-Swift-Parrot.pdf>, <http://dpiwwe.tas.gov.au/Documents/Part-2---Strategic-landscape-approach-to-the-management-of-habitat-for-RFA-priority-species.pdf>

24 Stojanovic, D., Webb, M. H., Alderman, R., Porfirio, L. L., & Heinsohn, R. (2014). Discovery of a novel predator reveals extreme but highly variable mortality for an endangered migratory bird. *Diversity and Distribution*.



Hastings and Kermadiec. Two major flowering and breeding events have occurred in the Southern Forests production area in the past seven years.²⁵ Suitable areas of mature habitat have become increasingly isolated in the Southern Forests as logging of diminishing areas of *E.globulus* forest adjacent to suitable hollow-bearing forest (such as *obliqua* forest).

Newly discovered threats of predation by introduced sugar gliders²⁶ (with up to 83% mortality of adults recorded) have added substantially to pre-existing habitat loss impacts. This makes island populations, such as Bruny Island, and areas protected in mature forests of particular importance.

While historically land clearing has been the primary driver of habitat loss, the key driver of suitable habitat loss is now logging. Wildfire has also exacerbated the loss of mature forest attributes in some areas.

Webb *et al.* identify a number of conservation actions required to protect the Swift Parrot:

To protect the species, conservation actions need

*to account for the spatiotemporal variation in the availability of Swift Parrot breeding habitat and recognise there may be several years between the use of a particular site. Given the number of nests found at individual sites this will require the management or reservation of suitable forest stands with old-growth characteristics across the landscape, rather than focussing on individual trees or historical nesting sites.*²⁷

Loss of breeding habitat has been recognised as a threat to the species since the development of the first five year Swift Parrot Recovery Plan in 2001.²⁸ The Tasmanian RFA also recognises the need to protect defined ‘Priority Species’ (being listed forest-dependent species), however its habitat has continued to be lost due to logging.

A number of recommendations to protect the Swift Parrot, focused on mature habitat conservation at the landscape-scale, have been advanced through the Commonwealth-funded RFA Priority Species Project. Subsequently, substantial protection requirements have been introduced through the Threatened Fauna Advisor planning tool.

25 Webb, Matthew H., Simon Wotherspoon, Dejan Stojanovic, Robert Heinsohn, Ross Cunningham, Phil Bell, and Aleks Terauds(2014), “Location matters: Using spatially explicit occupancy models to predict the distribution of the highly mobile, endangered swift parrot.” *Biological Conservation* 176 (2014): 99-108.

26 Stojanovic, D., Webb, M. H., Alderman, R., Porfirio, L. L., & Heinsohn, R. (2014). Discovery of a novel predator reveals extreme but highly variable mortality for an endangered migratory bird. *Diversity and Distributions*.

27 Webb, Matthew H., Mark C. Holdsworth, and Janneke Webb. “Nesting requirements of the endangered Swift Parrot (*Lathamus discolor*.” *Emu* 112.3 (2012): 181-188

28 Swift Parrot Recovery team (2001) Swift Parrot Recovery Plan.

However, as discussed in section 4.1, the systemic failed implementation of these tools through the duty of care provisions and DPIPWE decision-making ignoring expert advice has resulted in Swift Parrot protections largely going backwards.

In fact, FPA figures show that between 2009 and 2001, only four of 44 applications to log potential swift parrot habitat were rejected.²⁹

A recent report by Environment Tasmania, based on Right to Information documents, revealed that the Tasmanian Government is actively approving logging in areas that its own scientists have identified as needing to be set aside from logging to protect Swift Parrot habitat.³⁰ Senior DPIPWE bureaucrats have clearly overruled expert objections and allowed logging to proceed under the duty of care provisions.

The documents reveal that expert advice on the impacts of logging, sought by DPIPWE at the request of the FPA, revealed high levels of concern at a number of logging sites. For example, at one site, expert advice stated that logging failed the objectives of the NFPS, the policy underpinning the RFAs:

In allowing harvesting of breeding habitat for the species at this site conservation objectives for the species at the coupe and regional scales will not be met; hence the conservation management for the species would become ineffective. The species’ conservation objectives are driven by the need to maintain existing habitat; further loss would not meet sustainability objectives of ecologically sustainable forest management as outlined in the National Forest Policy Statement and planning guidelines referred to above.

There is no scientific evidence to support the position that continued harvesting of breeding habitat will support conservation objectives for the species.

Based on the Government response to the Environment Tasmania report, there is little evidence any change in Government practice is being considered to ensure the Swift Parrot is adequately protected.

