



## **SUBMISSION**

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

**August 2009**

#### **Introduction**

The National Association of Forest Industries (NAFI) welcomes the opportunity to provide comment on the interim report of the independent review of the *Environment Protection and Biodiversity Conservation Act (1999)* (hereafter referred to as the EPBC Act).

As with previous submissions by NAFI to the independent review, this submission focuses on the relationship between the operation of the EPBC Act and the *Regional Forests Agreement Act (2002)* (hereafter referred to as the RFA Act). However, the comprehensive policy framework provided by the Regional Forest Agreement (RFA) process is relevant to other aspects of the review dealing with the regulatory efficiency of the EPBC Act and mechanisms for landscape scale assessments and streamlined biodiversity policy approaches.

This submission is underpinned by the recognition of the overwhelming strengths of the Regional Forest Agreement (RFA) process to provide for the regional protection of biodiversity values while at the same time providing investment certainty for an internationally competitive timber and forest based industry.

In keeping with the intentions of the interim report, NAFI has commented on policy options and mechanisms that would allow for the efficient operation of the EPBC Act and its current relationship with RFAs. Implementation of these existing mechanisms would allow for the continuation of the comprehensive RFA policy framework to deliver multiple biodiversity and sustainable development outcomes.

## **The RFA context**

To understand the complementary relationship of the RFA Act with the EPBC Act, it is important to put the historical development and purpose of the RFAs into context. These agreements were put in place to: (a) resolve long standing native forest land use conflicts between state and federal governments through agreed 20 year commitments; (b) improve the national reserve system and conservation outcomes through the addition of significant forest areas to the comprehensive, adequate and representative (CAR) forest reserve system; (c) evaluate and accredit state based ecologically sustainable management systems in multiple-use areas available for wood production; and (c) provide for long term investment and certainty in the forest industry.

Such ambitious and worthwhile goals were achieved at substantial cost, including the significant investment in scientific studies and ecosystem mapping that shaped the agreements and provided for environmental protection and biodiversity conservation measures, including the listing of priority threatened species and ecological communities within each RFA region and measures to protect them. The extensive nature of the assessments is reflected in the very definition of an RFA under the Act:

"RFA" or *Regional Forest Agreement* means an agreement that is in force between the Commonwealth and a State in respect of a region or regions, being an agreement that satisfies all the following conditions:

- (a) the agreement was entered into having regard to assessments of the following matters that are relevant to the region or regions:
  - (i) environmental values, including old growth, wilderness, endangered species, national estate values and world heritage values;
  - (ii) indigenous heritage values;
  - (iii) economic values of forested areas and forest industries;
  - (iv) social values (including community needs);
  - (v) principles of ecologically sustainable management;
- (b) the agreement provides for a comprehensive, adequate and representative reserve system;
- (c) the agreement provides for the ecologically sustainable management and use of forested areas in the region or regions;
- (d) the agreement is expressed to be for the purpose of providing long-term stability of forests and forest industries;
- (e) the agreement is expressed to be a Regional Forest Agreement.

Such a comprehensive landscape approach to achieving biodiversity and socio-economic outcomes in RFA regions provides the underlying context as to why there is the RFA 'exclusion clause' in the EPBC Act. As identified in the interim report, the rationale for the EPBC Act's RFA provisions were in recognition that:

'in each RFA region a comprehensive assessment ... has been undertaken to address the environmental, economic and social impacts of forestry operations'.

Furthermore, NAFI would agree with the views of leading CSIRO scientists that the present narrow focus of the EPBC Act on listed threatened species and ecological communities is an outdated and static approach to biodiversity conservation, particularly at a broader ecosystem and landscape scale. As the CSIRO state in their submission to this review:

The changing nature of biodiversity dictates we must reformulate the core objectives of biodiversity conservation. The current (implicit) objective of preventing any change to biodiversity (in selected places) will become untenable. We will need to shift to something like “managing the change to minimize the loss”.<sup>1</sup>

Given the uncertainty of climate change and other dynamic processes, they conclude that managing for a diversity of habitat types and disturbance regimes is likely to become increasingly important for maintaining ecosystem resilience and biodiversity.

