

# OEH Responses to Auditing of RFA Forestry Operations in the South Coast Native Forests

2010 - 2011



**SUMMARY OF 'REGULATORY REPORT' BY SOUTH EAST FOREST RESCUE**

**AUGUST 2011.**

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# Regulatory Response Monitoring Report for the 2010-11 Period

On the South Coast of New South Wales thousands of hectares of unique native forest are being clearfelled every year. The Forestry Commission of NSW, trading as Forests NSW, has descriptions for these practices varying from 'Single Tree Selection - Heavy' to 'Australian Group Selection' to 'Modified Shelter Wood', yet they all amount to clearfelling or patch clearfelling on the ground. Old-growth, rainforest and mature age native forests are being logged at an unsustainable rate. Eighty five percent of trees felled are turned into woodchips, either at the Eden chipmill or at the various saw mills on the South Coast and then trucked down to the chipmill and exported at a cost to the taxpayers of the state.

Forests NSW must comply with the law in accordance with a number of environmental, social and economic objectives. In doing so, it must take into account other matters including preservation and enhancement of the environment. Every state forest must be managed in accordance with a management plan, either individually or collectively within a forest management area. The plan must define the forest management strategy to be adopted and the conditions of harvesting. A harvesting plan must be prepared for each logging operation in accordance with the Code of Practice and Integrated Forestry Operations Approvals ("IFOA"). The harvesting plan must be consistent with the IFOA, and must specify a number of conditions aimed at environmental protection. The Threatened Species Licence ("TSL") and Environment Pollution Licence ("EPL") must be adhered to. Operations must be conducted in accordance with the Regional Forest Agreements.

This monitoring report extends from early 2010 through to June 2011. During that period South East Forest Rescue filed a total of 57 breach reports to the regulator, the Office of Environment & Heritage, canvassing a plethora of non-compliant forestry operations within the native forests of the region.

## Mumbulla State Forest Cpts 2133 and 2135

*The logging operation which is the subject of the current case had been approved and undertaken on a flawed basis as the National Parks and Wildlife Act imposes certain restrictions upon activities which may be undertaken in Aboriginal places.*

Magistrate Bone, DPP v Castle, Moruya Local Court, decision 8/7/11

Upon our analysis of the koala survey reports from FNSW, the one plot surveyed, a 17 metre radius area, in compartment 2135 (site number 3158) contained koala feed tree species *Eucalyptus globoidea* & *E. muelleriana* (White & Yellow Stringybarks). This fact indicated koala habitat, as actually more than 55% of the trees identified in Cpt 2135 are preferred koala feed trees. The FNSW surveys should have been conducted at 350 metre grid intervals, FNSW originally were to use 500m intervals but instead chose to use one kilometre intervals. Further information came to light showing koala records within two kilometres of the proposed logging area, records of which FNSW were unaware.

After an oral formal breach report to Forests NSW regional manager the first written breach report on these compartments was sent pre-logging on the 25/3/10:

South East Forest Rescue contends that the FNSW koala survey in relation to the pending Mumbulla State Forest operations are not adequate.

Information we have reviewed shows koala records within two kilometres of compartment 2135. The FNSW surveying output constitutes a breach of the Eden IFOA prescriptions.

We request that DECCW disallow logging until this issue has been rectified.

Four days later on 29/3/10 the following email was sent as FNSW had moved the machines in that morning and commenced the illegal forestry operations. We reiterated our concerns to the regulator, and cc'd both the Minister and Premier:

South East Forest Rescue again contends that the FNSW koala surveys in relation to the Mumbulla State Forest native forest logging operations are not adequate.

Information we have reviewed shows koala records within two kilometres of compartment 2135, 2133 and 2163.

The FNSW surveying output constitutes a breach of the Eden IFOA prescriptions. One seventeen metre radius area looked at on one day cannot be classed as pre-logging, pre-roading surveys.

We urgently request that DECCW disallow logging until this issue has been rectified.

The OEH agreed with our evaluation and ordered a 'stop work' until the proper surveys had been undertaken, however FNSW continued logging in clear breach of the OEH orders under the guise of 'road maintenance'. This necessitated a further breach report:

Further to our verbal breach report 31/03/2010, South East Forest Rescue would like to inform DECCW we believe FNSW are in breach of condition 8.8.12 of the Eden IFOA by continuing 'roading' operations on the 30 March.

It is our considered opinion that the roading operations fall under the definition of harvesting operations and therefore require the pre-logging surveys before FNSW can recommence any operations.

As we stated on the phone on 30 March, routine road maintenance is not a specified forestry activity. Clause 5 of the Eden IFOA states ancillary road construction, namely the provision of roads and fire trails but not road maintenance. Routine road maintenance is defined in the TSL and Eden IFOA as the clearing, scraping or treating of a revegetated road where all of the trees growing on the road have a dboh of less than 20cm. The operations that have taken place are in breach. We have photographic evidence of these breaches and GPS locations if required ie 075661/5948440.

The trees logged were clearly over 20cm dboh. FNSW ceased logging on 1 April, then waited until the ten day period had lapsed after lodging their new koala surveys, undertaken the day before.

On-ground it became apparent that more facets of the FNSW logging operation were illegal. One of the main issues was that IFOA consultation prescriptions had not been adhered to so another breach report was sent:

The IFOA at 8.8.12.a states the requirement of the consultation of peak conservation groups and the local community. It is our understanding that FNSW has not consulted with any conservation groups. FNSW know the peak conservation groups of the region which are South East Region Conservation Alliance, Friends of Five Forests, South East Forest Rescue and Chipstop. Therefore they are also in breach of this. Please also note that neither ignorance nor wilful ignorance is an excuse in the eyes of the law.

SEFR obtained from FNSW the fresh koala survey sheets, and upon review it seemed these surveys were inadequate. On 6/4/10 we lodged another breach report:

It is our opinion that this new one day koala survey is inadequate. In the IFOA TSL Appendix B at 8.8.2 it states;

*For each targeted fauna survey method used the following information must be recorded:*

*h) Survey start time and finish time;*

Transect 8 does not have a recorded finish time. Also at quadrat 27/4 and 33/3 both have cowpats. As the quadrats are 50cm by 50cm we question the placement of these quadrats. T12 starts when T11 is still going yet is filled out by the same person. We question how many people were deployed for surveying, and then how many doing each transect?

At 8.3 it states:

- a) SFNSW must ensure that persons conducting pre-logging and pre-roading surveys are suitably experienced and trained. Suitable experience and training includes, but is not limited to:*
  - i. Extensive experience with flora and / or fauna survey work.*
  - ii. Extensive experience in the field identification of flora and / or fauna. Surveyors must be able to identify the threatened species and habitats of threatened species relevant to the region that require species-specific or site-specific conditions, as well as similar species that may be confused with these. Surveyors must be able to identify features referred to in Condition 8.7.3 b).*
  - iii. Familiarisation with herbarium or museum specimens of threatened species requiring species specific or site-specific conditions, if not already familiar.*

There is evidence of varying levels of commitment and experience by the surveyors, as seen by the lack of time taken for different transects. We question the experience of the persons surveying when the word pittosporum and Mumbulla are misspelled continuously.

The method of surveying is flawed in that it was neither comprehensive nor uniform. See attached our GIS on transects.

- i. An intensive survey within the proposed logging area will occur prior to harvesting to determine whether koalas use the compartment.*
- iii. The traverses must uniformly cover the harvesting area with transects between 50 to 100 metres apart (subject to local conditions).*

The transects on the map have predetermined start and finish points, therefore the start and finish coordinates of the transects should be the same as those predetermined. For many transects the start and finish coordinates are nowhere near those on the map, which should not occur as they should go to the predetermined points. The result is the transects have not adequately covered the net harvest area. Following on from that the actual transects shown on the map also do not cover the net harvest area.

SEFR then closely followed that breach report with another:

Following on from our previous same breach submitted on Tuesday 6/4/10, we would like to notify you of further information regarding this breach.

#### **8.8.12. Koala survey**

##### **b) Transect Survey with Quadrats**

- ii. The survey will involve traverses in areas to be logged. Areas where logging will not take place (such as wildlife corridors) need not be surveyed.*
- iii. The traverses must uniformly cover the harvesting area with transects between 50 to 100 metres apart (subject to local conditions).*

Analysis of the survey data sheets provided by Forests NSW show that the total length of traverses undertaken was 6 444m. Using the map of the traverses supplied with the data sheets and taking into consideration the above clauses of the TSL, we believe the total length of traverses should have been 8 700m. This is 2 256m less than what is required to meet the TSL conditions.

As stated in our previous breach report there are serious questions with regard to the time taken for certain transects. Transect 10 is the shortest transect at 159m and took 50 minutes to complete. Comparing this

transect to other ones raises some serious credibility issues. Several longer transects take less time to complete while some transects that are 4 or 5 times longer only take twice the time.

Transects 7,9,10,11 all report more rainforest and creeks in the data sheets than the transects show they cross in Arcview. Are these increased areas of rainforest and unmapped drainage lines going to be incorporated into the harvest plan map? There are large areas in the compartment that contain significant Koala feed trees, most notably *E.globoidia*, *E.muelleriana* and *E.teretecornis*. As this compartment is the gateway from the known Koala colony in Mumbulla to the east and the Bega valley to the west where there are programs to re establish Koala habitat on the valley floor, the protection of this area is crucial to the future recovery of this threatened Koala colony. The failure to devise adequate new prescriptions as required by the IFOA for Koalas means that this compartment should be subject to adaptive management and all harvesting operations cease.

SEFR is of the opinion that the latest surveys under 8.8.12 of the TSL do not meet the requirements as specified in the TSL and as such the Pre logging pre roading report is invalid and that if harvesting operations recommence then Forests NSW will be in breach of the IFOA-TSL. We request that you immediately inform Forests NSW of this situation and advise them to cease all operations in compartment 2135.

We state again logging must cease.

The regulator assessed our evaluations and responded in writing on 8/4/10 with their position:

Thank you for your emails received by Department of Environment, Climate Change and Water (DECCW) on 6 April 2010 regarding Koala surveys in Mumbulla State Forest. DECCW has considered the information provided and provides the following responses to the matters you have raised.

Response to specific issues

The lack of a finish time on transect 8 of the koala survey in Mumbulla State Forest Compartment 2135 is noted. DECCW does not consider the omission of a finish time on transect 8 sufficient to disqualify the survey outcome.

In response to comments regarding cow pats within quadrats, it is noted that the survey methodology specified in condition 8.8.12)b)iv of the Threatened Species Licence clearly requires that quadrats be randomly placed. Placement to intentionally avoid cow pats would not be consistent with that requirement. DECCW also notes your comments regarding transect 12 start time being prior to finish of transect 11 and the data sheets being filled out by the same person. As you would be aware, two observers are recorded for transect 12. Two people may legitimately conduct a portion of a transect each and consolidate this information on to a single data sheet. This is not sufficient to disqualify the survey outcome.

In response to comments that there are varying levels of commitment and experience by the surveyors, DECCW is not aware of any basis for concluding that surveyor experience is inadequate.

DECCW notes that times taken on different transects have varied and that spelling errors have been made, however, these factors do not support such a conclusion.

DECCW also notes your comments regarding the survey method being neither comprehensive or uniform. As part of its investigation into this matter, DECCW has assessed the transects plotted from AMG points and considers that GPS error adequately accounts for the variation between planned and recorded transect locations. In application of the survey method it should be noted that condition 5.1(e) of the Threatened Species Licence requires that “all distances must be measured on the ground independent of slope”. This applies to the measurement of distances between transects and quadrats and consequently the measurement of these distances on the ground using a measuring tape or hip chain is required rather than determination of spacing between grid references by GPS.

DECCW is satisfied that the survey conducted in Compartment 2135 has adequately sampled the proposed logging area.

As this response was inadequate SEFR commissioned a third-party independent review of the FNSW koala survey sheets by noted ecologist Dr David Milledge. While this was underway actual koala scats and tracks were discovered close to adjoining compartment 2133. The regulator, Minister and Premier were informed immediately:

On Wednesday 14 April two more koala scats were found and verified approximately 400m from the boundary of compartment 2133. On Thursday 15 April koala tracks were found on both sides of the barrier of the prohibited area and edge of compartment 2133. This leads us to restate that the surveys undertaken while the logging was underway are inadequate.

As the prohibited area boundary has grown and has now been changed twice, firstly to take in the area where the first scat was found and now to the corner of Mumbulla Creek road and Mumbulla Falls road, where the second and third scats and tracks were found, there is no opportunity for any more sightings by the public.

As you are aware South East Forest Rescue (SEFR) informed Ian Barnes, regional manager for Forests NSW, on Monday March 22 that there was a koala record within two kilometres of the compartment and that FNSW would be in breach if they began logging. This was ignored by Ian Barnes and they started logging on March 29. FNSW were informed by DECCW on March 30 that the surveys were inadequate and they would be in breach if harvesting operations continued. FNSW continued what they were calling road maintenance. SEFR informed both FNSW and DECCW that this road maintenance was also in breach of the IFOA. Roading stopped nearly two days after being notified by SEFR. FNSW undertook transect surveys on Tuesday 30th March and these were sent to DECCW and ten days later FNSW recommenced logging. FNSW latest Koala transect surveys clearly do not meet cl8.8.12 of the TSL yet DECCW has not enforced compliance with the TSL.

FNSW has now been logging in breach of the TSL for two weeks. In light of the latest Koala evidence on the compartment boundary SEFR reiterates that logging operations must cease immediately while adequate surveys are undertaken and the results analysed to meet or better what is required under cl8.8.12.

We are re-submitting our original breach reports as they still apply at this present time.

In addition inspections of the logging ‘after-hours’ further reinforced that FNSW were logging illegally. So with fresh evidence we reported again on 12/4/10:

We would like to report yet another breach in Mumbulla compartment 2135. IFOA TSL 5.6 h(i) states:

*Hollow-bearing and recruitment trees are to be retained at a variable rate in the Regrowth Zone depending on the Habitat Quality [see Condition 5.6 d)] and the number of hollow-bearing trees present per hectare of net logging area.*

At 5.6 k(iii) it states:

*Retained trees referred to in Conditions 5.6 f), g) and h) of this licence must be marked for retention. The only exception to the marking of the retained trees can occur where there is an impenetrable understorey. SFNSW must clearly document and justify such situations in harvest planning documentation either during pre-planning or as it becomes apparent during compartment mark-up.*

There are no trees marked up in this compartment even though logging commenced on Monday 29 March. There is legislated 4 per hectare.

There were several more breaches that we raised during the course of the logging of these compartments that were upheld:

- Consultation TSL breaches
- Rocky Outcrop TSL breaches
- Inadequate Koala Surveys TSL breaches

- Failure to have Road Management Plan IFOA breaches
- IFOA Cultural Heritage breaches
- Filter Strip protection EPL breaches
- IFOA TSL Habitat Quality Map breaches
- Failure to conduct adequate surveys for Murrah 2051/52 compartments breach

Feedback from the independent ecologist confirmed that our koala survey evaluations were valid:

The map datum used was GDA94, but this was *as advised* by Forests NSW. Contrary to DECCW's claim that no evidence was provided for my claim that 38% of the net harvest area was not surveyed, I clearly stated that this was based on a comparison of actual (mapped) transect lengths across the harvest area with the transect lengths required to provide uniform (100%) coverage. Similarly, the evidence provided for my assertion that the scratch mark/scat searches outside quadrats were insufficient was the lack of any documentation in the field sheets (apart from the suspect Yellow-bellied Glider record) that these had actually been conducted.