Recent discovery of predation threats adds to the level of risk, with offshore islands and nest sites surrounded by mature forest offering greater protection from

29 Chuter and Munks (2011) Developing a framework for the conservation of habitat for RFA priority species: Background report 3. A report to the Commonwealth Department of the Environment and the Tasmanian Forest Practices Authority.

30 Pullinger, P (2015) *Pulling a Swiftie*, Environment Tasmania

predation threats.³¹ Research has shown that heavily fragmented areas with more than 20% mature habitat in a five kilometre radius greatly reduce the chances of survival, reinforcing the need for true and adequate landscape-scale protection targets.

Despite the well-recognised need for substantial improvements in the protection of blue gum and surrounding mature forest, the continued loss of habitat, newly-identified threats, and the existence of Recovery Plans, the Commonwealth Environment Minister has no powers to enforce additional protections or management changes. This is despite the potential listing of the species as critically endangered—it is likely to go extinct in the near future.

This is due to the accreditation and effective exemption of forestry operations in RFA regions from the *EPBC Act*. As the Weilangta Federal Court decision determined (including specifically in relation to the Swift Parrot), this exemption does not require that a species is actually protected through measures agreed under the RFA. It merely requires that a CAR reserve system with an agreed purpose to protect federally listed threatened species is in place.

Under this ruling, a species could go extinct because of direct and significant impacts from logging operations, but the species would still be viewed as being effectively protected for legal purposes with no sanction.

This case study highlights the substantial failure of the RFA framework to protect environmental values, as required under the National Forest Policy Statement, and the failure to protect matters of national environmental significance.

A species could go extinct because of direct and significant impacts from logging operations, but the species would still be viewed as being effectively protected for legal purposes with no sanction.

31 Stojanovic, D., Webb, M. H., Alderman, R., Porfirio, L. L., & Heinsohn, R. (2014). Discovery of a novel predator reveals extreme but highly variable mortality for an endangered migratory bird. *Diversity and Distributions*.



IMAGE: Tasmanian Masked Owl | Dave Watts

4.3 Meeting Australian environmental standards

The recent EDO Tasmania report *State Forests, National Interests* concluded that:

*One principal difficulty with the RFA regime occurs when the State defines its interest in securing a productive forest industry as conflicting with the national interest in protecting matters of national environmental significance. Where the State implements prescriptions that are less rigorous than the measures required to protect these matters, the RFA regime does not provide adequate mechanisms to effectively promote the national interest.*³²

As the Hawke Review makes clear, the Commonwealth Environment Minister does not currently have formal powers to undertake compliance audits or investigate whether ‘operations in RFA forest regions with potential impacts on matters of [M]NES are actually consistent with the RFA, and therefore satisfy s.38 [the effective exemption or licensing clause] of the Act’.³³

Amendments to the Act would be required to extend the compliance, enforcement and sanction powers available to the Minister regarding MNES to the exempted RFA forest regions. The Hawke Review recommended these changes be legislated.³⁴

The lack of Commonwealth powers to protect the environment in RFA regions is also reflected in the almost complete absence of options for formal community participation and third party legal participation (see Section 5 *Community participation and social license*) in forest management in Tasmania.

As detailed in the extensive case study in this report, Commonwealth funded and independent research has identified that the Swift Parrot — an RFA Priority Species notionally and explicitly protected under the TRFA — is not being adequately protected, and is being impacted by logging operations. Documents recently acquired under Freedom of Information demonstrate that the ultimate regulator in Tasmania (the Department of Primary Industries, Water and Environment) is ignoring the advice of its own experts in allowing logging in Swift Parrot areas where logging is known to be damaging habitat.

There is currently no mechanism for the Commonwealth to require changes to ensure this species is protected.

In effect, a nationally listed endangered species could go extinct under the current arrangement and the Commonwealth Environment Minister would be unable to intervene, except to cancel the Regional Forest Agreement and thus reactivate the provisions of the EPBC Act. The community would be similarly powerless.

The attached *State Forests, National Interest* report outlines a number of potential mechanisms to address the failures created by the s.38 exemption. Our organisations submit that the s.38 exemption or accreditation should be repealed and replaced with a mechanism that fulfils the following criteria:

- legislates Commonwealth investigation, intervention, compliance and enforcement powers in regards to MNES in current RFA regions, in line with non-RFA regions
- requires Commonwealth assessment and approval of operations in RFA areas, while allowing assessment and approval of multiple logging operations or plans
- includes monitoring against EPBC Act performance requirements
- supports active and immediate responses to new information
- can be cancelled by the Commonwealth in the event of non-compliance by a State.