The management of the CAR reserve system in conjunction with the ecologically sustainable management of multiple-use areas within RFA regions, such as accredited environmental management systems, forest zoning and codes of practice (e.g. prescribed riparian buffers, habitat trees and variable retention harvesting), provides such a holistic framework. The lessons and successes from the RFA process could be applied to other strategic assessments for controlled actions or responsibilities under the EPBC Act, such as for a range of regional development proposals or in conjunction with other land use suitability assessments in prospective areas such as northern Australia.

### **Adaptive management**

Furthermore, the interim report seems to imply that adaptive management is deficient with respect to the RFAs. Without any supporting evidence to the contrary, this would appear at odds with the principles of adaptive management that are embedded into ecologically sustainable management and their application through:

- state level sustainable forest management (SFM) systems and processes adopted and accredited under the RFAs; and
- voluntary third party SFM certification schemes, such as the Australian Forestry Standard, which apply to much of Australia’s native forest resources.

Accordingly, NAFI considers the review to date has insufficiently recognised the adaptation aspects and available documentation from state based SFM systems and third party certification schemes that apply in the RFA regions. In 2006-07, over 9 million hectares of plantation and multiple-use native forest in Australia was certified under internationally recognised SFM schemes.<sup>2</sup>

### **RFA implementation and compliance**

Given the central purpose of RFAs to achieve environmental and sustainable development objectives in RFA regions, NAFI would agree that monitoring and reporting to assess their implementation and performance is an important issue.

While critical about the delays in completion of the 5 yearly reviews for the mainland RFAs, the interim report fails to adequately acknowledge the timely completion of the

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<sup>1</sup> CSIRO Submission 08/329. Review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), December 2008, page 3.

<sup>2</sup> Montreal Process Implementation Group for Australia (2008). *Australia’s State of the Forest Report 2008*. Bureau of Rural Sciences, Canberra, Pg 192.

5 yearly reviews and extensive level of monitoring, reporting and consultation undertaken as part of the Tasmanian RFA. The Tasmanian Government and forest stakeholders deserve significant recognition for meeting their RFA obligations. NAFI recognises the exemplary review processes and outcomes from the Tasmanian RFA and subsequent Tasmanian Community Forest Agreement (TCFA), as described in the detailed submissions by the Tasmanian Government and Forestry Tasmania.

The Tasmanian RFA provides a good example of what can be achieved with government support and resources for the monitoring, public consultation and reporting aspects of the RFAs.

NAFI is equally concerned that with the exception of the Tasmanian RFA, the 5 year reviews are yet to be completed for the RFAs in the mainland states. We understand that scoping agreements and background reports are being prepared between Commonwealth and state officials to underpin the reviews for each of the mainland RFAs. It is also acknowledged that a substantial amount of data and information has been collected as part of the state based SFM processes and other reporting measures such as the state and national State of the Forests Reports which link to international and regionally based forest sustainability indicators. This information will undoubtedly be relevant to reporting on the RFA milestones as well as their specific SFM purposes which were accredited by the Commonwealth.

In order to improve the transparency and public perceptions of the performance of the RFAs, it is imperative that sufficient public resources be put into the completion of the outstanding 5 yearly reviews as soon as possible. By doing so, governments would be reconfirming their commitment to the RFA process and ensure that the original goals of providing secure long term environmental planning arrangements and certainty for industry investment are equally met.

### **Forest reserve management**

NAFI is equally concerned that there appears to be an imbalance in the monitoring and reporting expectations and requirements for RFA forestry operations compared to formally conserved forests and other terrestrial reserves both within and outside RFA regions. Adaptive management and monitoring of conservation reserves should be subject to the same standards as for RFA forestry operations, given previous concerns raised by NAFI over 'passive management' approaches in many reserves. Improvements in monitoring and reporting for formal reserves would assist in assessing whether reservation is meeting stated biodiversity conservation objectives, particularly when fire, pests and diseases are taken into account. For example, a key deficiency has been a policy shift to fire suppression at the expense of longer term fire prevention and active management in formal reserves that essentially mimic natural ecological processes and reduce the risk of high intensity fires through fuel reduction. This aspect of fire management has failed to be adopted as part of any real reform of current practice for large tracts of conserved forest, despite its general acceptance by the scientific community:

Australian bushfire scientists and anthropologists generally agree that, before European settlement, Indigenous people carried out frequent, regular and wide-scale burning, especially in the drier forest types. The net result was a mosaic of burnt and unburnt patches that limited the extent and intensity of fire under severe weather conditions.<sup>3</sup>