In relation to the time taken to conduct the transects and associated searches that, even allowing for confounding variables, the time taken on some transects was insufficient to allow adequate application of the method. DECCW do not appear to have understood this problem. Similarly, they do not appear to understand that except in exceptional circumstances (such as an observer's detailed familiarity with a particular area and its specific arboreal marsupial fauna), it is not possible to identify arboreal marsupial scratch marks (i.e. Yellow-bellied Glider) on rough barked eucalypt trunks.

Various responses from the OEH have been received on these matters:

5/5/10

DECCW has reviewed the report and is of the opinion that several assumptions made in the report cannot be clearly confirmed or refuted on the basis of information currently available. In order to establish the veracity of the allegations made DECCW has requested further information from Forests NSW.

...

As advised in a letter to SEFR dated 26 May 2010, DECCW Issued a warning letter to Forests NSW and ensured that Forests NSW are fully aware of the need to improve compliance reporting of survey and planning documentation. However, based on the available evidence it is considered that survey coverage has been adequate in meeting the intent of the licence, and the survey outcome is valid.

SEFR notes the change and widening of the 'prohibited area' boundary directly after each of the scat findings. Unfortunately this lack of transparency sends the signal that, by prohibition, this could be seen to be an indication of criminal behaviour.

### **Biamanga Aboriginal Place Gazetted in 1984**

*DECCW has issued two warning letters to Forests NSW to ensure that Forests NSW are fully aware of the need to improve compliance reporting of survey and planning documentation*

The NSW government acknowledged this special characteristic in 1984 by gazetting the Biamanga Aboriginal Place under section 84 of the *National Parks and Wildlife Act 1974* (NPW Act).

At the time section 90 of the NPW Act provided that any person who, without the consent of the Director-General, *knowingly* destroys, defaces or damages an Aboriginal object or place, or permits the same is guilty of an offence.

SEFR verbally requested a Stop Work order under s.90 of the NPW Act from the NSW Director-General of OEH on 15 April and was advised to put this in writing which SEFR did by email that day. On this day SEFR also requested an emergency declaration for protection under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) with the Commonwealth Minister for the Environment and was advised to put this in writing.

Logging continued for a further eight days after this letter. However on the evening of Friday 23 April SEFR received the actual gazettal map, just three clicks deep into the OEH website. Nevertheless despite many attempts to show the map to FNSW and the police they remained steadfast in their denial.

On May 6 SEFR received official confirmation from the Director-General:

I am writing to you in relation to your email dated 20 April 2010 regarding Mumbulla State Forest and Biamanga Aboriginal Place.

The Department of Environment, Climate Change and Water (DECCW) contacted Forests NSW on 27 April 2010 to request an immediate cessation to logging in compartments 2135 and 2133 Mumbulla State Forest due to the gazetted Aboriginal Place. Forests NSW advised that logging had already ceased.

On 28 April 2010 Forests NSW also advised DECCW in writing that they had stopped all harvesting operations in those compartments.

I appreciate you raising your concerns with me and can advise that DECCW is currently conducting an investigation into the matters you have raised in your email.

I would also like to advise that DECCW has subsequently been informed by Forests NSW that they will recommence logging in parts of compartment 2133 that will not include the Aboriginal Place.

In an email SEFR again requested a stop work order on the 9 May 2010 sending the letter of April 15:

#### **URGENT Stop Work Order on Mumbulla Mountain**

Dear Director General Corbyn,

In reply to your last letter ED10/516 we state again that the whole of Mumbulla Mountain has been identified and designated as a well known significant Aboriginal area and already has suffered serious and immediate threat of injury and desecration from the logging.

We state again there has been no proper consultation with the Yuin people. As you are aware parts of the Mountain have been handed back to the traditional owners.

Perhaps we have failed to communicate the seriousness of the situation and the area in question. Perhaps we were not clear in our previous two letters. We are not just talking about compartment 2133 and 2135, we are stating the whole mountain is sacred, the whole of Mumbulla Mountain is sacred.

Under the National Parks and Wildlife Act 1974 NSW) s91AA we request an URGENT Stop Work Order on Forests NSW operations of Mumbulla State Forest -all compartments.

*91AA Director-General may make stop work order*

*(1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to significantly affect:*

- (a) protected fauna or native plants or their environment, or*
- (b) an Aboriginal object or Aboriginal place, or*
- (c) any other item of cultural heritage situated on land reserved under this Act,*

*the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out with respect to that environment or in the vicinity of those items within a period of 40 days after the date of the order.*

We also request an interim protection order;

*91A Interim protection of areas having significant values*

*The Director-General may recommend to the Minister the making of an interim protection order in respect of an area of land:*

- (a) which has, in the Director-General's opinion, natural, scientific or cultural significance, or*
- (b) on which the Director-General intends to exercise any of the Director-General's powers, authorities, duties or functions under this Act or the Threatened Species Conservation Act 1995 relating to fauna, native plants, threatened species, populations or ecological communities or critical habitat of endangered species, populations or ecological communities, or*
- (c) that is critical habitat or the habitat of a threatened species, population or ecological community.*

Please note we are legally able to request this and there is no exemption for Forests NSW under the *Forestry and National Park Estate Act 1998 (NSW) s37.*

*37 Application of National Parks and Wildlife Act 1974 and Threatened Species Conservation Act 1995*

- (1) Part 6A (Stop work orders and interim protection orders) of the National Parks and Wildlife Act 1974 does not apply to the carrying out of forestry operations during any period that an integrated forestry operations approval applies to those operations.*
- (2) However, subsection (1) does not prevent the making of an order for the purpose of protecting any Aboriginal relic or place.*

Forestry are cutting hundreds of trees down, including big old trees, and disrupting the sacred songlines. You must understand about the sacredness and the songlines, the Dreaming lines. They say cutting trees down is not touching the sacred sites, but they don't understand about the short circuiting of the spiritual connectedness from one place to the other. They don't understand that the whole Mountain is sacred. Uncle Max Harrison, Yuin elder.

Mumbulla Mountain has been the subject of many studies and reports.

Mumbulla Mountain is significant by virtue of the mountain having been the locale of Aboriginal initiations which utilised a complex of sacred sites. Two quite independent sources provided compelling evidence for this significance. Tape recordings made by Janet Mathews and Louise Hercus in 1964, which remained closeted in the Australian Institute of Aboriginal and Torres Strait Islander Studies archives until the late 1970s provide a link between Aboriginal elders that had participated in the ceremonies and contemporary Yuin elders.

An even more compelling source was the discovery by Egloff of an unpublished map in Howitt's papers that shows quite clearly that the 1883 Yuin initiation ceremony attended by him was held on Mumbulla Mountain.

We refer you to 'Mumbulla Mountain, an Archaeological Survey,' by Brian Egloff (1974). This is available in your NP&W library and Denis Byrne, *The Mountains Call me Back: a History of the Aborigines and Forests of the Far South Coast of New South Wales* (1984).

The desecration that the Mountain has already suffered is enormous. Forests NSW have damaged three rocky outcrops so far. We are asking you to stop this destruction now and enact a stop work order and interim protection order - at least until the Commonwealth investigation under the ATSIHP Act has been finalised.

## **Post 27 April**

There was no response from the DG however OEH responded:

26/5/10

DECCW recognises that the Koala transect surveys undertaken by Forests NSW in these compartments are not in full compliance with all details of TSL requirements. However, compliance issues that have been substantiated to date are of a minor and technical nature and do not detract from the validity of the survey outcomes. Poor documentation of survey, particularly the inconsistent use of map datums is of concern to DECCW.

DECCW has issued two warning letters to Forests NSW to ensure that Forests NSW are fully aware of the need to improve compliance reporting of survey and planning documentation. However, based on the available evidence it is considered that survey coverage has been adequate in meeting the intent of the licence.

7/6/10

### **Integrated Forestry Operations Approval - Non-licensed Terms**

The matters you raised regarding Forests NSWs compliance with Clause 15 and 16 of the non-licensed terms of the Integrated Forestry Operations Approval (IFOA) dealing with the identification and protection of heritage items are being investigated by DECCW as part of the investigation in the Aboriginal place matter.

...

In relation to your email received on 12 April 2010 regarding the marking retained trees, including hollow-bearing and recruitment trees, DECCW is considering this information in the context of its ongoing regulatory work.

I am informed that your email dated 6 May 2010 alleged that Harvest Plans for operations within the Eden IFOA Region did not include indicative maps of habitat quality as required by condition 5.6(b) of the Threatened Species Licence. DECCW reviewed the Harvest Plan for compartments 2135 and 2133 and found this condition has not been complied with. DECCW has issued a warning to Forests NSW regarding this licence breach.

...

As advised in a letter to South East Forest Rescue dated 26 May 2010 (Attachment 3), DECCW issued a warning letter to Forests NSW and ensured that Forests NSW are fully aware of the need to improve compliance reporting of survey and planning documentation. However, based on the available evidence it is considered that survey coverage has been adequate in meeting the intent of the licence.

12/10/10

### **Compartment 2135 of Mumbulla State Forest**

DECCW has completed its investigations in relation to harvesting within Biamanga Aboriginal Place. While it was found that Forests NSW harvested in 6.5 hectares of the Biamanga Aboriginal Place, Forests NSW undertook all relevant due diligence procedures in relation to community and stakeholder consultation for the compartment in Mumbulla State Forest, including with Aboriginal community representatives. As such, DECCW has concluded that Forests NSW did not knowingly damage the Biamanga Aboriginal Place as defined under Section 90 of the National Parks & Wildlife Act. In making these findings, DECCW identified a number of process failures and is actively working with Forests NSW to improve the transfer and storage of information relevant to Forests NSW timber harvesting operations. Correspondence also has been sent to Forests NSW and the Environmental Defenders Office about this matter.

Compartment 2135 of Mumbulla State Forest.

DECCW officers inspected the area in May 2010 and again in November 2010. DECCW requested further information regarding these matters from Forests NSW.

Forests NSW sought EPL coverage for forestry operations in this compartment on 23 March 2010.

### **Complaint 1**

#### **Item 1**

**Allegation:** No trees marked as hollow bearing or recruitment trees

**Response:** DECCW identified that no trees had been marked as hollow bearing or recruitment trees in the area outlined in the complaint, although DECCW also identified that across the net harvest area, hollow bearing and recruitment trees had been marked and the appropriate number of trees retained. As such, no breach of the IFOA in relation to this matter was identified.

### **Complaint 2**

#### **Item 1**

**Allegation:** SEFR points A to D, an unmarked rock outcrop greater than 0.1ha where several stumps were located. Machinery had driven into outcrop.

**Response:** DECCW has inspected this area and identified the rocky feature described in SEFRs complaint. DECCW agrees that this feature meets the definition of a rocky outcrop, and has raised this matter with Forests NSW. DECCW is currently finalising its regulatory response in relation to this matter.

As a result of this and previous audits, DECCW identified some inconsistencies between the Forests NSW *Rocky Outcrop Guidelines* and the requirements of the TSL. Forests NSW has agreed to work with DECCW to improve identification and mark-up of rocky outcrops and cliffs to ensure a consistent interpretation and application of TSL conditions relating to rocky outcrops and cliffs in the field.

#### **Item 2**

**Allegation:** SEFR point E - marked unmapped drainage line at 756478 594852 – three stumps located inside the exclusion zone. Largest stump was located 4m from centre of the unmapped drainage line and leaves had been placed on top of it to conceal it.

**Response:** DECCW identified a tree stump 4.3 metres from the centre of the unmapped drainage line. Two trees (less than 10cm DBHOB) had been cut within five metres of the centre of the stream. At this location a number of trees had also been pushed and felled across the unmapped drainage line. The line was an incised channel with nick points and evidence of channelised flows. DECCW is currently finalising the regulatory response into this matter and will notify SEFR following the conclusion of this work. This matter was recorded as a breach.

SEFR contends OEH misinterpretation of IFOA cl.5.

## **Glenbog State Forest**

*DECCW has warned Forests NSW about this issue and has requested that Forests NSW takes steps to ensure that the amount of debris around habitat and recruitment trees is minimised in future*

Situated directly west of Mumbulla, Glenbog State Forest is on the Great Dividing Range east of Nimmitabel. Compartment 2367 had been active since 17 March and the terrain, being similar to Badja, was prone to rockiness confirmed by the harvest plan map depicting rocky terrain between dumps D and E.

The next breach report was filed to OEH on 18/4/10.

On Saturday 17/4/10, SEFR conducted an audit of Glenbog State Forest compartment 2367 coup 3 and found the following breaches of the Eden region IFOA-TSL.

## **BREACH 1**

### **5.6. Tree Retention**

#### *k) Protection of retained trees*

*ii. In the course of conducting specified forestry activities, logging debris must not, to the greatest extent practicable, be allowed to accumulate within five metres of a retained hollow-bearing tree, recruitment tree, stag, Allocasuarina with more than 30 crushed cones beneath, eucalypt food tree, or Yellow-bellied Glider or Squirrel Glider sap feed tree. Logging debris within a five metre radius of a retained tree must be removed or flattened to a height of less than one metre. Disturbance to ground and understorey must be minimised to the greatest extent practicable within this five metre radius. Habitat and recruitment trees must not be used as bumper trees during harvesting operations.*

Trees H1, H2, H3, H4, H6, R1, R2, R4 and HR1 all have debris >1m within 5m of their base.

Most notable were H/R1 and R1 where the debris has obviously been pushed towards the trees.

## **BREACH 2**

### **5.6. Tree Retention**

#### *g) Non-regrowth Zone Recruitment Tree Retention*

*iv. Retained recruitment trees must show potential for developing into hollow-bearing trees. Retained recruitment trees must have good crown development and should have minimal butt damage and should not be suppressed. Mature and late mature trees must be retained as recruitment trees where they are available.*

Trees R1, R2, R3 and R4 do not meet the prescription for a recruitment tree. R1, R2 and R3 all have a poor crown and are of poor form. All trees are not late mature or mature and show a significant size difference to nearby stumps.

## **BREACH 3**

### **5.6. Tree Retention**

#### *f) Non-regrowth Zone Hollow-bearing Tree Retention*

*i. In High Quality Habitat a minimum of 12 hollow-bearing trees must be retained in every two hectares of net logging area. Where this density is not available, the existing hollow-bearing trees must be retained plus additional trees must be retained to meet the requirement of 12 in every two hectares. The additional trees retained must be those with the largest dbhob.*

*iv. Retained hollow-bearing trees must be selected from the trees with the largest dbhob within the two hectare area and must be live trees and should have good crown development and minimal butt damage.*

Tree H4 has no visible hollows and is not of the largest dbhob. Judging by the size of the stumps their would have been a better tree to retain as a H tree than this one.

## **BREACH 4**

### **5.6. Tree Retention**

#### *i) Stag Retention*

*i. Where more than ten stags per two hectares occur in the net logging area, a minimum of ten stags must be retained per two hectares of net logging*

*area where it is safe to do so. If there are less than ten stags per two hectares, then all stags should be retained where it is safe to do so.*

There are no stags left standing in the entire coup. S1 and S2 have been pushed over for no apparent reason. There are many more stags that have been pushed over that are not listed as it was only having walked the coup that this breach was realised. It would be highly improbable that all the stags in this coup were unsafe to leave.

Tree H5 has a snig track cut 30cm deep and only 30cm away from the base. This root damage and subsequent compaction will impact on the future health of this tree. There was no obvious terrain constraint for placing the snig track so close to the tree.

Once again SEFR has found breaches that we find in every compartment audited. Individually these breaches might seem minor but at a landscape level they become very serious breaches.

The application of the tree retention prescriptions by Forests NSW has been a constant source of breaches. This situation must be rectified immediately by vigorous enforcement if the TSL.

