

SOUTH EAST TIMBER ASSOCIATION SUBMISSION ON THE DRAFT COASTAL INTEGRATED FOREST OPERATIONS APPROVALS

INTRODUCTION

SETA members are strongly committed to ensuring public forests are available for a range of commercial and recreational activities and expect that land management practices should maintain environmental values in the long term.

SETA expects the government to commit to ensuring forest and related policies strike an appropriate balance between social, environmental and economic outcomes, while minimising adverse impacts of policy changes on regional communities.

The first pillar of the NSW Forestry Industry Roadmap commits to ecologically sustainable forest management through "regulatory modernisation and environmental sustainability."

Unfortunately, SETA members see changes to the native forest regulatory framework continuing to be driven by an eco-political agenda, rather than a framework guided by a strong understanding of the historical ecological development, of the biodiversity existing on the Australian continent at the time of European arrival.

The terra nullius approach to environmental management of harvesting operations and adjacent "environmentally sensitive areas" is emphasised by language including "permanent protection," "permanent retention," "long undisturbed patches" and "wilderness."

International museums have found that permanent protection of artefacts is not always possible when fires, floods and storms intervene. Natural ecosystems, are far more exposed to disasters such as wildfires and storms. The IFOA fails to provide appropriate fire management protocols and conditions for those areas deemed to be permanently protected.

The draft Coastal Integrated Forest Operations Approvals (IFOA), continues to provide a tape measure driven regulatory approach to environmental conservation in areas available for timber harvesting. The authors of the IFOA Protocols and Conditions have not recognised that most species depend on frequent mild fire to maintain their health, resilience and reproductive potential. Under permanent protection a few common species proliferate at the expense of most others and in the absence of regular mild patch burning, three-dimensionally continuous fuels, that promote devastating megafires, predominate at a landscape scale.

The protocols and conditions are structured to make it relatively easy to penalise anyone who infringes the rules, regardless of whether or not environmental harm has been caused.

THE RELATIONSHIP BETWEEN PENALTIES FOR BREACHES OF THE IFOA CONDITIONS & RELEVANT ACTS & REGULATIONS

IFOA Conditions 16, 17 and 18 set out the terms of the Biodiversity Conservation, Environment Protection and Fisheries licences. Each licence falls under the relevant Act, which are, the Protection of the Environment Operations Act 1997 (POEO Act), the Biodiversity Conservation Act 2016 (BC Act) and the Fisheries Management Act 1994 (FM Act).



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The Forestry Bill 2018, recently passed by the NSW parliament has increased maximum penalties to \$5 million for corporations and \$1 million for individuals, for offences under Part 5B of the Forestry Act 2012. These penalties align with the maximum penalties set out in the Protection of the POEO Act. The maximum penalties applying under Sections 115, 116 and 117 of the POEO Act relate to disposal of waste (such as the ABC 4 Corners story on illegal waste dumping, now subject to an ICAC investigation), leaks, spillages and other escapes and emission of ozone depleting substances. None of these offences would be expected to occur during native forest harvesting operations.

Section 123 of the POEO Act states that the maximum penalties for water pollution offences are **\$1 million for corporations and \$250,000 for individuals**, with additional penalties for continuing offences.

Section 13.1 of the BC Act states the maximum penalty for a **Tier 1 offence is \$1,650,000 for a corporation and \$330,000 for individuals**, with additional penalties for continuing offences.

Section 220ZA of the FM Act 1994 sets maximum penalties for harming threatened species or ecological communities at 2,000 penalty units or \$220,000.

The proposed maximum penalties in the amended Local Land Services Act 2013 (LLS Act), Forestry Act and Biodiversity Conservation Regulations (BC regulations) are greatly in excess of the relevant penalty provisions of the POEO Act, BC Act & FM Act.

Penalty Notice offences will be increased from \$1,100 to \$15,000 for corporations and to \$5,000 for individuals. This means potential breaches under the IFOA will be treated with the same severity as operations conducted illegally on state forests.

Penalties applying to Part 5A offences under the LLS Act, are included in Schedule 1 of the BC regulations, where Part 5B (Forestry Act 2012) penalties are to be posted. In relation to Clause 139 (Offence of contravening certain requirements of approvals or certificates), maximum penalties for corporations are \$2,200 and \$440 for individuals. Penalties for breaches of IFOA Conditions should logically be the same as Part 5A offences.