32 EDO Tasmania (2015) *State forests, National Interests: A Review of the Tasmanian RFA*

33 Hawke Review Chapter 10

34 Hawke Review Chapter 10

5. Community participation and social license

The National Forest Policy Statement has an identified National Goal regarding *Public awareness, education and involvement*:

The goals are to foster community understanding of and support for ecologically sustainable forest management in Australia and to provide opportunities for effective public participation in decision making.

The ongoing contest over forest use and conservation demonstrates that this support has not been achieved. As the international literature identifies and the on-ground experience verifies, the institutional failure to provide genuine options for community participation in forest management has been a key driver of the rise of multi-stakeholder market governance systems, primarily the Forest Stewardship Council and other multi-stakeholder initiatives such as the Tasmanian Forest Agreement.

There are virtually no procedural or formal channels for third parties to participate as stakeholders in forest management planning decisions. Likewise there are no channels to take legal action to ensure an RFA or the EPBC Act is being complied with.³⁵

Comment on forest practices plan certification processes are restricted to immediate neighbours. Appeals on planning decisions are restricted to the applicant, and the post Weilangta TRFA changes make recourse to judicial review for ‘interested persons’ under the EPBC Act extremely unlikely to succeed.³⁶

The failure of the TRFA to deliver true Ecologically Sustainable Forest Management and to ensure effective public participation has also been a key contributor in the rise and importance of the Forest Stewardship Council system in Tasmania, with higher-than-regulatory standards that seek to ensure community acceptance, stakeholder participation, and the protection of environmental values.

The industry, union, and conservationist negotiated Tasmanian Forest Agreement — with an unprecedented focus on market access and explicit conservationist support for timber products — was

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also a direct response to the industry, market, employment, conservation, and community failures that the TRFA purported to address.

The warning provided in the Hawke Review seven years ago has proven to be a prescient, if obvious, one:

RFAs have reduced community conflict over native forest harvesting but have been implemented in a way that has not realised the envisaged benefits in transparency and public accountability. If this issue is not addressed it could form the basis for renewed conflict, undermining public support for continuation of the current RFA arrangements into the future.³⁷

35 EDO Tasmania (2015) *State Forests, National Interest: A Review of the Tasmanian RFA*.

36 EDO Tasmania (2015) *State Forests, National Interest: A Review of the Tasmanian RFA*.

37 Hawke Review Chapter 10

6. Industry development and change management

The RFAs have not provided an effective framework for managing some of the key structural changes in the forestry industry.

Some circumstances are difficult to plan for, such as the rise of the Australian dollar impacting competitiveness.

However, it has been a constant for the industry over decades that value-adding was required to transition the Australian industry from competing on low-cost products such as woodchips where there is no comparative advantage. Similarly, the rise of the domestic and international plantation sector, and the resulting structural transition, has been both foreseeable and actively planned for by governments and industry. Increased expectations of environmental sustainability in key markets have also been a perceivable long-term trend that has not been effectively managed.

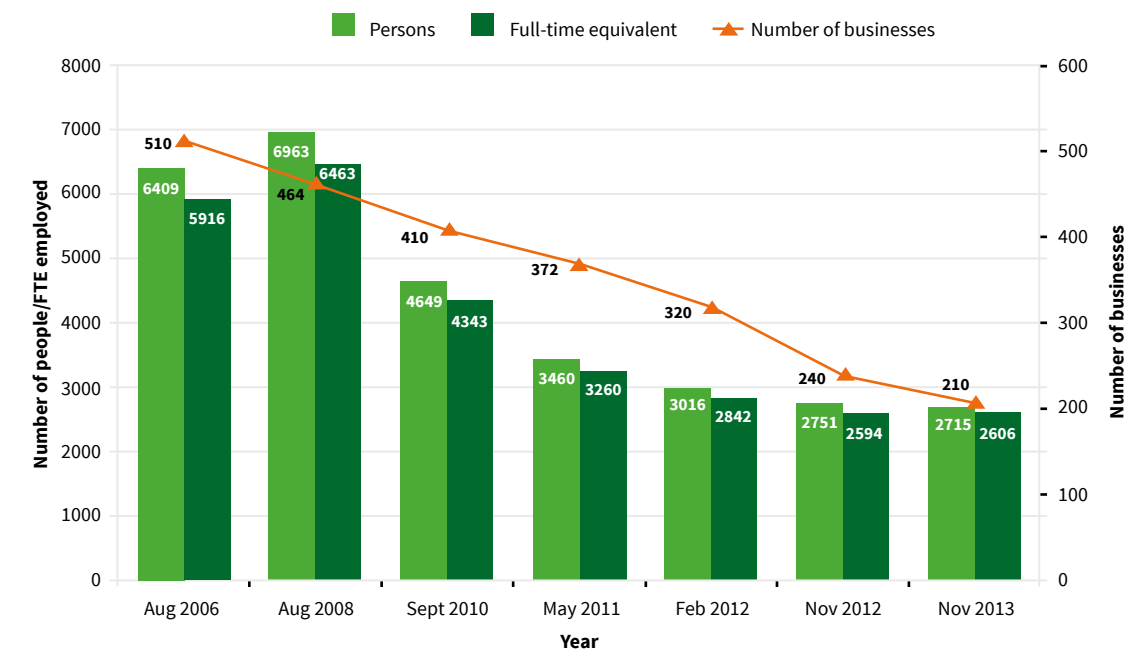
Despite these well-known circumstances, there have been consistent failures to provide support, incentives, planning schemes and other mechanisms to plant the right trees, in the right places, with the right research and development and incentives for innovation, and failures to respond to the substance of sustainability concerns.