The investigation of several of our previous breaches have been given to Forests NSW to self regulate. SEFR disputes many of Forests NSW outcomes from these investigations and therefore requests that DECCW officers undertake the field audit.

Although no rocky outcrop breaches were encountered on this inspection, other TSL prescriptions were not adhered to, particularly tree retention conditions. This contractor donates much firewood to local charity groups. These groups may wish to reconsider such offerings.

Extract from Loss of Hollow-bearing Trees - key threatening process determination 2007

NSW Scientific Committee - final determination

On a landscape basis, dead trees often account for 20–50% of the total number of hollow-bearing trees and typically contain hollows when at a smaller DBH than live trees (Bennett et al. 1994, Gibbons 1999, Soderquist 1999, Ross 1999, Harper et al. 2005). Although dead trees are sometimes preferentially selected as roost sites by certain species (e.g. Taylor and Savva 1988, Lumsden et al. 2002) they are far more prone to collapse or incineration than live trees (e.g. Ross 1999) and are selectively harvested for firewood. 'Removal of dead wood and dead trees' is listed as a Key Threatening Process under the NSW Threatened Species Conservation Act, with the loss of hollows in dead trees exacerbating the currently limited resource in live trees.

The response dated 1/11/10 to these breaches in Glenbog 2367 is as follows:

**Compartment 2367 (coupe 3) of Glenbog State Forest**

**Protection of retained trees**

DECCW identified a number of habitat and recruitment trees in compartment 2367 (coupe 3) of Glenbog State Forest with logging debris around the base. DECCW has warned Forests NSW about this issue in relation to the outcomes of this audit and has requested that Forests NSW takes steps to ensure that the amount of debris around habitat and recruitment trees is minimised in future.

**Selection of Habitat and Recruitment Trees**

In the week prior to DECCW's inspection, strong winds and storms had caused several retained habitat and recruitment trees to fail. This made identification of trees retained post Forests NSW logging difficult. DECCW's inspection identified that habitat trees that remained were generally of a large size class and many had hollows or the potential to form hollows. The recruitment trees were also well selected.

**Stags**

DECCW noted South East Forest Rescues (SEFR) concerns regarding the retention of stags. This issue was raised with Forests NSW. Forests NSW indicated that any stags felled were for occupational health

and safety purposes. Whilst there are Threatened Species Licence (TSL) conditions for the protection of stags, the Integrated Forestry Operations Approvals (IFOA) does permit Forests NSW to fell stags for occupational health and safety reasons.

## **Wandera State Forest Compartments 584 and 585**

*OEH identified that the selection of hollow bearing and recruitment trees in the area outlined in the complaint was less than is required by the IFOA, although OEH identified that the appropriate number of hollow bearing and recruitment trees had been retained across the net harvest area*

An inspection on 30 May 2010 of current logging near Moruya produced this report to OEH:

As the TSL states:

*This licence is issued subject to the licence holder complying with the conditions and requirements set out in the licence. A contravention of the terms of this licence makes the person carrying out the forestry operations liable for an offence under the National Parks and Wildlife Act 1974 for e.g. harming a threatened species under Section 118A of the National Parks and Wildlife Act 1974.*

*The objectives of this licence are to set out the minimum measures to protect threatened species and protect the habitat of threatened species from activities associated with timber harvesting.*

We feel our investigation uncovered evidence of non-compliant forestry operations being conducted by FNSW and its contractors, and we call for strong regulatory action to be effected on these matters.

OEH responded with their final determinations on Wandera as at 10/6/11:

OEH received a written complaint from SEFR on 30 May 2010. The complaint made seven allegations in relation to harvesting operations in Compartments 584 and 585 of Wandera State Forest.

OEH had undertaken a comprehensive compliance audit of operations in Compartments 584, 585 and 586 of Wandera State Forest in May 2010 prior to receiving SEFR's complaint. Based on the audit, OEH issued Forests NSW two Penalty Notices on 5 November 2010 relating to pollution of waters.

OEH conducted a proactive audit across Compartments 584, 585 and 586 of Wandera State Forest focussing on a number of roads and drainage feature crossings and recently harvested areas around log dumps 10, 14, 23 and 26. OEH has not prepared a comprehensive map of OEH's tracks made as part of this audit, and as such, is not in a position to provide SEFR with such information. OEH issued two Penalty Notices under the POEO Act for observed water pollution at two crossings. These Penalty Notices totalled \$3000.

OEH inspected the compartment when the operation was still active. Forests NSW advised OEH that all waste would be removed from the compartment at the completion of the operation. OEH identified that the selection of hollow bearing and recruitment trees in the area outlined in the complaint was less than is required by the IFOA, although OEH identified that the appropriate number of hollow bearing and recruitment trees had been retained across the net harvest area. As such, no breach of the IFOA in relation to this matter was identified.

OEH assesses Forests NSW compliance with the IFOA's, taking regulatory action and working with Forests NSW as appropriate. In relation to tree protection and debris, OEH is working with Forests NSW to improve compliance.

## Transparency & Accountability Batemans Bay Style

*All forestry operations to the best of my knowledge are conducted legally and lawfully*

Kevin Petty, FNSW Planning Manager, 22/6/2011

Forests NSW have on many occasions failed to provide information to the public. On an office inspection of documents this report to OEH sent 20/5/10:

We were of the understanding that the 'public availability of information' issue, relating to provision of same by Forests NSW, had been resolved some time ago. Indeed we were led to believe that all the required information would be available on the public computer set up on their counter. Yet, after a visit to the FNSW Batemans Bay Regional Office this afternoon we conclude that the 'warning letters' etc. have had desultory effect.

Instances of non-compliance were apparent.

### 1. TSL Non-Compliance Register Condition 4.1 f)

*The SFNSW Regional Manager responsible for the land to which this licence applies must keep a register of every incident of non-compliance with the conditions of this licence. The register must contain the following information known to SFNSW:*

- i. the date, time and duration of the non-compliance;*
- ii. the date upon which SFNSW became aware of the non-compliance;*
- iii. the exact location of the non-compliance, either marked on the operational map or in the form of Australian Map Grid co-ordinates;*
- iv. the name of the person who caused the non-compliance;*
- v. the nature of the non-compliance;*
- vi. the reasons for the non-compliance;*
- vii. whether the non-compliance resulted in any environmental harm;*
- viii. any remedial action taken by SFNSW or any other person in relation to the noncompliance and the dates upon which it was taken;*
- ix. any disciplinary action taken by SFNSW against any of its contractors, employees, licensees or agents and the dates upon which it was taken; and*
- x. any measures taken or proposed to be taken to prevent or mitigate the recurrence of such a non-compliance.*
- xi. the name of the Supervising Forestry Officer that was responsible for the supervision of SFNSW staff and other people involved in the forestry operation that caused the noncompliance;*
- xii. a full report from the officer causing the non-compliance; and*
- xiii. what pre harvesting audit and post harvesting audit checks were carried out to check compliance.*

What is available on the said computer does not extend beyond 12/10/2007. Therefore there are two and a half years worth of information lacking. Also lacking was a 'full report from the officer causing the non-compliance'.

### 2. Monthly IFOA Reports

#### 63. Public availability of documents

- (h) any report concerning harvesting operations prepared under clause 30 of this approval;*

The monthly IFOA report for this month was not available on the computer for both Southern and Eden sub-regions. Considering that there is only five working days to go before the next month's report is due it seems tardy.

### **3. Boyne SF compartment 102**

#### **29. Monthly advance notice of harvesting operations**

*Note: SFNSW may combine the written notices and reports required each month under this, the next clause, clause 42 and clause 43.*

*(1) This clause applies from 1 July 2002.*

*(2) By the first working day of each month, SFNSW must submit to the regulatory agencies a written notice that specifies the following:*

- (a) each new harvesting operation that is proposed to commence that month or the following month, by reference to the event ID for the operation and, if the associated site specific plan, prepared under clause 28, has been approved by SFNSW, to the date on which it was approved;*
- (b) each suspended harvesting operation proposed to recommence that month or the following month, by reference to the event ID for the operation and to the date on which the associated site specific plan, prepared under clause 28, is approved by SFNSW;*
- (c) the location of each harvesting operation specified, by reference to State forest name and compartment number or other identifying particulars (in the case of Crown-timber lands other than State forests);*
- (d) the proposed commencement or recommencement date for each harvesting operation specified; and*
- (e) the quantity of timber that SFNSW estimates will be yielded for each harvesting operation specified.*

*(3) In specifying the estimated yield under paragraph (e) of subclause (2), DoP may authorise SFNSW to nominate a figure or a range.*

*(3A) If SFNSW is of the opinion, having regard to the topography of the relevant land, that the compartment or other location in which a proposed harvesting operation is to be carried out is likely to contain one or more unmapped drainage lines, then the written notice must include a statement to that effect. However, such a statement is required only where:*

- (a) it is proposed to carry out the harvesting operation other than under the authority conferred by the terms of the licence under the Protection of the Environment Operations Act 1997 set out in this approval; and*
- (b) it is proposed to log within any unmapped drainage line or within 10 metres of any unmapped drainage line, in the compartment or other location. If possible, the statement is to indicate where the unmapped drainage line may be situated within the compartment or other location.*

*(3B) If a new harvesting operation specified in the written notice under subclause (2) is to be carried out including in part:*

- (a) at a location that has not been identified in the relevant annual plan of logging operations as an intended location of a logging operation; or*
- (b) other than in accordance with the order of operations proposed in that annual plan, the written notice is to contain a statement to that effect.*

*(4) A harvesting operation may be commenced or recommenced only:*

- (a) where it has been specified in a written notice submitted to the regulatory agencies under subclause (2); and*

- (b) on or after the date, and in the location, specified in such a notice.
- (5) Subclauses (2) to (4) do not apply to a harvesting operation that has been suspended and is subsequently recommenced in the same month.
- (6) SFNSW may carry out a harvesting operation other than at the time or location specified in a written notice submitted to the regulatory agencies under subclause (2), provided that the regulatory agencies are notified in writing and in advance of any such variation being implemented.
- (7) In this clause, "event ID" means a unique identification number generated by SFNSW's Harvest Tracking System (HTS) that exclusively represents a forestry operation, such as a harvesting operation.

### **30. Monthly report on harvesting operations**

- (1) This clause applies from 1 August 2002.
- (2) By the first working day of each month, SFNSW must submit to the regulatory agencies a report that specifies the following:
  - (a) each harvesting operation that has commenced or continued in the financial year within which that month falls, by reference to the event ID for the operation and to date on which the associated site specific plan, prepared under clause 28, was approved by SFNSW;
  - (b) (in the case of a report to be provided by 1 July of any year) each operation that has commenced or continued in the financial year ending prior to 1 July of that year;
  - (c) the location of each harvesting operation specified, by reference to State forest name and compartment number or other identifying particulars (in the case of Crown-timber lands other than State forests);
  - (d) the date on which any such harvesting operation was commenced;
  - (e) where the operation has been and remains suspended at the date of the report, the date on which it was suspended; and
  - (f) where the operation has been completed, the date on which it was completed.
- (3) In this clause, "event ID" means a unique identification number generated by SFNSW's Harvest Tracking System (HTS) that exclusively represents a forestry operation, such as a harvesting operation.

We were informed by a resident nearby that logging had started in the Boyne State Forest. This was surprising news as there was no mention of this in the May 2010 monthly IFOA report that had been distributed earlier in the month. Were DECCW informed of this variation as per clause 29.6 above?

We requested an amended monthly from Mr Kevin Petty but he said 'I don't know anything about it'. We state that the commencement of logging in Boyne State Forest is a breach of cl 29(2)(a).

### **4. Request to provide koala survey for Cpt 2032 Murrah State Forest.**

#### **4.2 Availability of Data**

- a) Copies of the following documents must be made available for inspection by any person at the SFNSW Regional Office or relevant Operational Centre responsible for land to which this licence applies:
  - i. this licence; and
  - ii. all planning documentation and registers relating to harvesting operations, including  
*Harvesting and Operational Plans and Site-specific Conditions.*

*b) Copies of all planning documentation for harvesting operations which are the responsibility of the SFNSW Regional Office or relevant Operational Centre must be made available to any person for photocopying at a reasonable cost.*

SEFR requested this document and it was not provided. This survey was allegedly completed in 2005.

This is further evidence of the willful neglect and disregard FNSW have towards their statutory obligations.

We were informed by OEH that FNSW will improve their performance.

The start of the financial year coincides with the start of the Annual Plan of Operations which is made publicly available at the counter. Upon review of the FNSW logging plan of operations for the year ahead we saw more reporting non-compliance, so another report to OEH ensued:

We today obtained a copy of what purported to be the FNSW Plan of Operations 2010-11 for the south coast region and contend that it does not comply with the requirements of clause 27 of the IFOA.

Cl 27 (1) (b) states “the predicted kinds and quantities of timber products that will be yielded from the proposed logging operations”.

What we were provided with by FNSW Lee Blessington was an eight column table with column headings:

IFOA Region	SF Region	Management Area	State Forest	Cpt	Principle Forest Type	Operation Type	Operation Intensity
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There is no mention of kinds of products or quantities of products.

Cl 27 (1) (c) states “any other matters relating to the matters set out in paragraphs (a) or (b) that DoP notifies SFNSW is to be specified”. Would you please inform us of the effect of this subclause. Are there any other matters?

We also report that the TSL non-compliance register is still not up-to-date and available for public inspection in the Batemans Bay FNSW Regional Office.

Finally our records indicate that FNSW have received upwards of five warning letters for the southern region alone so far this year.

We request the Minister be recommended to adopt a more stringent regulatory approach.

This OEH response was received on 23/6/10:

I am writing in relation to your email received by DECCW on 21/05/10 regarding the public availability of documents from FNSW Southern Region.

Your email raised concerns regarding the maintenance of the non-compliance register and the monthly reports.

In relation to the publicly available non-compliance register for the Southern Region not being up-to-date, DECCW has issued FNSW a warning letter for a breach of condition 4.1.f.

DECCW has also reminded FNSW that every incident of non-compliance with the TSL is to be recorded in the non-compliance register.

DECCW has reviewed the April, May and June 2010 monthly reports for the Southern Region and identified that harvesting operations in cpt 102 Boyne SF commenced on 31 April 2010. This was not reported on the May 2010 monthly report for the Southern Region. DECCW has issued FNSW a warning letter for this breach of condition 30.2 of the IFOA for the Southern (South Coast) region.

Your email also raised concerns regarding public availability of koala surveys undertaken in cpt 2032 of Murrah SF. DECCW has been advised that the Harvest Plan for Murrah 2032, including pre-logging and pre-roading survey report is currently being reviewed and will be made publicly available when finalised and approved.

Then this response exactly a month later:

I am writing in reply to alleged breach of Clause 27(1) (b) of the Southern region Integrated Forestry Operations Approval (IFOA) conditions. After investigation of your allegation, DECCW requested that Forests NSW correct the Annual Plan of Logging Operations to reflect “the predicted kinds and quantities of timber products that will be yielded from proposed logging operations”. Forests NSW subsequently provided a rectified Annual Plan of Logging Operations.

DECC have recently requested that Forests NSW Southern region update compliance registers in accordance with requirements of the IFOA.

Interestingly, the new POO for this financial year has the very same non-adherence to the requirements.