There is a clear intent to establish the harshest penalty regimes, whether operations are conducted with or without approvals. Those responsible for drafting the Forestry Bill have:

- Relied on comparison to irrelevant sections of the POEO Act to justify the maximum penalties for court-imposed fines;
- Chosen to impose the same penalty for breaches of IFOA conditions (usually at the low end of the environmental impact scale) for penalty notice offences, as would be applied to illegally conducted operations; and
- Included the penalties under the BC Regulations, rather than under the relevant Act and Regulations applicable to each of the three licences.

The size of the fines would not be an issue for the SETA membership, many of whom will be affected by this Bill, if they were confident that the regulating authority could deliver regulatory oversight in a fair and equitable manner.

SETA members believe that the penalty regime implemented by the passing of the Forestry Bill 2018 is based on a flawed interpretation of the relevant Acts and Regulations.



It is recommended that penalties applying to breaches of IFOA conditions be set at the level applying to offences under the relevant provisions of the POEO Act, BC Act and FM Act).

It is recommended the fines for penalty notice offences be included in the POEO regulations, BC regulation and the FM regulations, rather than all being grouped under the BC Regulations.

It is recommended the penalty notice regime be set at lower levels (as applies to Part 5A offences under the Local Land Services Act 2013) for breaches of IFOA conditions, than those that would apply to operations conducted illegally or without the necessary approvals.

IFOA PROTOCOLS & CONDITIONS

Protocol 6: Suitably qualified persons – training and experience

Protocol 6 sets out requirements for suitably qualified persons, who undertake soil, aquatic and biodiversity assessments.

No similar requirement is placed on EPA staff who will approve various IFOA processes and enforce breaches of IFOA conditions.

Given the experience of a number of SETA members over the past two years, it is recommended that the EPA also be required to provide evidence that EPA staff involved in all facets of the IFOA process also have the necessary experience, qualifications or both.

Protocol 22: Wildlife habitat and tree retention clumps

The public consultation package Slide 10 claims *The Coastal IFOA must not erode environmental values or change wood supply.*

For more than 20 years, “forestry reform” processes have promised that there will be not be a reduction in wood supply. Every promise has, in subsequent years, proven to be false and misleading.

The requirements of Protocol 22, which will see up to 10 percent of the remaining net harvest area being “permanently protected” will be the main tool in the new Coastal IFOA package, that will further erode available log supply from state forests covered by the IFOA.

It is recommended that areas of the nett harvest area, which have already been retained to protect environmental values be reassessed and areas that do not contain habitat for regional priority species or forest communities, or environmental features important within the local landscape area be returned to the nett area available for harvesting.

If the permanently protected areas are to deliver the best environmental outcomes, they must be actively managed and not left to the whims of the next fire season or the assumption that lockup and neglect policies will maintain or improve environmental values.

It is recommended that generic plans for management of fire risk and dense regrowth stands, in and around environmentally sensitive areas (ESAs) be developed and implemented. Trials to examine how deliberate, managed damage to some trees can be used to facilitate earlier hollow development should also be undertaken.



Protocol 23: Tree retention

23.3 Protection of retained trees. (1) states that FCNSW must not damage retained trees during a forestry operation. Damage to retained trees is anything that compromises the tree's longevity. It is ironic that damage to trees, whether by natural causes such as storms or by trees felled during harvesting facilitates earlier hollow formation than if the trees remain undamaged.

There is no indication with the IFOA rules, that the authors of these rules and those that will enforce the rules, have any comprehension of the need for balanced decision making. If hollow bearing trees are so ecologically important, levels of "damage" that will compromise the longevity of many trees, particularly healthy trees with no hollows, will actually deliver better ecological outcomes than if trees remain undamaged.

It is recommended that in regrowth forests, with low numbers of hollow bearing trees, management plans be developed to facilitate controlled damage to a percentage of trees in tree retention clumps and in the margins of ESAs, to accelerated the development of habitat hollows.

Protocol 24: Identification of old growth on unassessed land.