These and other issues have resulted in the failure of some native forest industry regions to adapt to changing market circumstances and resource availability. While there is an argument made that declining employment and competitiveness is due to resource constraints as a result of protected area expansion, the dramatic collapse of the Tasmanian industry in the period 2006–2012 provides a compelling counterfactual.

During this period, the Tasmanian native forest industry faced unchanging resource circumstances — a legislated 300,000 cubic metres of high quality sawlogs, and a consistent available estate. Despite this, employment in the sector reduced from 6,463 FTEs in August 2006 to 2,594 in November 2012. This decline only stabilised once the stakeholder-driven Tasmanian Forest Agreement sought to address fundamental structural issues — including an expansion of the protected area estate.³⁸

The Commonwealth Government, through its recent Forest Industry Advisory Council (FIAC) issues paper,³⁹ has identified the need for forward looking forest policy focused on high quality, high value products. Our organisations support this intent. It is worth quoting the FIAC issues paper at length on this issue:

38 Schirmer, J. (2014) *Tasmanian Forest Industry Structural Analysis Phase 1 results* 17 March 2014, University of Canberra
39 Commonwealth of Australia 2015, *Meeting Market Demand: Australia's Forest Products And Forest Industry*, Forest Industry Advisory Council, Department of Agriculture, Canberra.



Data sources: (i) 2006–2011 data drawn from Schirmer et al. 2011 (ii) Feb 2012 data estimated based on data reported in Schirmer et al. 2011 and Schirmer 2012 (iii) Nov 2012 and Nov 2013 data based on results of 2013–14 survey of industry.

Just as wood processing, forest management and conservation practices have improved in response to new developments in science and technology, it is important that the policy settings for Australia's forest products sector are innovative, flexible and responsive to align with our changing times. We are certain there are yet-to-be realised opportunities for high-quality, high-value forest products for Australia. These products are renewable, recyclable and an excellent substitute for more carbon-intensive materials, offering us a positive and sustainable future.

However, in determining what the future may look like for our forest products sector, we cannot look to the future through the rear-view mirror—we need to look ahead and, importantly, to emerging opportunities and future demand for forest products. There are challenges in doing so and our collective response requires fresh, clear thinking. We need to encourage more innovation, more productivity and more investment to drive more trade and more jobs. Greater productivity and improved competitiveness offers the opportunity for a vibrant future.

What is notable about this statement is that it offers a very similar narrative to dozens of Government and forest industry reports over the past few decades. While innovation and growth has occurred in some parts of the industry, including in Tasmania, it is also noteworthy that current industry statistics suggest a substantial failure to deliver a viable industry based on high value products.

The recent Commonwealth commitment to providing funding support for forestry innovation and product research at the University of Tasmania through the Industrial Transformation Research Program provides a starting point. However, more substantial policy support for value adding, innovation and plantation management is clearly required.

Our organisations suggest that the process for the TRFA, in concert with other processes such as the FIAC issues paper process, provide an opportunity for the Commonwealth to take a more active role in actually delivering industry policy that builds a viable future focused on high value products. A more collaborative approach across the broad range of stakeholders would be of substantial value in this context.

7. Tasmanian Aboriginal community and forest lands

The TRFA review process provides one opportunity to progress Aboriginal aspirations for management and/or ownership of forested lands in Tasmania.

Our organisations recognise and support these aspirations, and support efforts for legislative change, land hand backs, Tasmanian Aboriginal community management, and resourcing support for the Tasmanian Aboriginal community.

We also support improvements to cultural heritage protection, management and tenure and mechanisms to support conservation management by the Aboriginal community. We recognise the economic aspirations of the Aboriginal community in respect to land ownership and management.

Progression of these issues should be done with participatory collaboration of the Tasmanian Aboriginal community.