## **Boyne State Forest compartment 102 AGS**

*The planned random placement of AGS gaps did not suit the uneven nature of the forest stand and it was recognised that the application of STS would be better suited to achieve the desired outcomes in silviculture and timber yields.*

Not far north of Batemans Bay between the Princes Highway and the Clyde River is logging in National Heritage forest. This example of Australian Group Selection logging being particularly graphic meant another breach report filed 13/6/10:

### **Re: Boyne SF cpt 102 inspection-Area Listed on the Register of National Estate**

Following an inspection of Boyne State Forest on 12/6/10 we feel obliged to inform you of our observations of the forestry operations being conducted in the area.

We inspected the logged area around the active dump site on Saltwater Creek Road at AGD coordinates 0244425/6055509, which seems to be at or about dump 9 on the FNSW operational map. It seems likely that the actual position of this dump is about 200-250 metres further east along Saltwater Creek Road than what is depicted on the map.

We have three main points of concern:

#### **1 AGS gap oversize**

As the Southern IFOA states:

#### **5. Description of forestry operations to which this approval applies**

##### **(11) In this clause:**

*“AGS Light”, “AGS Medium” and “AGS Heavy” refer to silvicultural practices, which in relation to a tract of forested land have the following elements:*

*(A) in any one harvesting operation:*

*(b) in the South Coast Subregion, the area of each group of trees selected for logging (as measured from the outermost crown edges of trees standing on the outer boundary of the group prior to logging), is:*

*(i) in the case of AGS Light - no more than 0.13 hectares,*

*(ii) in the case of AGS Medium – more than 0.13 hectares and no more than 0.39 hectares, and*

*(iii) in the case of AGS Heavy – more than 0.39 hectares and no more than 0.79 hectares,*

*(Note: Clause 26 sets out restrictions on the use of AGS Heavy in the South Coast Subregion.*

*Note to paragraphs (b) and (c): 0.13 hectares, 0.39 hectares, 0.5 hectares and 0.79 hectares are the approximate areas of circles that have a radius of 20 metres, 35 metres, 40 metres and 50 metres respectively.)*

## **20. Australian Group Selection and Single Tree Selection to be carried out in accordance with guidelines**

*(1) The silvicultural practices of AGS Light, AGS Medium, AGS Heavy or Single Tree Selection are to be applied in the Southern Region in accordance with the document, "Implementation of IFOA Silviculture in the Southern Forest Agreement Region" (State Forests of New South Wales, April 2002).*

The operational map states that the net harvest area is subject to 'AGS Medium' treatment. This means that the logging gap must be no more than 70 metres wide. What we saw was far in excess of this. Even if 'AGS Heavy' was allowed in this compartment, which the Arcview shape file (see map attached) we have shows that there is no AGS Heavy within compartment 102, the gap the operations had created is we believe also in excess of the maximum allowed under that treatment. Attached on the photos page are a sequence of four shots which go some way to depicting the enormity of the treated area. We were aghast at the size of this AGS gap and feel that it is a significant breach of the conditions of the IFOA.

We also stated that due to the forest being listed on the National Register that this was a matter of national significance and sent a report to the DEWSPEC compliance unit. OEH has determined the following dated 18/1/11:

### **Compartment 102 of Boyne State Forest**

DECCW received a number of complaints from SEFR regarding Compartment 102 of Boyne State Forest. These complaints were received by email on 14 June 2010 and 13 July 2010, through Environment Line on 07 October 2010 and by e-mail on 18 October 2010. The complaints made a number of allegations in relation to harvesting operations in Compartment 102 of Boyne State Forest.

DECCW conducted an audit in Compartment 102 of Boyne State Forest on 1 September 2010.

### **Complaint 1: Received 14 June 2010**

#### **Item 1: Australian Group Selection Gap (AGS) Oversize**

**Allegation:** Area should be subject to AGS medium treatment and the logging gap must be no more than 70m wide. Complainant alleged that gap sizes were far in excess of this.

**Response:** DECCW inspected the compartment on 1 September 2010 and identified that medium intensity AGS was applied in the compartment in initial operations. Forests NSW harvest plan noted that AGS was to be applied during this operation. DECCW's investigation has identified that Forests NSW changed the silvicultural regime from AGS to Single Tree Selection (STS) after initial operations were commenced. Forests NSW have stated that this occurred because "the planned random placement of AGS gaps did not suit the uneven nature of the forest stand and it was recognised that the application of STS would be better suited to achieve the desired outcomes in silviculture and timber yields". Whilst Forests NSW Harvest Plan did not contain an update referring to the change of silviculture from AGS to STS, the Supervising Forest Officer (SFO) had noted this amendment in his records. DECCW has requested that Forests NSW maintains accurate records.

### **Complaint 3: Received through Environment Line on 07 October 2010**

**Allegation:** The harvest plan lists the operation as AGS medium, however, the logging had gone far beyond AGS and significant clear felling had occurred.

**Response:** DECCW inspected the compartment on 1 September 2010 and identified that medium intensity AGS was applied in the compartment in initial operations. Forests NSW harvest plan noted that AGS was to be applied during this operation. DECCW's investigation has identified that Forests NSW changed the silvicultural regime from AGS to STS after initial operations were commenced. Forests NSW have stated

that this occurred because the planned random placement of AGS gaps did not suit the uneven nature of the forest stand and it was recognised that the application of STS would be better suited to achieve the desired outcomes in silviculture and timber yields. Whilst Forests NSW Harvest Plan did not contain an update referring to the change of silviculture from AGS to STS, the SFO had noted this amendment in his records. DECCW has requested that Forests NSW maintains accurate records.

During inspection an Compartment 102 of Boyne State Forest, DECCW officers observed that the intensity of the non-AGS component of the operation was consistent with heavy STS. As such, no breach of the IFOA in relation to this matter was identified.

SEFR state that a harvest plan is a legal document and cannot be changed on-ground by either the SFO or logging contractor:

***Southern Region IFOA***

***28. Site specific plans of harvesting operations***

*(1) Before any harvesting operation is carried out, SFNSW is to prepare a site specific plan in respect of the harvesting operation.*

*(a) whether it is proposed to produce timber by means of thinning;*

*(b) where it is proposed to produce timber other than:*

*(i) timber for fencing or sleepers, or firewood or craftwood, or*

*(ii) by means of thinning,*

*the selection method proposed to be used (Single Tree Selection, AGS Light,*

*AGS Medium or AGS Heavy); and*

*(c) such other information and instructions as SFNSW considers necessary to enable staff of SFNSW and other persons to carry out harvesting operations in conformity with this approval.*

*(4) In preparing the plan, SFNSW must consider the application of this approval to the harvesting operation.*

*(5) A harvesting operation should only be carried out in accordance with a plan prepared under this clause. However, if a harvesting operation varies from a plan prepared under this clause, then SFNSW must:*

*(a) prepare a document that sets out the reason for such a variation; and*

*(b) amend the plan, or prepare a document that sets out how the harvesting operation varies from the plan and keep this document with the plan.*

*(6) To the extent of any inconsistency between this approval and a plan prepared under this clause, this approval prevails.*

## Mogo State Forest

*The number of marked hollow bearing and recruitment trees was less than is required by the IFOA, however, additional trees meeting the requirements for hollow bearing and recruitment trees were retained and marked across the net harvest area.*

### **Compartment 160**

*'DECCW identified that the harvesting operation was intense'*



**Mogo 160**

This compartment was very heavily logged and necessitated reporting to the regulator:

On Thursday 21/10/10 SEFR conducted an audit of Mogo State Forest compartment 160 and found the following breaches of the South Coast region IFOA-TSL.

Please note that all GPS coordinates are produced from a Garmin E-trex 12 channel GPS unit with settings at:

position format:	UTM/UPS
map datum:	WGS84
units	metric
North ref:	grid
variance:	002°E

From Mogo village we travelled west along Buckenbowra Road, then entered the compartment on 160/2 road and travelled up and along to 0235947/6036530. Within 20 metres of this point we discovered three felled hollow-bearing trees (HBTs).

Also nearby, at point 0235835/6036508 was found an unmarked HBT that had debris at its base, but due to the intensity of the post-harvest hazard reduction burn the tree had collapsed.

Traverses around the harvest area identified two marked H trees at 0236506/6035921, with one accompanying R tree discovered, although this R tree had, by causes unknown, somehow fallen down.

We note that this compartment is in the 'Regrowth zone', but due to the amount of HBTs felled and the paucity of marked H & R trees retained throughout the net harvest area, we contend that the operation did not comply with the relevant licence conditions of the IFOA and TSL.

This logging event is one of the most graphic in its tree removal and burning treatment we have seen in the South Coast RFA region - STS heavy had seemingly become STS extreme on this occasion. We contend that the minimum basal area of 10m<sup>2</sup> has not been adhered to. This logging operation has removed well over 50% of the canopy of the net harvest area.

IFOA/TSL breaches include:

1. Inadequate H & R trees retained in NHA - **TSL 5.6.c-g**
2. R trees and H trees damaged by logging
3. R trees and H trees damaged by burning
4. Felled hollow bearing trees
5. Greater than 50% canopy removal - **IFOA 5.11**
6. Minimum basal area not retained.

FNSW information gives that Mogo SF Cpt 160 commenced 08-Jul-08 and ended 17-Aug-10, and had EPL coverage from 03-Jun-10 to 17-Aug-10. We contend that this operation was not conducted in compliance with the IFOA and request regulatory action on this matter.

Another report was sent in two days later after another inspection:

Further to our breach report of 21/10/10 SEFR conducted a further audit of Mogo State Forest compartment 160 and found the following breaches of the South Coast region IFOA-TSL and EPL.

#### **EPL**

- On Buckenbura Rd at 0235707/6036370 there has been incursion into the 2nd order stream.
- An unmapped drainage line was logged adjacent to the fork in 160/2 Road at about 0235611/6036581.
- Along 160/2 Rd on the north side of the road there has been incursion into the 1st order streams.
- Along 160/2 Rd there has been incursions into 3rd order stream south of dump 15. (5.7.1 of TSL).
- On 160/3 Road while trying to ascertain whether there had been a breach of the TSL- retained Owl Roost tree, we were unable to proceed as at Dump11 a huge amount of bark, dirt and stones was piled on the road.

#### **TSL cl 5.6 - Retained Tree Breaches:**

*On 160/4 Road:*

- H tree used as bumper at 0237475/6037032.
- Debris around H tree at 0237465/6037103.

We would also ask DECCW to investigate the alleged 40m Ridge and Headwater Habitat zone for incursions.

We would again contend that this operation was not conducted in compliance with the IFOA and request regulatory action on this matter.

The first response from OEH states:

#### **Compartment 160 of Mogo State Forest**

DECCW received a written complaint from SEFR on 22 October 2010 and another on 24 October 2010. The complaint made a total of 21 allegations in relation to harvesting operations in Compartment 160 of Mogo State Forest.

DECCW undertook a field inspection Compartment 160 of Mogo State Forest on 3 and 4 November 2010.

#### **Complaint 1**

##### **Item 1**

**Allegation:** Three felled hollow bearing trees at (235947 6036530) on 160/2 Road.

**Response:** DECCW identified the three hollow bearing trees adjacent to 160/2 Road and determined that they had been felled during the harvesting operation. DECCW is currently finalising its investigation into this matter and will notify SEFR following conclusion of this work.

### **Item 5**

**Allegation:** Unable to see if there has been a breach to owl roost EZ — can DECCW investigate.

**Response:** DECCW was unable to inspect the owl roost due to unsafe conditions at the time of the inspection. DECCW will investigate this matter as circumstances permit.

### **Item 11**

**Allegation:** Hollow bearing tree used as a bumper tree at (237475 6037032) on 160/4 Road.

**Response:** DECCW identified a marked recruitment tree at the location provided in SEFRs letter. The tree had sustained a minor amount of damage at its base. DECCW will raise this matter with Forests NSW at the completion of this investigation.

### **Item 17**

**Allegation:** Request DECCW to inspect 40m Ridge and Headwater for incursions.

**Response:** DECCW officers inspected the 40 metre wide ridge and head water habitats in Compartment 160 of Mogo State Forest. It was identified that the location of the mapped stream within Compartment 160 did not lie where it was mapped and, as such, the exclusion zone was shifted by Forests NSW to match the on ground location of the stream. The exclusion zone width was in accordance with the TSL requirements and there were no incursions. As such, no breach of the IFOA in relation to this matter was identified.



**Habitat casualty in Mogo 160**

## **Badja State Forest Breach Reports**

*Pre-harvest fauna surveys were conducted in November 2000*

During the reporting period in focus we have submitted three breach reports to OEH and one formal complaint to FNSW in relation to this iconic forest area.

### **6 March 2011**

#### **Re: EPL & TSL breaches in Badja State Forest**

Dear DECCW,

Following our recent inspection of Badja State Forest we wish to report some noteworthy findings. GPS setting used is WGS84.

Along Badja Forest Road at GPS point 0725363/5994604 we believe that there has been logging in what should have been marked as a Rocky Outcrop.

On old Falcon Road at point 0731304/6000838 there has been a partial collapse of the bridge with ensuing road material falling into the creek.

From the bush milling point down the end of Balook Road at 0729536/5998434 there is the track leading into recent logging of compartment 2029/1. The use of machinery in this area has lead to significant rutting along the various tracks used during the operation.

In compartment 2044 at point 0731811/6001512 we believe to have found another Rocky Outcrop that had been logged.

We believe that a DECCW field audit would be productive and uncover further non-compliance with prescriptions.



**Deep rutting in old growth compartment 2029/1 Badja State Forest**

**26 April, 2011**

Dear EPRG,

South East Forest Rescue has recently inspected compartment 2084 of Badja State Forest uncovering several breaches of the South Coast TSL and EPL.

The area surveyed in this inspection encompasses the zone around 2084/3 Road. All following GPS coordinates are in WGS84 format.

**Breach 1: EPL Schedule 4 81(b)**

Significant rutting was observed at the following locations, among others:

- 0726904/5999212
- 0726959/5999130
- 0727102/5999449

**WET WEATHER RESTRICTIONS**

*81. Tracks must not be used where:*

- a) there is run off from the snig track surface; or*
- b) there is a likelihood of significant rutting leading to turbid runoff from the track surface.*

*Appendix A of the Southern Region Environment Protection Licence at page 25 states:*

*"saturated soil" means the physical condition of a soil in which no more moisture can be absorbed or accepted. Saturated soils are subjected to compaction, rutting or displacement by machinery and vehicles;*

**Breach 2: TSL Condition 5.6.g.ii Debris Around H & Rs**

Judging by the amount of burnt debris and the scorch marks and damage of retained trees we would state that there was, prior to burning, logging debris within 5 metres of retained Habitat tree and greater than one metre in height. This was observed at the following location, among others:

- 0726913/5999168
- 0726934/5999110
- 0727076/5999504
- 0727078/5999463

*ii. In the course of conducting specified forestry activities, logging debris must not, to the greatest extent practicable, be allowed to accumulate within five metres of a retained hollow bearing tree, recruitment tree, stag, Allocasuarina with more than 30 crushed cones beneath, eucalypt food tree, or Yellow-bellied Glider or Squirrel Glider sap feed tree. Logging debris within a five metre radius of a retained tree must be removed or flattened to a height of less than one metre. Disturbance to ground and understorey must be minimised to the greatest extent practicable within this five metre radius. Habitat and recruitment trees must not be used as bumper trees during harvesting operations.*

#### **Breach 3: Condition 5.6 Tree Retention**

We would state that as there were an inadequate amount of suitable trees with good crown development retained in the area surveyed, suggesting that this would be the case for the entire compartment.