The note under 24.2 (3) (b) states: "*Re-evaluation of old growth mapping is only permitted in areas previously unassessed for high conservation value old growth. Existing high conservation old growth mapping will not be altered under any circumstances.*"

Given the high error levels in the 13 areas on the NSW north coast reassessed by the Natural Resources Commission (NRC), the inclusion of the above note in the IFOA is totally unacceptable.

The sample indicates there were some extra ordinary factors at play in the original mapping. Quality of aerial photographs would have been one factor and the competence of the people doing the work, another. Given the high error rate, even a modest level of field verification should have highlighted the issues set out in the summary below.

6 sites	<ul style="list-style-type: none">• No old growth in areas currently mapped
4 sites	<ul style="list-style-type: none">• Old growth but largely outside of mapped areas
2 sites	<ul style="list-style-type: none">• Old growth forest but much lesser extent than currently mapped
1 site	<ul style="list-style-type: none">• Old growth forest where none is currently mapped

The mapping of old growth on both public and private land, in northern and southern NSW has proven to be highly inaccurate. If old growth forest is of high conservation value, then it must be properly managed. If it is to be managed, land managers must know where it is in the local and regional landscape.



Given the technology that is now available, it is recommended that all native forests across NSW must be remapped to ensure land managers, the public and government know how much old growth currently exists and where it is.

It is also recommended that the circumstances of the original old growth mapping be investigated to determine why the general public and government have been mis-lead as to the extent and location of old growth forest in NSW for the past 20 years.

Protocol 25: Identification of rainforest on unassessed land

25.2 (3) (b) notes: *Re-evaluation of rainforest mapping is only permitted in areas previously unassessed for rainforest. Existing areas mapped for rainforest will not be altered under any circumstances.*

Given the findings of the NRC Final Report *Old Growth Forests and Rainforests - North Coast State Forests*, the ecological sense of this directive is highly questionable. SETA is extremely concerned as to why EPA, OEH & FCNSW staff involved in negotiation of the Coastal IFOA would issue and agree to enshrining such error ridden mapping, if the objectives IFOA are to promote modern and best practice environmental management and outcomes.

Given the technology that is now available, it is recommended that all native forests across NSW must be remapped to ensure land managers, the public and government know how much rainforest currently exists and where it is.

It is also recommended that the circumstances of the original rainforest mapping be investigated to determine why the general public and government have been mis-lead as to the extent and location of rainforest in NSW for the past 20 years.

Protocol 28: Rocky outcrops and cliffs

Despite the changes to the conditions relating to the cliffs and rocky outcrops, including the defining of a cliff to be at least 3 metres high and 10 metres long, the key ecological processes that need to be managed to sustain threatened species in these environments are ignored. The key issue is whether rocky or not, do these areas contain special ecological features? "Protecting" rocks does little to enhance ecological outcomes.

IFOA Conditions Division 2 - Habitat protection requires rocky outcrops and cliffs, which are two of the "important environmental features including habitat" must be permanently protected.

The protection of rocks provides an excellent case study on the impact of **terra nullius ecological management**, imposed on an environment that evolved under aboriginal management. These environmental features are now, an artefact of ecological neglect, rather than an environment subject to active and adaptive ecological management.

<http://southeasttimberassociation.com/wp-content/uploads/2017/02/Protecting-Rocky-Outcrops-From-What.pdf>

Rocky terrain should be key habitat for reptiles. However due to heavy crown cover and understorey in many of these protected areas, high shade levels do not allow sufficient heat to reach the rock surfaces. Consequently, reptiles are uncommon in many rocky environments. The Broad-headed Snake appears to be an example of a reptile species being driven to the brink of extinction by a "permanent protection" rather than active management of its' sandstone habitat.



It is recommended that management plans be developed for cliffs and rocky outcrop habitat, that recognise that this special habitat requires regular ecological burning, not occasional incineration by wildfire.

It is recommended that the buffers created under the current IFOA be returned the available harvest area.



Rocky Outcrops Scrubbed Up, Threatened Species Scrubbed Out

Protocol 29: Ridge and headwater habitat

If any of these category 2 ESAs are additional to the current environmental protections and the additional ESAs created under the wildlife and tree retention protocols, this protocol potentially undermines the commitment that there should be no reduction in wood supply.