The outcome of these management settings has been a recurrence of large scale high intensity fires throughout south-eastern Australia, which can have devastating impacts on endemic flora and fauna populations. It is highly questionable as to whether such ‘passive’ approaches to fire risk management are consistent with the objectives of the EPBC Act. It is for these reasons that NAFI does not support any policy proposal to consider ‘fuel reduction burning’ as a matter of national environmental significance under the EPBC Act. To the contrary, fuel reduction burning is essentially a management tool that can be used to improve broader ecosystem resilience and biodiversity protection by greatly reducing the risks of large scale high intensity fires. Furthermore, there are a range of other environmental, cultural and socio-economic benefits that could be pursued from more active fuel reduction management. These benefits include the provision of additional habitat diversity and residual biomass for green energy, as well as greater use of traditional indigenous knowledge of biodiversity that is entirely consistent with the objectives of the EPBC Act.

### **The Wielangta case**

The interim report highlights the outcomes from the *Wielangta* court decisions (*Brown v Forestry Tasmania*) regarding the legality of RFA forestry operations conducted in the Wielangta state forest in Tasmania.

Following the decision by the Full Court of the Federal Court to overturn the original decision by Justice Marshall and refusal by the High Court to grant special leave to appeal, it was found there was no contravention of s 18(3) of the EPBC Act by Forestry Tasmania through its forestry operations in the Wielangta state forest. Furthermore, these operations were conducted in accordance with the RFA, which included the establishment and maintenance of the CAR reserve system to ‘constitute the protection’ of listed threatened species.

The interim report notes that a number of submissions relied on the *Wielangta* decision as evidence that RFAs are having negative outcomes for biodiversity. Given the extensiveness of the CAR reserve system and application of SFM principles and practices in multiple-use forests, NAFI would not accept a view that RFAs are having a significant impact on biodiversity in the absence of compelling scientific evidence. Furthermore, NAFI would concur with the view of the Australian and Tasmanian Governments in their endorsement of the Tasmanian RFA and subsequent amendment in 2008 to recognise and agree that the CAR reserve system and other management strategies and systems ‘protect rare and threatened fauna and flora species and Forest Communities’.<sup>4</sup>

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<sup>3</sup> Montreal Process Implementation Group for Australia (2008). *Australia’s State of the Forest Report 2008*. Bureau of Rural Sciences, Canberra.

<sup>4</sup> Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (2009), Interim Report, Pg 111.

It is also important to recognise the complexity of biodiversity conservation management given the dynamic and stochastic nature of ecosystem and biological disturbances and responses. While this may seem obvious as part of a review of the EPBC Act, it is important when assessing the relationship between the RFAs and the EPBC Act.

A fundamental issue with respect to endangered species management is the often uncertain relationship between a species' habitat requirements, population dynamics and species persistence. It is acknowledged that given the underlying uncertainty of ecological systems, the appropriate benchmark for measuring the effectiveness of management programs should be the probability of species survival.<sup>5</sup> By taking a comprehensive and adaptive land management approach, NAFI believes the RFAs provide an appropriate framework for maximizing the likelihood of species survival and ecosystem resilience, given its emphasis on a CAR forest reserve system and a mosaic of disturbance patterns and habitat diversity across the forest estate.

### **Ways forward**

In terms of policy responses for improving the links between the RFAs and EPBC Act objectives, the interim report suggests:

6.115 RFA requirements for conservation actions in production forests need to be monitored, measured and reported on in a timely and accessible way.

NAFI would agree with these requirements for the adequate functioning of the RFAs. However, NAFI disagrees with the overly simplistic temptation for policy makers and regulators to revert back to the pre-RFA situation of opening up the EPBC Act (Part 3) to forestry operations undertaken within an RFA region (i.e. to 'turn off' the RFA exemption clause as suggested in C6.1115). There are a number of compelling reasons for not pursuing this option. These include:

- the duplicative and costly regulatory burden of imposing the EPBC Act on top of existing RFA processes and mechanisms already in place;
- the uncertainty created by reverting back to an ad hoc and potentially 'coupe by coupe' assessment process that is unworkable;
- an undermining of the very foundations of the RFAs, based on the comprehensive assessments, conservation planning processes and provision of certainty for an internationally competitive timber and forest based industry; and
- no basis for assuming such a response would produce a better outcome than existing management and dispute resolution processes already available to the Commonwealth.