The following condition must be applied within the non-regrowth zone:

##### *b) Non-regrowth Zone Recruitment Tree Retention*

*ii. Retained recruitment trees must show potential for developing into hollow-bearing trees. Retained recruitment trees must have good crown development and should have minimal butt damage and should not be suppressed. Mature and late mature trees must be retained as recruitment trees where they are available.*

#### **Breach 4: Condition 5.6(i) Stag Retention**

There were two felled stags on the walk down 84/2 Rd as per photographs attached.

*i. Where more than ten stags per two hectares occur in the net logging area, a minimum of ten stags must be retained per two hectares of net logging area where it is safe to do so. If there are less than ten stags per two hectares, then all stags should be retained where it is safe to do so.*  
*ii. Stags must not be counted as hollow-bearing trees or recruitment trees.*

#### **Breach 5: Condition 5.11 Rocky Outcrops and Cliffs**

A large unmarked rocky outcrop was observed in this compartment. It had no exclusion zone. It had been logged. We traversed the perimeter down the snig track 84/2 Rd. This was beginning at the following location and extending down south westerly and encompassing the knoll:

- 0727094/5999388

There is another small rocky outcrop which possibly did join the larger one, however a snig track has been driven through, at the following circumference transect:

0727126	5999421
0727138	5999411
0727155	5999402
0727159	5999387
0727158	5999382
0727151	5999379
0727133	5999396
0727124	5999401
0727120	5999408
0727123	5999416

*a) Specified forestry activities are prohibited within areas of rocky outcrops and cliffs.*

*b) In addition, exclusion zones of at least 20 metres wide must be implemented around all rocky outcrops more than 0.1 hectare (approx. 30m x 30m), and all cliffs.*

*(Note: it is not intended to exclude SFNSW from all areas that have a scattered or stony or rocky ground cover, only those areas where rocks and exposed boulders cover greater than 70% of at least a 0.1 hectare area. Those areas that fall within the definition of Rocky Outcrops and Cliffs are considered to contain likely habitat for threatened flora and fauna.)*

#### **Breach 6: Tree Retention**

Trees with butt damage were observed at the following locations:

- 0727060/5999494
- 0727072/5999501

*The following condition must be applied within the non-regrowth zone:*

*a) Non-regrowth Zone Hollow-bearing Tree Retention*

*i. A minimum of ten hollow-bearing trees must be retained per two hectares of net logging area. Where this density is not available, the existing hollow-bearing trees must be retained plus additional trees must be retained to meet the requirement of ten per two hectares. The additional trees retained must be selected from those with the largest dbhob.*

*ii. Retained hollow-bearing trees must be selected from the trees with the largest dbhob and must be live trees and should have good crown development and minimal butt damage.*

SEFR requests that an immediate investigation be undertaken by DECCW of these breaches.

On 27 April 2011 OEH responded:

Thank you for your correspondence received by the Office of Environment and Heritage (OEH) on 27 April 2011 in relation to potential breaches in Badja State Forest, Compartment 2084.

Please be advised that OEH has received the information you have provided and is currently considering this information in the context of OEH's ongoing regulatory work.

Our 2011 concerns remain unanswered at this stage.

### **Tantawangalo State Forest**

*OEH identified inconsistencies between Forests NSW Rocky Outcrop Guidelines and the requirements of the TSL*

Tantawangalo, like Badja, runs along the spine of the Great Dividing Range. Tall moist forest with many Rocky Outcrops. Inspections over a five month period gave rise to breach reports in a total of 33 instances of non-compliant illegal logging as summarised in the following table.

Compartment	Report date	Regulations breached	Number of breaches
Tantawangalo 2433	25/4/2010	Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs. Eden IFOA-TSL, cl 5.11(b); failure to mark exclusion zones around rocky outcrops and cliffs.	9 TSL
Tantawangalo 2434	14/9/2010	Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs. Eden IFOA-TSL, cl 5.11(b); Failure to mark exclusion zones around rocky outcrops and cliffs. Eden IFOA-TSL, Schedule 4; failure to remove waste generated during forestry activities.	6 TSL 1 EPL
Tantawangalo 2432	15/9/2010	Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs. Eden IFOA-TSL, cl 5.11(b); failure to mark exclusion zones around rocky outcrops and cliffs. Eden IFOA-TSL, cl 5.6(g)(iv); failure to mark retained recruitment trees that meet the requirements under the clause. Eden IFOA-TSL, cl 5.6(k)(ii); failure to remove debris from the base of R and H trees.	9 TSL

Tantawangalo 2432 and 2434	20/9/2010	No.2 Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs. Eden IFOA-TSL, cl 5.11(b); Failure to mark exclusion zones around rocky outcrops and cliffs.	6 TSL
Tantawangalo 2432	22/9/2010	Eden IFOA-TSL: <i>5.10. Heath and Scrub(a) Specified forestry activities are prohibited from all areas of heath and scrub greater than 0.2 hectares (approx. 45 metres x 45 metres) surface area.</i> <i>b) Exclusion zones of at least 10 metres wide must be implemented around all heath and scrub of more than 0.2 hectares surface area.</i> <i>c) The area of heath and scrub, and exclusion zones around heath and scrub, must be measured from the outer edge of areas of heath and scrub.</i> Failure to identify and protect environmentally sensitive land.	2 TSL

Responses include this in October 2010:

#### **Compartment 2433 of Tantawangalo State Forest**

DECCW has concluded its investigations in relation to the alleged breaches of rocky outcrop provisions in compartment 2433 of Tantawangalo State Forest. As part of its investigations DECCW undertook a field audit and a review of Forests NSW documents. DECCW is currently finalising its regulatory response in relation to these matters. DECCW is also organising an on-site meeting with Forests NSW to ensure a consistent interpretation and application of rocky outcrop Threatened Species Licence (TSL) conditions.

#### **Compartments 2432 and 2434 of Tantawangalo State Forest**

DECCW has received further advice from South East Forest Rescue (SEFR) in relation to these compartments. DECCW is currently investigating these matters. DECCW will respond to SEFR's allegations following conclusion of these investigations.

And a further response on 1/11/11:

#### **Compartment 2433 (coupe 2) of Tantawangalo State Forest**

##### **Rocky Outcrops and Cliffs**

DECCW identified the two areas in Compartment 2433 (coupe 2) of Tantawangalo State Forest which you raised in your letter. One of the areas, labelled Rock 1 in your letter, was determined as not meeting the definition of a rocky outcrop. For the other site labelled Rock 2 and 3 in your letter DECCW found that FNSW had not complied with s.5.11 of the TSL because exclusion zones of at least 20 metres wide were not implemented around a site containing a rocky outcrop and where harvesting had occurred.

Given, that rocky outcrop and cliff definitions in the TSL may be subject to varying interpretations, Forests NSW has agreed to work with DECCW to improve identification of rocky outcrops and cliffs in the field and to ensure a consistent interpretation and application of rocky outcrop licence conditions.

DECCW has issued Forests NSW with a Warning Letter in relation to each of the complaints received from SEFR. DECCW will also continue to monitor Forests NSW performance in relation to these matters in future audits.

And the latest OEH response dated 10/6/11 in full:

#### **Compartment 2432 of Tantawangalo State Forest**

OEH received a written complaint from SEFR on 16 September 2010. The complaint made nine allegations in relation to harvesting operations in Compartment 2432 of Tantawangalo State Forest.

OEH inspected Compartment 2432 of Tantawangalo State Forest on 28 October 2010.

Please note, as a result of this and previous audits OEH identified inconsistencies between Forests NSW Rocky Outcrop Guidelines and the requirements of the TSL. Forests NSW has agreed to work with OEH to improve identification and mark-up of rocky outcrops and cliffs to ensure a consistent interpretation and

application of TSL conditions relating to rocky outcrops and cliffs. OEH is currently finalising its regulatory response in relation to the rocky outcrop related breaches discussed in the following sections.

#### **Item 1**

**Allegation:** RO 1 - At (722699 5921921) part of a rocky outcrop greater than 0.5ha in area was logged. It is alleged that part of this outcrop lies within FMZ3b but the area within the net harvest area of the operation was logged.

**Response:** OEH inspected this area and identified a rocky outcrop of approximately 0.58ha and an adjacent outcrop of approximately 0.21 ha that were not marked for protection. Approximately 0.1 ha and 0.05ha respectively of these outcrops was subject to specified forestry activities including tree felling. This resulted in two breaches of the Eden Region TSL Condition 5.11(a).

#### **Item 2**

**Allegation:** It is alleged that a 40m exclusion zone was required to be applied to the outcrop referred to above, and the area of the required exclusion zone was logged.

**Response:** Approximately 0.59ha required to be protected within exclusion zones surrounding the rocky outcrops referred to in relation to allegation 1 above was not marked as exclusion zones and was subject to specified forestry activities and machinery entry. This resulted in one breach of Eden Region TSL Condition 5.11(b) and one breach of Eden Region TSL Condition 5.11(c).

#### **Item 3**

**Allegation:** RO 2 — At (722675 5921811) a rocky outcrop greater than 0.1 ha in area was logged.

**Response:** At the location referred to OEH officers observed a rocky outcrop of approximately 0.12ha which was not marked for protection. An area of approximately 0.08ha of this outcrop was subject to specified forestry activities including tree felling. This resulted in one breach of the Eden Region TSL Condition 5.11(a).

#### **Item 4**

**Allegation:** A 20m exclusion zone was required to be applied to the outcrop (above) and the area of the required exclusion zone was logged.

**Response:** OEH officers observed that approximately 0.25ha required to be protected within an exclusion zone surrounding the rocky outcrop referred to above was not marked for protection as an exclusion zone and was subject to specified forestry activities and machinery entry. This resulted in one breach of the Eden Region TSL Condition 5.11(b).

#### **Item 5**

**Allegation:** R1 - At (722636 5921847) a marked recruitment tree "does not meet the prescription as an R tree" as it has a small DBHOB and the top half of the crown had previously died.

**Response:** OEH officers observed that the tree at this location does not have good crown development and does not have good potential for long term survival. This tree was not suitable for selection as a recruitment tree. This resulted in one breach of Eden Region TSL Condition 5.6(g)(iv).

#### **Item 6**

**Allegation:** This tree (above) has debris greater than 1 m high within 5m of its base.

**Response:** OEH officers observed a variety of debris greater than 1 m in height located within 5m of this tree including a branch next to the trunk at almost 3m in height and a variety of other debris such as branches, trunks and bark greater than 1 m in height. This resulted in one breach of Eden Region TSL Condition 5.6(k)(ii).

#### **Item 7**

**Allegation:** R2 -At (722647 5921872) a marked recruitment tree "does not meet the prescription as an R tree" as it has an even smaller DBHOB (than the tree discussed above), is suppressed by a nearby H tree and is of poor form.

**Response:** OEH officers observed that the tree at this location is marked for retention as a recruitment tree, is suppressed, has poor form and crown development and is of early mature growth stage. This resulted in one breach of Eden Region TSL Condition 5.6(g)(iv).

**Item 8**

**Allegation:** H1 - At (722728 5921920) a marked H tree has debris greater than 1 m high within 5m of its base.

**Response:** OEH officers observed that this tree has debris to a height of approximately 3m against its trunk and a large amount of other debris greater than 1 m in height within 5m. This resulted in one breach of Eden Region TSL condition 5.6(k)(ii).

**Item 9**

**Allegation:** H2 - At (722801 5921907) a marked H tree has .debris greater than 1 m high within 5m of its base.

**Response:** OEH officers observed that this tree has debris in the form of a tree head against its trunk at a height of approximately 1.5m. This resulted in one breach of Eden Region TSL Condition 5.6(k)(ii).

**Compartment 2432 of Tantawangalo State Forest**

OEH received a written complaint from SEFR on 22 September 2010. The complaint made one allegation in relation to harvesting operations in Compartment 2432 of Tantawangalo State Forest.

OEH inspected Compartment 2432 on 28 October 2010.

**Item 1**

**Allegation:** At (723143 5921625) the complainant questioned whether an area constituted heath and scrub requiring protection and implementation of an exclusion zone under the terms of the TSL.

**Response:** At this location OEH officers observed an area of approximately 50m by 50m (estimated to be approximately 0.25ha) which supports a relatively sparse tree cover, a mid-storey/shrub layer of heath vegetation including *Banksia marginata* and a *Grevillea sp.* ground cover in which sphagnum moss and *Gleichenia sp.* fern are prominent. Tree felling and machinery entry had occurred within this area and in the area surrounding it. The heath component of the vegetation was noted to be absent from some parts of this area. OEH officers consider that "woody shrubs and graminoids" did not contribute to greater than 50 per cent foliage cover required for the area to be considered heath and scrub for the purpose of the TSL.

OEH does, however, consider that the area meets the definition of a wetland for the purpose of both the TSL and the EPL as:

- the area is a drainage depression which is expected to be subject to intermittent inundation and
- the area supports vegetation which is indicative of a wetter micro-climate than the surrounding country such as sphagnum moss and *Gleichenia sp.* fern.

The wetland was not marked for protection and specified forestry activities, including tree felling, were conducted within the wetland and machinery had entered the wetland. No exclusion zone was marked around the wetland and logging and machinery access had occurred within the area of the required exclusion zone. This resulted in the following breaches: one breach of Eden Region TSL Condition 5.9(a), one breach of Eden Region TSL Condition 5.9(b), one breach of Eden Region EPL schedule 4 Condition 8, one breach of Eden Region EPL schedule 4 Condition 17, and one breach of Eden Region EPL schedule 4 Condition 20.

**Compartment 2432 and 2434 of Tantawangalo State Forest**

OEH received a written complaint from SEFR on 22 September 2010. The complaint made seven allegations in relation to harvesting operations in Compartments 2432 and 2434 of Tantawangalo State Forest.

OEH inspected the allegations in Compartment 2434 of Tantawangalo State Forest on 27 and 28 October 2010 and those in Compartment 2432 of Tantawangalo State Forest on 28 October 2010.

### **Item 1**

**Allegation:** At (722891 5922458) in Compartment 2434 of Tantawangalo State Forest it is alleged that a rocky outcrop greater than 0.1 ha in area was logged.

**Response:** At the location referred to OEH officers observed a rocky outcrop of approximately 0.24ha which was not marked for protection. Timber felling had occurred on the edges of the outcrop wherever merchantable trees were accessible and trees were felled into the outcrop. This resulted in one breach of Eden Region TSL Condition 5.11(a).

### **Item 2**

**Allegation:** A 20m exclusion zone was required to be applied to the rocky outcrop referred to above, no exclusion zone was marked and the area of the required exclusion zone was logged.

**Response:** OEH officers observed that no exclusion zone was applied around the outcrop and an area of approximately 0.64ha surrounding the outcrop which was required to be protected under the licence was subject to specified forestry activities and machinery entry. This resulted in one breach of Eden Region TSL Condition 5.11(b).

### **Item 3**

**Allegation:** At (722976 5922393) in Compartment 2434 of Tantawangalo State Forest it is alleged that a rocky outcrop greater than 0.1 ha in area was logged.

**Response:** At the location referred to OEH officers observed a rocky outcrop of approximately 0.14ha. The rocky outcrop was not marked for protection, specified forestry activities including tree felling were conducted within the outcrop and machinery had entered the outcrop. This resulted in one breach of Eden Region TSL Condition 5.11(a).

### **Item 4**

**Allegation:** It is alleged that a 20m exclusion zone was required to be applied to the rocky outcrop referred to above and that no exclusion zone was marked and the area of the required exclusion zone was logged.

**Response:** Approximately 0.43ha required to be protected within an exclusion zone surrounding the rocky outcrop referred to in allegation 7 above was not marked as an exclusion zone and was subject to specified forestry activities and machinery entry. This resulted in one breach of Eden Region TSL Condition 5.11(b).