It is recommended that these ESAs have management plans written that allow for active management to improve ecological outcomes. For example, thinning of even-aged regrowth could be undertaken to allow larger diameter, hollow bearing trees to develop, than is currently the case with regrowth forests locked up in the NSW parks and reserves system.

Condition 32: Small quantity authorisation for firewood collection.

This condition restricts firewood collection to areas within 20 metres of the edge of roads and log dumps. It is understood that this is to conserve coarse woody debris within the harvested areas.

Fire wood is a critical source of heating in many regional and remote communities. Following harvesting operations, extraordinary quantities of coarse woody debris is strewn across the harvest area. The volume per hectare greatly exceeds levels found in most forest sites prior to European settlement. Leaving abnormally high tonnages of coarse woody debris provides an energy source, to totally destroy the forest ecology of regrowth forest and retained habitat trees when intense bush fires impact the forests, as recently occurred at Tathra in southern NSW.

It is recommended that the 20 metre restriction on firewood collection be removed.



Condition 69: Coarse woody debris protection

Based on early European descriptions of many of the forests of east coast NSW, coarse woody debris are at historically high levels.

SETA would be interested to see the detailed ecological assessment used to determine the contents of Table 3: Coarse woody debris species. Abnormal levels of coarse woody debris does not appear to a critical habitat component for most of the listed species. None of the species are able to move long distances in a short time, so are particularly vulnerable to wildfires.

It is recommended that the IFOA Conditions recognise that historically high levels of coarse woody debris increase severity of wildfires and forest managers should be able to reduce coarse debris to more manageable levels, to reduce wildfire impact on ecological, soil and water values.

Division 7: Burning operations

Condition 120.3 (a) requires that a pre-harvest or post-harvest burn does not impact on fallen logs greater than 40 centimetres in diameter and greater than 5 metres in length.

As it will be next to impossible ensure logs of this dimension are not impacted by burns, this condition could stop all post-harvest burns, including those used to create a seed bed for regeneration. It will be lower risk for FCNSW to do nothing than risk fines and adverse publicity resulting from breaches of impractical conditions.

Lack of appropriate fuel management in the short to medium term leads to perverse soil, water and ecological outcomes in the medium to long term.



Impact of Wildfire on Small Catchments Where Fuel Loads in and Around ESAs are not Managed

It is recommended that Condition 123 (a) be rewritten to recognise that coarse woody debris levels are elevated by harvesting operations and these elevated levels should be reduced by post-harvest burns

EPA APPROVALS and REPORTING REQUIREMENTS

The public consultation package Slide 10 claims “A new Coastal IFOA will reduce costs associated with implementation and compliance;

EPA Approvals are Required for:

1. Restricted activities, Protocol 5;
2. Soil regolith assessment and dispersible soil identification courses run by FCNSW - Protocol 6;
3. Intensive harvesting in a selective harvesting zone – Protocol 7;
4. Local landscape areas map and any subsequent changes – Protocol 8;
5. Using alternate data sets to assess the inherent hazard level for harvesting operations – Protocol 15;
6. Amendment of the table of rainfall erosivity for a compartment – Protocol 15;
7. Species management plans and any subsequent amendments – Protocol 21;
8. Approval for pre-harvest or post-harvest burns in ESAs – Condition 94.5;

The EPA also require FCNSW to prepare a host of management documents for EPA oversight.

It would seem that the cost of implementation and compliance are unlikely to be reduced.

It is recommended that the cost of implementation and compliance of the current IFOAs for each of the past 5 years be made public.

It is recommended that the cost of implementation and compliance for the new IFOA be published annually.

The public consultation package Slide 10 claims “A new Coastal IFOA will deliver a contemporary regulatory framework that is fit for purpose.”

Members of the South East Timber Association do not agree that the draft Coastal IFOA is either contemporary or fit for purpose, for the reasons set out above.

The legislation and regulations are framed to bludgeon forest managers and harvest crews into compliance using a rule book framed from a terra nullius ecological perspective. Unless the authors and enforcers of the rule book make a fundamental shift in mind set, to one that allows for active and adaptive management, ecological outcomes will continue to suffer, just as they do in our passively "managed" parks and reserve system.

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