It would be far more practical and effective to ensure existing compliance and enforcement provisions were undertaken to their fullest extent, as demonstrated in the Tasmanian RFA. Hence some of the measures identified in chapter 6.117 would be worth exploring under existing RFA processes to improve perceived inadequacies

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<sup>5</sup> Montgomery, CA, Brown, GM and Adams, DM (1994). The marginal cost of species preservation: the northern spotted owl. *Journal of Environmental Economics and Management*, 26: 111-128.

regarding the transparency and accountability of forestry operations conducted in RFA regions.

### **Additional triggers of national environmental significance**

The interim report also discusses the issue of additional matters of national environmental significance (NES) that might be considered in any amendment to the EPBC Act. Three matters which impinge on the forestry and forest based industries include: land clearance, climate change and water issues.

With regard to land clearance issues (chapter 7), NAFI is critically aware that vegetation clearing for long term agricultural or other non-forestry land uses is often confused or deliberately portrayed by some community groups as an integral part of normal forestry operations. Differentiating native forest harvesting and regeneration practices as part of normal ecologically sustainable management principles from the broader issue of land use change is essential in any consideration of land clearance issues. NAFI would therefore agree with redefining land clearance to ensure sustainable forestry practices are not captured within such a definition (7.5).

The interim report raises a number of questions with regard to the coverage of climate change issues and the relationship between the EPBC Act and other Commonwealth climate change policies or proposed legislation (chapter 7). While many public submissions to the review have proposed inclusion of 'greenhouse gases' as a matter of NES, very little understanding exists as to how a greenhouse gas trigger in the Act would interact with other climate change policies and legislation.

NAFI regards it premature to be contemplating greenhouse gas 'triggers' while other important measures, such as an emissions trading scheme under the Carbon Pollution Reduction Scheme (CPRS) and expanded National Renewable Energy target scheme, are being developed. Given the infancy of climate change policy nationally and internationally, NAFI would concur with recent Senate inquiry findings into the EPBC Act - that it is not appropriate at this time, to consider inclusion of a greenhouse gas trigger in the EPBC Act.

The management and protection of inland waters was also raised in the interim report as a possible issue for inclusion as a matter of NES (chapter 9). A number of submissions received by the review suggest that the EPBC Act does not sufficiently address water management issues (9.6). NAFI considers that inclusion of a water extraction or similar trigger within the EPBC Act would be inadequate in addressing the complexities of water policy and environmental protection. Water management, extraction and catchment hydrological balance concepts have already been built into national and other jurisdictional policy frameworks, such as the National Water Initiative (NWI). NAFI would therefore regard any consideration of water management issues under the EPBC Act be consistent with the NWI and not create regulatory duplication and additional uncertainty and sovereign risk with regard to water management and use.

## **Conclusions**

NAFI recognises the overwhelming strengths of the RFA process to provide for the regional protection of biodiversity at a strategic level while at the same time providing the investment certainty needed for an internationally competitive timber and forest based industry. The comprehensive and adaptive policy approach of the RFAs has provided a stable and solid foundation for sustainable development and biodiversity objectives in the RFA regions for the past 10 years.

However, NAFI is concerned that the 5 yearly reviews have not been completed in the mainland RFA regions. Additional effort and public resources should be provided for completing the 5 yearly reviews of the mainland RFAs as soon as possible. This would facilitate stakeholder participation and greatly improve the public perception and confidence in the RFA process as a whole.

However, any legislative amendments that would allow the EPBC Act to unduly interfere with the operation of forest activities within the RFAs would create significant resource and investment uncertainty, and could put national forest policy back 20 years to the pre-RFA days of 'coupe by coupe' assessments and ongoing sovereign risk. The logical policy response would be to improve the existing RFAs with regard to reporting and compliance within the accredited management systems and dispute resolution procedures available to the Commonwealth.

NAFI appreciates the opportunity to make a further representation to the independent review and would be willing to expand on its submission by taking part in any further consultations as part of its deliberations. NAFI is also willing to work constructively with the Australian Government and other stakeholders beyond the term of this review to ensure the integrity of the RFAs are maintained in a manner that delivers both the industry certainty and environmental objectives of their original purpose.