### **Item 5**

**Allegation:** At (722981 5921695) in Compartment 2432 of Tantawangalo State Forest it is alleged that a rocky outcrop greater than 0.1 ha in area was logged.

**Response:** At the location referred to OEH officers observed an area of greater than 0.1 ha where rocks and exposed boulders cover more than 70 per cent of the surface. OEH officers observed that the rocky outcrop at this location was not subject to logging. As such, no breach of the IFOA in relation to this matter was identified.

### **Item 6**

**Allegation:** It is alleged that a 20m exclusion zone was required to be applied to the rocky outcrop referred to above and that no exclusion zone was marked and the area of the required exclusion zone was logged.

**Response:** OEH officers observed that while the outcrop (above) was not logged, the area surrounding the outcrop was not marked as an exclusion zone and tree felling and machinery access had occurred within it. This resulted in one breach of Eden Region TSL Condition 5.11(b).

### **Item 7**

**Allegation:** At (723094, 5921574) in Compartment 2432 of Tantawangalo State Forest it is alleged that a rocky outcrop greater than 0.1 ha in area did not have a 20m exclusion zone that was required to be applied to this outcrop and the area of the required exclusion zone was logged.

**Response:** At the location referred to, OEH officers observed a rocky outcrop of greater than 0.1 ha in area. The rocky outcrop was not marked for protection, specified forestry activities including tree felling were conducted within the outcrop and machinery had entered the outcrop. This resulted in one breach of Eden Region TSL Condition 5.11(a) and Condition 5.11(b).

## **Compartment 2434 of Tantawangalo State Forest**

OEH received a written complaint from SEFR on 14 September 2010. The complaint made seven allegations in relation to harvesting operations in Compartment 2434 of Tantawangalo State Forest.

OEH inspected the allegations in Compartment 2434 of Tantawangalo State Forest on 27 and 28 October 2010.

### **Item 1**

**Allegation:** At (723073 5922772) a rocky outcrop greater than 0.1 ha in area was logged.

**Response:** At the location referred to OEH officers observed a rocky outcrop of approximately 0.35ha. The rocky outcrop was not marked for protection and specified forestry activities including tree felling were conducted within the outcrop and machinery had entered the outcrop. This resulted in one breach of the Eden Region TSL Condition 5.11(a).

### **Item 2**

**Allegation:** It is alleged that a 20m exclusion zone was required to be applied to the rocky outcrop referred to above and that no exclusion zone was marked and the area of the required exclusion zone was logged.

**Response:** OEH officers observed that approximately 0.63ha required to be protected within an exclusion zone surrounding the rocky outcrop referred to above was not marked as an exclusion zone and was subject to specified forestry activities and machinery entry. This resulted in one breach of Eden Region TSL Condition 5.11(b).

### **Item 3**

**Allegation:** At (723184 5922681) an area of rocky outcrop was logged which was a continuation of a larger rocky outcrop to the south of this location that was protected. It is alleged that this area was required to be included as part of the protected outcrop and a 40m exclusion zone applied to it.

**Response:** OEH officers observed that the outcrop at this location was less than 0.1 ha in size. It was separated from a large outcrop to the south of it by a substantial area which does not meet the definition of rocky outcrop and as such was a separate outcrop which was less than 0.1 ha in size and does not require protection under the TSL. As such, no breach of the IFOA in relation to this matter was identified.

### **Item 4**

**Allegation:** It is alleged that the area of outcrop referred to above was required to have a 40m exclusion zone applied to it.

**Response:** As identified above, this area of outcrop was separate to the one to the larger outcrop to the south and was less than 0.1 ha in area and was not required to be protected or have an exclusion zone applied to it under the TSL. As such, no breach of the IFOA in relation to this matter was identified.

### **Item 5**

**Allegation:** At (723161 5922547) an area of rocky outcrop was logged which was a continuation of a larger rocky outcrop to the north of this location that was protected. It is alleged that this area was required to be included as part of the protected outcrop and a 40m exclusion zone applied to it.

**Response:** At the location referred to OEH officers observed a rocky outcrop of approximately 0.17ha. The rocky outcrop was not marked for protection, specified forestry activities including tree felling were conducted within the outcrop and machinery had entered the outcrop. This resulted in one breach of Eden Region TSL Condition 5.11(a).

### **Item 6**

**Allegation:** It is alleged that the area of outcrop referred to above was part of the larger outcrop to the north and was required to have a 40m exclusion zone applied to it.

**Response:** As identified above, this area is separate to the larger outcrop to the north but being over 0.1 ha in area, required a 20m exclusion zone to be implemented around it. Approximately 0.18ha required to be protected within an exclusion zone surrounding this rocky outcrop was not marked as an exclusion zone

and was subject to specified forestry activities and machinery entry. This resulted in one breach of Eden Region TSL Condition 5.11(b).

#### Item 7

**Allegation:** At (722959 5922485) oil filters were discarded on the ground and concern was raised regarding the whereabouts of oil that may have been contained in the filters.

**Response:** At the location referred to OEH officers observed that no oil filters were present at the time of inspection on 27 October 2010. There was no indication that an oil spill had occurred at the site. It is presumed that the filters had been removed by the logging contractors in the intervening period. As such, no breach if the IFOA in relation to this matter was identified.

As you are aware, OEH identified inconsistencies between the Forests NSW Rocky Outcrop Guidelines and the requirements of the TSL. OEH has actively engaged with Forests NSW and is currently considering appropriate enforcement action in relation to these matters.

A total of 26 breaches identified by OEH in these three compartments. We are yet to learn what enforcement action will be taken.

### More Koala Surveying Breaches - Yurammie and Murrah SF

Two breach reports were sent on 8 September 2010:

SEFR has audited the Koala transect surveys for Yurammie SF Cpt's 963, 964, 965 and found that the survey fails to comply with the prescriptions in the IFOA-TSL.

#### 8.8.12. Koala survey

##### b) Transect Survey with Quadrats

- i. An intensive survey within the proposed logging area will occur prior to harvesting to determine whether koalas use the compartment.
- ii. The survey will involve traverses in areas to be logged. Areas where logging will not take place (such as wildlife corridors) need not be surveyed.
- iii. The traverses must uniformly cover the harvesting area with transects between 50 to 100 metres apart (subject to local conditions).
- iv. At approximately 25 to 50 metre intervals (depending on the distance between transects) quadrat searches are to be conducted. At each search site, four quadrats (quadrat size = 50 centimetres x 50 centimetres) are to be randomly placed within 10 metres of the transect, beneath tree crowns. The quadrats are to be searched for Koala scats

The following table summarises the data from the surveys.

Transect	Distance (m)	Quadrats required	Quadrats surveyed	Time (min)	Time per quadrat	Survey or
T1	1315	53	43	190	4.41	A
T2	600	25	22	100	4.54	A
T3	175	8	7	30	4.28	A
T4	1090	44	36	180	5	B
T5	700	29	23	120	5.21	B
T6	130	6	7	60	8.57	B
T7	1240	50	50	180	3.6	C
T8	850	35	38	120	3.15	C
T9	300	13	20	60	3	C
<b>Total</b>		<b>263</b>	<b>246</b>	<b>1040</b>	<b>4.64</b>	

Previous breach reports on Koala surveys have focused on the time taken per quadrat and therefore the adequacy of the surveys. In these breach reports we have used a minimum time per plot of 3.25mins, which when applied to the above

transects means T8 and T9 do not comply with the prescription and T7 only just complies. Although the surveyor names have been blacked out it seems these three transects were undertaken by the same person.

Of more concern with this survey is the number of transects with less than the required quadrats. The distance figure does not take slope into account and so the quadrats required figure is less than what is actually needed. This shows that T1, T2, T3, T4 and T5 do not comply with the number of quadrats required, and T1, T4 and T5 have only 80% of the required quadrats.

While we acknowledge that DECCW has undertaken RGB-SAT surveys of the area and found no evidence of Koalas, this does not enable FNSW to undertake sub-standard surveys of their own. It has been shown in Murrah 2051 that both RGB-SAT and transect surveys may not find all evidence of Koala's and therefore reinforces the need for all surveys to be undertaken to the highest standard.

This is the fifth compartment that SEFR has found with Koala surveys that do not comply with the prescriptions. It shows FNSW complete disregard for the spirit, intent and prescriptions of the TSL.

Likewise for a pending Murrah compartment:

SEFR has audited the Koala transect surveys for Murrah SF Cpt 2032, and found that the survey fails to comply with the prescriptions in the IFOA-TSL.

#### **8.8.12. Koala survey**

##### *b) Transect Survey with Quadrats*

*i. An intensive survey within the proposed logging area will occur prior to harvesting to determine whether koalas use the compartment.*

Previous breach reports on Koala surveys have focused on the time taken to undertake transects and therefore the adequacy and intensity of the survey. Once again SEFR has serious concerns regarding the same issues in this compartment.

The report by David Milledge stated that an appropriate time per quadrat should be 5-10 minutes to ensure the survey is adequate. If this is taken as the baseline then only transect 3 and 15 come close to meeting this.

In SEFR's breach report on Cpt's 2133, 2051 and 2052 the average time per quadrat was 3.25mins. This is similar to the above figure 3.14mins. We believe that any time less than the average time is totally unacceptable. Therefore transects 1, 2, 4, 5, 6, 10, 11, 12 and 16 do not comply with the TSL.

Although several transects have more quadrats than what is required there are several transects where the required number quadrats have not been completed. This occurs with transects 6, 7, 8, 9, 10, 11, 12, 13, 16 and 17.

Once again there is a strong correlation between the surveyors of the defective transects in this report and the report on Cpt's 2133, 2051, 2052.

SEFR has grave concerns over the integrity of all the FNSW Koala surveys. Every compartment that SEFR has obtained Koala surveys have been in breach of the TSL. In Mumbulla 2133 no Koala activity was detected yet a scat was found 400m from the boundary and tracks were found right on the boundary.

The survey in Murrah 2051 also found no Koala activity but during the resurveying of inadequate transects a scat was found. While this scat was found off-transect and the transect was being surveyed properly it brings into question the reliability and accuracy of the transect surveys as a method to detect Koala activity.

No response has been forthcoming on these evaluations.

## **Dampier State Forest**

*DECCW is working with Forests NSW to improve guidelines for selecting hollow bearing and recruitment trees and minimising damage to and debris around hollow bearing and recruitment trees.*

An inspection of the recent logging in this forest found breaches and two reports were sent:

#### **Re: Dampier SF Cpt 3127 Breaches of Southern IFOA TSL**

Following our recent inspection of Dampier State Forest Cpt 3127 on 26 September we report the following breaches of the recent forestry operations.

**EPL Litter Schedule 4A. I. 165.**

Around the dump site were found numerous instances of rubbish left behind by the forestry workers such as large oily patches, hydraulic tubes, wire, chains, oily rags, bubble wrap, plastic bags, etc.

*165. Waste must be removed from the forest and disposed of in a proper and efficient manner at an appropriate facility.*

#### **Breach of TSL 5.4 Logging in rainforest exclusion zone**

At or about 0756425/6001718 on 3172/2 Rd north of the large dump site is a road (the second track) that goes down into a rainforest gully. Many tree ferns were damaged. Many of the stumps were over 20cm. This was also an owl reserve. We did not see any marking up of this rainforest. Even if this was not noted on desktop it should have been marked up in the field.

*5.4.b) The on ground identification and location of Rainforest and exclusion zones established around Warm Temperate and Cool Temperate Rainforest, must be undertaken before or during pre-logging mark-up.*

*k4) SFNSW must ensure that all practicable measures are taken to minimise any adverse impacts on the environment of any of the following activities within Rainforest or an exclusion zone around Warm Temperate Rainforest or Cool Temperate Rainforest:*

- i. construction of a road or snig track;*
- ii. re-opening or brushing-up of a snig track;*
- iii. any snigging carried out on a snig track.*

*In particular, hollow-bearing trees may not be felled or removed, or used as bumper trees for moving logs.*

#### **Breach of TSL 5.6 g(i) and g(ii) Damaged and Debris around H and R trees**

Down this track there were two H trees with much debris around their base, an R tree with no head and debris, a felled hollow bearing tree.

East of the dump was a patch of many H and R trees clumped together. At 0756542/6001682 there was debris around H and R trees. This was also the case at 0756579/6001649, and the same again 10 metres down the slope. Additionally, the selection of many of the marked trees was of poor quality.

Further breaches of this TSL were found at 0755554/6001472 where there were two H trees with debris and a H without a head.

We note that the harvest plan states this logging is STS, but the intensity we witnessed looks similar in style to Eden region logging. Clear felled hillsides are not any form of environmental protection. There is serious adverse impacts to the many threatened species of the area and the water catchment, it seems 'best practice' was not factored in to this logging event. We contend that there would be numerous further breaches of the TSL and EPL evident regularly throughout the compartment. We request regulatory action on this matter.

#### **Re: Dampier SF Cpt 3111 and 3120 Breaches of TSL**

Following our recent inspection on 27 September of Dampier State Forest Cpt 3111 and 3120 we report the following breaches of the forestry operations.

#### **Breach of TSL 5.6 (g)(i) and (g)(ii) Damaged and Debris around H and R trees**

At or about 0762206/6001640 H and R trees with much debris around their base, poorly selected H and R trees. H tree used as a bumper.

In Cpt 3120 there were numerous instances of non-compliance for example as we were driving along the Nerrigundah Ridge Rd there were 6 burnt out H trees, H and R trees with debris. This is indicative of both of these compartments.

#### **Breach of TSL5.6 (f)**

In Cpt 3111 at the corner of Nerrigundah Ridge Rd and 3111/5 Rd there was damaged Glossy Black cockatoo feed trees. We contend that there would be numerous further breaches of the TSL and EPL evident regularly throughout the compartment. We request regulatory action on this matter.

These concerns were responded to in detail thus dated 18/1/11:

#### **Compartments 3111 and 3120 of Dampier State Forest**

DECCW received a written complaint from SEFR on 27 September 2010. The complaint made three allegations in relation to harvesting operations in Compartments 3111 and 3120 of Dampier State Forest.

#### **Item 1**

**Allegation:** Damage and debris to retained hollow bearing and recruitment trees at (762206 6001640), poor selection of trees, hollow bearing tree used as a bumper.

**Response:** DECCW is aware of issues surrounding selection of hollow bearing and recruitment trees, damage to hollow bearing and recruitment trees and debris around hollow bearing and recruitment trees in Compartments 3111 and 3120 of Dampier State Forest. While Forests NSW have retained the appropriate number of hollow bearing and recruitment trees and aim to operate to minimise impacts on retained trees. DECCW is working with Forests NSW to improve guidelines for selecting hollow bearing and recruitment trees and minimising damage to and debris around hollow bearing and recruitment trees.

#### **Item 2**

**Allegation:** Six burnt out hollow bearing trees and hollow bearing and recruitment trees with debris along Nerrigundah Ridge Road in Compartment 3120.

**Response:** The control of fire associated with hazard reduction burning and the related interactions with retained trees is inherently complex. Forests NSW are required under the Rural Fires Act to conduct hazard reduction burns to protect life and property. DECCW is aware of issues regarding debris around hollow bearing and recruitment trees and, as noted, DECCW is working with Forests NSW to improve guidelines to minimise the amount of debris around hollow bearing and recruitment trees as one potential consideration in relation to this matter.

#### **Item 3**

**Allegation:** Damaged Glossy Black Cockatoo feed tree at the corner of Nerrigundah Road and 3111/5 Road.

**Response:** DECCW has not yet completed its investigation into this allegation and will provide SEFR further information in relation to this allegation once this matter is further progressed.

### **Compartment 3127 of Dampier State Forest**

DECCW received a written complaint from SEFR on 27 September 2010. The complaint made 11 allegations in relation to harvesting operations in compartment 3127 of Dampier State Forest.

#### **Item 1**

**Allegation:** Waste on log dumps in Compartment 3127, including hydraulic tubes, wire, chains and oily rags.

**Response:** On 21 October 2010 DECCW requested that Forests NSW remove all rubbish from the compartment. DECCW has since received confirmation from Forests NSW that rubbish would be removed from the compartment at the completion of the harvesting operation. DECCW has requested that Forests NSW continue to ensure waste is removed from State Forests at the completion of harvesting operations.

#### **Item 4**

**Allegation:** Damage and debris around hollow bearing and recruitment trees near (756425 6001718) off 3127/2 Road. Two hollow bearing trees had debris around their base, a recruitment tree had no head, and a hollow bearing tree (unmarked) was felled.

**Response:** As noted above. DECCW is working with Forests NSW to improve practices in relation to minimising damage to and debris around hollow bearing and recruitment trees. DECCW will continue to monitor Forests NSW performance in relation to this matter.

#### **Item 6**

**Allegation:** Debris around hollow bearing and recruitment trees at (756542 6001682).

**Response:** As noted above, DECCW is working with Forests NSW to improve practices in relation to minimising damage to and debris around hollow bearing and recruitment trees. DECCW will continue to monitor Forests NSW performance in relation to this matter.

#### **Item 7**

**Allegation:** Debris around hollow bearing and recruitment trees at (756579 6001649).

**Response:** As noted above. DECCW is working with Forests NSW to improve practices in relation to minimising damage to and debris around hollow bearing and recruitment trees. DECCW will continue to monitor Forests NSW performance in relation to this matter.

### **Item 9**

**Allegation:** Two hollow bearing trees with debris at (755554 6001472).

**Response:** As noted above, DECCW is working with Forests NSW to improve practices in relation to minimising damage to and debris around hollow bearing and recruitment trees. DECCW will continue to monitor Forests NSW performance in relation to this matter.

### **Item 11**

**Allegation:** Harvest plan records the operation as STS, but the intensity recorded was similar to Eden style coupe logging.

**Response:** Compartment 3127 of Dampier State Forest was harvested under the AGS harvesting regime. Forests NSW opted to change the silvicultural regime from STS to AGS to achieve a better silvicultural outcome. The compartment was harvested in accordance with the IFOA silvicultural prescriptions. The Harvest Plan did not contain an update referring to the change of silviculture from AGS to STS. This will be raised with Forests NSW following finalisation of this audit.

SEFR note the ‘windstorm’ defense once again, and also the contrast here in item 11, where FNSW switched from STS to AGS to achieve a “*better silvicultural outcome*”, as opposed to Boyne mentioned earlier where FNSW went from AGS to STS saying that:

Forests NSW changed the silvicultural regime from AGS to Single Tree Selection (STS) after initial operations were commenced. Forests NSW have stated that this occurred because “the planned random placement of AGS gaps did not suit the uneven nature of the forest stand and it was recognised that the application of STS would be better suited to achieve the desired outcomes in silviculture and timber yields.”

## **Glenbog Revisited**

We are of the view that both a literal and a purposive interpretation when applied to the condition leads to the same result, namely that 10 trees per actual 2 hectare area within the net harvestable area are required to be retained

NCC/EDO report “If a Tree Falls”<sup>1</sup>

Three further breach reports have been lodged with OEH highlighting illegal logging in two compartments:

### **RE: BREACHES OF EDEN IFOA-TSL AND EPL, GLENBOG SF, CPT 2363- COUP 1**

On Sunday 3/10/10 SEFR conducted an audit of Glenbog SF compartment 2363 coup 1 and found the following breaches of the Eden region IFOA-TSL and EPL. All coordinates are AGD 66 datum. Also see attached field notes.

#### **5.11. Rocky Outcrops and Cliffs**

- a) Specified forestry activities are prohibited within areas of rocky outcrops and cliffs.
- b) In addition, exclusion zones of at least 20 metres wide must be implemented around all rocky outcrops more than 0.1 hectare (approx. 30m x 30m), and all cliffs.
- c) Exclusion zones of at least 40 metres wide must be implemented around all rocky outcrops more than 0.5 hectare.

(Note: it is not intended to exclude SFNSW from all areas that have a scattered or stony or rocky ground cover. Only those areas where rocks and exposed boulders cover greater than 70% of at least a 0.1 hectare area. Those areas that fall within the definition of Rocky Outcrops and Cliffs are considered to contain likely habitat for threatened flora and fauna.)

<sup>1</sup> Hammond-Deakin N, and Higginson S, ‘If a Tree Falls: Compliance Failures in the Public Forests of New South Wales’ (2011) Environmental Defender’s Office (NSW), p 22.

**BREACH 1: 5.11. (a), (b)**

At 0719535/5941292, an unmarked rocky outcrop greater than 0.1ha was found that has been logged. Machinery has been driven onto the outcrop and mini roads have been made in the outcrop. It is probable that a nearby outcrop was joined but a major snig track has been pushed between the two.

**5.7. Stream Exclusion Zones**

- a) *Exclusion zones of at least ten metres wide must be implemented on both sides of all first order streams.*
- f) *Specified forestry activities, except road and snig track construction in accordance with condition 5.7 (i) and road re-opening, are prohibited within Stream Exclusion Zones implemented under conditions 5.7 (a), (b), (c) and (d) above.*
- g) *Trees must not be felled into Stream Exclusion Zones. If a tree falls into an area of Stream Exclusion Zone, then no part of that tree can be removed from that area.*

**SCHEDULE 4****D. PROTECTION OF DRAINAGE FEATURES****OPERATIONS WITHIN NATIVE FOREST FILTER STRIPS**

- 17. *Trees located in a filter strip must not be felled, except for the purposes of constructing a road, extraction track or snig track crossing.*
- 18. *Trees must not be felled into filter strips.*

**BREACH 2: 5.7. (f), (g), SCHEDULE 4, D 17, 18**

At 0719385/5941496 a stump was found that is 9m from a 1<sup>st</sup> order stream. From this point to 0719384/5941465, being a distance of approximately 20m there are many small trees and debris that have crossed the exclusion boundary.

**5.6. Tree Retention**

- k) *Protection of retained trees*
  - i. *When conducting specified forestry activities and post-logging burning, damage to trees retained under Conditions 5.6 f), g) and h), of this licence must be minimised to the greatest extent practicable. During harvesting operations, the potential for damage to these trees must be minimised by utilising techniques of directional felling.*
  - ii. *In the course of conducting specified forestry activities, logging debris must not, to the greatest extent practicable, be allowed to accumulate within five metres of a retained hollow-bearing tree, recruitment tree, stag, Allocasuarina with more than 30 crushed cones beneath, eucalypt food tree, or Yellow-bellied Glider or Squirrel Glider sap feed tree. Logging debris within a five metre radius of a retained tree must be removed or flattened to a height of less than one metre. Disturbance to ground and understorey must be minimised to the greatest extent practicable within this five metre radius. Habitat and recruitment trees must not be used as bumper trees during harvesting operations.*

**BREACH 3: 5.6 (k) ii**

Trees H1, R1 and S1 all have debris >1m high around their bases. As only few hectares were inspected it is highly probable there are more breaches of this prescription.

**BREACH 4: 5.6 (k) ii**

Trees H2, R2 and R3 all have major ground disturbance due to snig tracks. H2 has a track less than 1m away. A rollover has also been placed against the tree. R2 has a 30-40cm cut about 0.5m away on one side and has suffered compaction on the other side. R3 also has snig tracks on two sides. Given the relatively flat terrain there is no reason to place tracks near retained trees.

**BREACH 5: 5.6 (k) i**

Trees R4 and H3 have suffered terminal logging damage. Most of the other retained trees have also suffered varying degrees of damage.

**BREACH 6: 5.6 (f) iv****5.6. Tree Retention**

- f) *Non-regrowth Zone Hollow-bearing Tree Retention*
  - iv. *Retained hollow-bearing trees must be selected from the trees with the largest dbhob within the two hectare area and must be live trees and should have good crown development and minimal butt damage.*

Trees H4 and H5 do not meet the requirements as a H tree. H4 has previously lost its main stem with only a poor crown left. H5 only has an average crown with a fire damaged trunk.

**5.6. Tree Retention**

*f) Non-regrowth Zone Hollow-bearing Tree Retention*

*i. In High Quality Habitat a minimum of 12 hollow-bearing trees must be retained in every two hectares of net logging area. Where this density is not available, the existing hollow-bearing trees must be retained plus additional trees must be retained to meet the requirement of 12 in every two hectares. The additional trees retained must be those with the largest dbhob.*

*k) Protection of retained trees*

*iii. Retained trees referred to in Conditions 5.6 f), g) and h) of this licence must be marked for retention. The only exception to the marking of the retained trees can occur where there is an impenetrable understorey. SFNSW must clearly document and justify such situations in harvest planning documentation either during pre-planning or as it becomes apparent during compartment mark-up.*

**BREACH 7: 5.6 (f) i, (k) iii**

A 1.9ha plot was inspected for retained trees. The forest type makes this high quality habitat. For this area there should be at least 11 H trees marked. In the plot we only found 6 marked H trees.

**5.6. Tree Retention**

*g) Non-regrowth Zone Recruitment Tree Retention*

*i. In High Quality Habitat a minimum of 12 recruitment trees must be retained in every two hectares of net logging area.*

*k) Protection of retained trees*

*iii. Retained trees referred to in Conditions 5.6 f), g) and h) of this licence must be marked for retention. The only exception to the marking of the retained trees can occur where there is an impenetrable understorey. SFNSW must clearly document and justify such situations in harvest planning documentation either during pre-planning or as it becomes apparent during compartment mark-up.*

**BREACH 8: 5.6 (g) i, (k) iii**

In the plot area there were only 5 marked R trees. Again this is totally inadequate to meet the prescriptions. Considering that many of these trees do not meet the requirements or have suffered damage, this is totally inadequate. While there are some unmarked retained trees in the area, the prescriptions require retained trees to be marked. If the correct numbers of trees to be retained are not marked it leaves the decision to contractors as to what other trees to leave. With many contractors admitting that they do not know the prescriptions and relying solely on the SFO to mark up this situation is unacceptable. It has to be noted again that FNSW are still not making habitat quality maps available with harvest plans as they are required to do. Due to the many rocky outcrop breaches in recent weeks, SEFR requests that an immediate investigation be undertaken by DECCW of these breaches. FNSW seem totally incapable in identifying outcrops that meet the prescription and urgent action has to be taken.

SEFR requests that this breach report be investigated by DECC and not handed to FNSW to self audit. SEFR also requests that after DECC's audit a meeting in the field with SEFR occurs.

**RE: BREACHES OF EDEN IFOA-TSL, GLENBOG SF, CPT 2360- COUP 3**

On Monday 21/02/11 SEFR conducted an audit of Glenbog SF compartment 2360 coup 3 and found the following breaches of the Eden region IFOA-TSL. All coordinates are WGS 84 datum.

**BREACH 1: 5.1h and 5.2**

The area has not been adequately marked up: 0718450/5941437, 0718323/5941339, 0718224/5941492, 0718320/5941571.

**5.2. Compartment Mark-up Surveys**

*a) An adequately trained person must conduct a thorough search for, record and appropriately mark the following threatened and protected species features during or before the marking-up of a compartment.*

*i. Nests and roosts for those species listed in Condition 5.13 of this licence;*

*ii. Dens of the following species: Yellow-bellied Glider, Squirrel Glider and Brush-tailed Phascogale;*

*iii. Koalas and Koala scats;*

*iv. Flying-fox camps;*

*v. Latrine and den sites of the Spotted-tailed Quoll;*

*vi. Distinctive scats (e.g. Spotted-tailed Quoll, Koala);*

*vii. Allocasuarina spp. with more than 30 crushed cones beneath;*

*viii. Yellow-bellied Glider and Squirrel Glider sap feed trees;*

- ix. *Microchiropteran bat tree roosts;*
- x. *Microchiropteran bat subterranean roosts (caves, tunnels and disused mineshafts);*
- xi. *Swift Parrot and Regent Honeyeater feed or nest trees;*
- xii. *Permanent soaks and seepages in Heleioporous australiacus potential habitat; and*
- xiii. *Threatened flora species and protected native plants likely to occur in the compartment requiring protection under Conditions 6.16, 6.17, 6.18 and 6.19 of this licence.*

b) *Searches for threatened species features must be conducted within that portion of the net logging area where harvesting will occur, and within 50 metres outside this area.*

c) *Harvesting operations are prohibited in areas which have not been subject to compartment mark-up surveys.*

d) *Where any of these features are found, the feature must be recorded, the Harvesting Plan (including the Operational Map) must be amended accordingly and the appropriate Condition applied.*

As logging operations are prohibited in compartments that have not been marked up logging must cease until this is carried out.

**BREACH 2: 5.6 (k) ii**

Trees H1 and H2 have been used as bumper trees during harvesting operations at 0718354/5941462.

**5.6. Tree Retention**

*k) Protection of retained trees*

- i. *When conducting specified forestry activities and post-logging burning, damage to trees retained under Conditions 5.6 f), g) and h), of this licence must be minimised to the greatest extent practicable. During harvesting operations, the potential for damage to these trees must be minimised by utilising techniques of directional felling.*
- ii. *In the course of conducting specified forestry activities, logging debris must not, to the greatest extent practicable, be allowed to accumulate within five metres of a retained hollow-bearing tree, recruitment tree, stag, Allocasuarina with more than 30 crushed cones beneath, eucalypt food tree, or Yellow-bellied Glider or Squirrel Glider sap feed tree. Logging debris within a five metre radius of a retained tree must be removed or flattened to a height of less than one metre. Disturbance to ground and understorey must be minimised to the greatest extent practicable within this five metre radius. Habitat and recruitment trees must not be used as bumper trees during harvesting operations.*

**BREACH 3: 5.6 (k) ii**

Further trees H1 and H2 all have major ground disturbance due to snig tracks having been pushed hard against them. Given the relatively flat terrain there is no reason to place tracks near retained trees.

**BREACH 4: 5.6 (f) iv**

**5.6. Tree Retention**

*f) Non-regrowth Zone Hollow-bearing Tree Retention*

- iv. *Retained hollow-bearing trees must be selected from the trees with the largest dbhob within the two hectare area and must be live trees and should have good crown development and minimal butt damage.*

Tree R1 does not meet the requirements as an R tree and has been poorly selected at 0718372/59141447.

**BREACH 5: 5.6 (f) i, (k) iii**

The area was inspected for retained trees. The forest type makes this high quality habitat. For this area there should be at least 11 H trees marked. In the area we only found 3 marked H trees.

**BREACH 6: 5.6 (g) i, (k) iii**

In the plot area there were only 3 marked R trees. Again this is totally inadequate to meet the prescriptions. Considering that many of these trees do not meet the requirements or have suffered damage, this is totally inadequate. While there are some unmarked retained trees in the area, the prescriptions require retained trees to be marked. If the correct numbers of trees to be retained are not marked it leaves the decision to contractors as to what other trees to leave. With many contractors admitting that they do not know the prescriptions and relying solely on the SFO to mark up this situation is unacceptable. It has to be noted again that FNSW are still not making habitat quality maps available with harvest plans as they are required to do.

**BREACH 7: 5.17**

The ground habitat has been destroyed in the area audited.

**5.17. Ground Habitat Protection**

a) SFNSW must, to the greatest extent practicable, protect ground habitat from specified forestry activities. Ground habitat includes, but is not limited to, understorey vegetation, ground cover vegetation, thick leaf litter and fallen timber.

**BREACH 8: 6.13**

Despite the existence of Yellow-bellied Gliders in this compartment there are no marked YBG trees retained.

**6.13. Yellow-bellied Glider *Petaurus australis***

- a) A 50 metre radius exclusion zone must be implemented around Yellow-bellied Glider dens.
- b) All Yellow-bellied Glider sap feed trees must be retained. All Yellow-bellied Glider Sap feed trees must be marked for retention.
- c) Where there is a record of a Yellow-bellied Glider in a compartment or within 100 metres outside the boundary of the compartment, the following must apply:
  - i. Within a 100 metre radius of each retained Yellow-bellied Glider sap feed tree, observation or den site record, 15 feed trees must be retained. Yellow-bellied Glider sap feed trees must not be counted towards these 15 feed trees. Retained feed trees must have good crown development, should have minimal butt damage and should not be suppressed. Mature and late mature trees must be retained as feed trees where these are available.
  - ii. Within a 200 metre radius of a Yellow-bellied Glider call detection site record, 15 feed trees must be retained. Retained feed trees must have good crown development, should have minimal butt damage and should not be suppressed. Mature and late mature trees must be retained as feed trees where these are available.
  - iii. The feed trees retained in 6.13 c) i. and ii. should be of the same species as the identified sap feed tree, or be a tree species recognised as a sap feed tree in the area (*Corymbia maculata*, *C. gummifera*, *Eucalyptus botryoides*, *E. cypellocarpa*, *E. viminalis*, *E. fastigata*, *E. ovata*, *E. angophoroides*).
  - iv. The feed trees retained in 6.13 c) ii. and iii. must be marked for retention.

**BREACH 9: 5.6(i)**

*i) Stag Retention*

- i. Where more than ten stags per two hectares occur in the net logging area, a minimum of ten stags must be retained per two hectares of net logging area where it is safe to do so. If there are less than ten stags per two hectares, then all stags should be retained where it is safe to do so.
- ii. Stags must not be counted as hollow-bearing trees or recruitment trees.

SEFR requests that an immediate investigation be undertaken by DECCW of these breaches. FNSW seem totally incapable in identifying outcrops that meet the prescription and urgent action has to be taken.

Witnessing this logging on-ground SEFR filed another report:

**RE: BREACHES OF EDEN IFOA-TSL, GLENBOG SF, CPT 2360- COUP 3**

**BREACH : Eden IFOA TSL conditions 5.1h and 5.2**

Thank you for your acknowledgement of our previous report.

Further to that, we report that the breach recommenced at about 11.05am yesterday morning, only deeper into the compartment. By 11.30am the three logging machines had made their way down to dump C and commenced felling trees in the also unmarked harvest area.

**5.2. Compartment Mark-up Surveys**

- a) An adequately trained person must conduct a thorough search for, record and appropriately mark the following threatened and protected species features during or before the marking-up of a compartment.
  - i. Nests and roosts for those species listed in Condition 5.13 of this licence;
  - ii. Dens of the following species: Yellow-bellied Glider, Squirrel Glider and Brush-tailed Phascogale;
  - iii. Koalas and Koala scats;
  - iv. Flying-fox camps;
  - v. Latrine and den sites of the Spotted-tailed Quoll;
  - vi. Distinctive scats (e.g. Spotted-tailed Quoll, Koala);
  - vii. Allocasuarina spp. with more than 30 crushed cones beneath;
  - viii. Yellow-bellied Glider and Squirrel Glider sap feed trees;
  - ix. Microchiropteran bat tree roosts;

- x. *Microchiropteran bat subterranean roosts (caves, tunnels and disused mineshafts);*
- xi. *Swift Parrot and Regent Honeyeater feed or nest trees;*
- xii. *Permanent soaks and seepages in Heleioporous australiacus potential habitat; and*
- xiii. *Threatened flora species and protected native plants likely to occur in the compartment requiring protection under Conditions 6.16, 6.17, 6.18 and 6.19 of this licence.*

b) *Searches for threatened species features must be conducted within that portion of the net logging area where harvesting will occur, and within 50 metres outside this area.*

c) *Harvesting operations are prohibited in areas which have not been subject to compartment mark-up surveys.*

d) *Where any of these features are found, the feature must be recorded, the Harvesting Plan (including the Operational Map) must be amended accordingly and the appropriate Condition applied.*

As logging operations are prohibited in compartments that have not been marked up, we witnessed illegal logging first hand and recorded it. All the while FNSW Tom Halliday was supervising the illegal operation. We call for regulatory action on this matter. It is not satisfactory that excuses of impenetrable understorey be allowed.

Also on ocular observation the compartment not only contains Yellow-bellied Gliders but Squirrel Gliders, Flame Robins and Rufous Fantails. There is no mention of these species in the harvest plan.

It was also noted that the placement of dump C was far less than desirable, as it was put hard up against and into a small rocky outcrop. It is totally unacceptable for such flagrant disregard for the legal prescriptions to be remedied with a warning letter.



**Mechanical harvester logging in Glenbog after Police assistance**

A response from OEH to do with these matters is still to arrive.

## **Yambulla**

*OEH is currently considering appropriate enforcement action in relation to these matters*

Over the years we have filed at least five breach reports concerning logging in Yambulla. These following are the latest:

19/10/10

### **Re: Logging of Old Growth**

South East Forest Rescue hereby formally request that you prosecute Forests NSW and the authorised contractor for the damage to mapped Old-growth in Yambulla State Forest Compartment 557.

This compartment, along with others, was earmarked as to be reserved by environment groups from the start of RFA negotiations. It was logged 24 June 2009 and was suspended in January 2010.

The evidence is irrefutable. Attached is the IFOA monthly report, the harvest plan map and the TSL non-compliance register.

The defences of honest and reasonable mistake of fact and due diligence are the reason the regulator has chosen not to prosecute past unlawful acts, despite the authorities that are now available, despite the regulator being no stranger to litigation, despite suspicious circumstances and despite strong clear evidence that damage has occurred as a result of the offenders actions.

It is my understanding that the defence of 'no batteries' is not mentioned in any statute.

Forests NSW and their authorised contractors have produced real harm to environment and ecosystems, to the community, to cultural heritage, the economy and resources. They make and have made deliberate attempts to conceal their offences.

Previous administrative responses to contraventions by Forests NSW have not resulted in compliance and the public expect prosecutorial action on these unlawful acts. Proceedings would be seen by the public as being in the public interest.

4/11/10

#### **RE: BREACHES OF EDEN IFOA-TSL, YAMBULLA SF, CPT 450- COUP 1, CPT 446- COUP 4**

On Wednesday 3/11/10 SEFR conducted a limited audit of Yambulla SF compartments 450 coup 1 and 446 coup 4 and found the following breaches of the Eden region IFOA-TSL. All coordinates are AGD 66 datum.

##### **5.11. Rocky Outcrops and Cliffs**

- a) Specified forestry activities are prohibited within areas of rocky outcrops and cliffs.
- b) In addition, exclusion zones of at least 20 metres wide must be implemented around all rocky outcrops more than 0.1 hectare (approx. 30m x 30m), and all cliffs.
- c) Exclusion zones of at least 40 metres wide must be implemented around all rocky outcrops more than 0.5 hectare.

*(Note: it is not intended to exclude SFNSW from all areas that have a scattered or stony or rocky ground cover. Only those areas where rocks and exposed boulders cover greater than 70% of at least a 0.1 hectare area. Those areas that fall within the definition of Rocky Outcrops and Cliffs are considered to contain likely habitat for threatened flora and fauna.)*

##### **BREACH 1: 5.11. (b)**

At RO1 0723863/5880190, an unmarked rocky outcrop greater than 0.1ha was located. The approximate size is 0.25ha. Logging disturbance was found in what should have been the 20m exclusion zone. The south western side of the outcrop is along Poole Gap Trail which has cut through what was once a larger outcrop.

Several of the marked retained trees near the outcrop were also very poor selections. Further many of them had debris around their base higher than a metre.

##### **BREACH 2: 5.11. (a), (b)**

At RO2 0724064/5879683, cpt 446-4 dump A, an unmarked rocky outcrop greater than 0.1ha was located. Machinery has been driven onto the outcrop and it has been logged along with the associated 20m exclusion zone.

Cpt 446 is currently active and partly logged. In a yet to be logged area of cpt 446-1 an unmarked rocky outcrop was located at RO3 0724965/5878951. H and R trees (also some very poor selections) have been marked to the edge of the outcrop in what should be a 20m exclusion. This clearly shows that the SFO has failed to identify the outcrop and is a breach waiting to happen.

While driving along Goldmine Road numerous unmapped outcrops were observed in cpt 444 which is to be logged next. The harvest plan for cpt 445, which is also active, shows mapped outcrops and large areas of rocky terrain. There is a high probability of future breaches in all of these compartments and urgent action needs to be taken to restrain the activities of FNSW in these areas.

Due to the many rocky outcrop breaches in recent weeks and the high potential for future breaches, SEFR requests that an immediate investigation be undertaken by DECCW of these breaches. FNSW seem totally incapable in identifying outcrops that meet the prescription.

SEFR requests that this breach report be investigated by DECC and not handed to FNSW to self audit. SEFR also requests that after DECC's audit a meeting in the field with SEFR occurs.

2/6/11

#### **RE: BREACHES OF EDEN IFOA-TSL, YAMBULLA SF, CPT 446- COUP 1**

Following on from our previous breach report for Yambulla SF cpt 450 and 446 dated 4/11/10, SEFR has conducted a second audit of cpt 446 on Monday 30/5/11 and found breaches of the IFOA-TSL prescription 5.11 rocky outcrops.

##### **BREACH 1**

The outcrop labelled RO3 0724965/5878951, in the previous breach report was inspected. FNSW has failed to mark the appropriate exclusion zone for this outcrop. At one small section of the outcrop (0724949/5878945), FNSW have marked an exclusion with crosses on trees. Unfortunately these marks are on or about the edge of the outcrop and therefore there is no

20m exclusion. On the side of the outcrop closest to Goldmine Rd, (0724926/5878957), no exclusion has been marked and stumps are located to the edge of the outcrop.

## **BREACH 2**

At the following points, (0725315/5878781), (0725330/5878759), FNSW have again marked the exclusion zone at the edge of the outcrop, not 20m from the edge as required. Stumps are located only a few metres from the edge of the outcrop.

## **BREACH 3**

On the harvest plan, there is a large mapped rocky outcrop requiring a 40m exclusion zone around it. At 0725122/5878790 we found that the marked exclusion zone was only 16m from the edge of the outcrop. This lack of an adequate exclusion zone also seems to continue for at least 70m, and possibly the entire length of the outcrop where logging has occurred.

## **BREACH 4**

### **2. General and Transitional Provisions**

#### **2.1. General**

- d) All specified forestry activities and miscellaneous forestry operations to which this licence applies must be carried out in a competent and reasonable manner.*

Breach 3 shows that forestry operations in this compartment have been carried out in a totally incompetent and unreasonable manner. How the SFO failed to identify and position the exclusion zone boundary for the mapped outcrop in the correct position is a perfect example of incompetence.

SEFR alerted DECCW to these probable but now actual breaches back in November 2010. SEFR requests a detailed response from DECCW as to what investigation occurred in relation to our initial breach report, especially breach 1 where SEFR gave DECCW actual coordinates of the probable future breach. Has DECCW undertaken a site inspection of this compartment? Did DECCW look at or inform FNSW of the outcrop in breach 1 of this report, if not why not? What correspondence or communication was there between DECCW and FNSW regarding the potential future breaches in this compartment?

SEFR requests that operations cease in the adjoining compartments 444 and 445, and that they be protected as compensatory habitat for the damage done by FNSW in compartments 446 and 450.

SEFR requests that this breach report be investigated by DECCW and not handed to FNSW to self audit. SEFR also requests that after DECCW's audit a meeting in the field with SEFR occurs. This has been an ongoing request yet to date this has only occurred for a few compartments in Tantawangalo SF.

Thank you for investigating these breaches in the context of your ongoing regulatory activities and we await your response.

These breach reports concerning Yambulla have met with one positive response:

#### **Compartment 557 of Yambulla State Forest**

OEH received a written complaint from SEFR on 19 October 2010. The complaint made one allegation in relation to harvesting operations in Compartment 557 of Yambulla State Forest.

**Allegation:** SEFR alleged that Forests NSW harvested an area of mapped Old Growth (breach identified from the Eden compliance register).

**Response:** OEH audited this area on 27 October 2010 and found two areas where harvesting had occurred in mapped Old Growth. Investigations into this matter are now complete. On 24 May 2011, OEH issued Forests NSW a Penalty Notice for conducting specified forestry activities in mapped Rare Old Growth Forest in contravention of the Threatened Species Licence for the Eden IFOA Region.

Then on 7/7/11 we received this:

I confirm that OEH has undertaken a site inspection of Yambulla State Forest compartments 450, 446 and 444 in response to the complaints received from South East Forest Rescue in November 2010.

OEH has actively engaged with Forests NSW about this complaint and is currently considering appropriate enforcement action in relation to these matters.

In April 2011 OEH met Forests NSW on site to discuss the complaint directly, and to consider wider issues about Forests NSW identification and markup of rocky outcrops.

OEH is progressing its investigation and will provide SEFR a detailed response to these matters once the investigations are finalised.

## The Tumut sub-region: Bago State Forest

*I appreciate your input into the investigation and ask that your patience continue until the end of August 2011 when this matter will be concluded and the OEH will be able to correspond with you about the outcome of their investigation.*

Minister for the Environment Robyn Parker reply to Jim Kelton 2/8/11

We have been concerned for some time that the regulator had dropped the ball on the Tumut region forests. Annual reports indicated that there had been no audits undertaken by the regulator for a stretch of four years or so. We had made contacts with people in the area over the time, and have received information of breaches. SEFR sent a report in December:

1 December 2010

**RE: BREACH OF EPL SCHEDULE 4 and SCHEDULE 5 – Tumut Subregion  
and Tumut Subregion TS 5.6(g)**

We have been given information regarding water pollution and EEC degradation in the Tumut RFA sub-region, particularly in and around Bago State Forest.

Evidence has been provided of locations where a combination of inappropriate vehicle use, cattle and feral horse impact and non-complying FNSW road drainage is causing massive erosion problems.

The following is occurring at what was once a significant Montane Peatland and Wetland but now destroyed by cattle grazing and bad drainage along FNSW road across the wetland at location 613600E/6046550N (Yarrangobilly 8526-1-S, 1:25,000).



**This location is known locally as Twin Culverts, Long Creek Bago SF.**

The photo below of 'Twin Culverts Long Creek Bog' is a picture of another area of peatland totally destroyed by FNSW bad drainage and domestic cattle and feral horse impact, with the additional impact of a so called 'controlled burn' by FNSW back in 2006. The boggy section in the middle of the photo is from cattle trampling and was once the location of a population of NSW Threatened Species listed native orchid *Pterostylis oreophila* - now extinct at that location.

Further locations in Bago State Forest which are silting up with run-off from FNSW roads (bad drainage).

1. Boundary Rd - Powerline Rd Cross Track (located immediately north west of Brandy Marys State Forest Crown Lease # 1964/1 boundary with adjacent state forest, situated in Bago SF Compartment 119. Map Co-ords: (approx.) 615000E/6045800N (Yarrangobilly 8526-1-S, 1:25 000).

FNSW road drainage is causing massive quantities of silt and eroding roadbase to drain into a montane peatland which was also burnt beyond recognition in 2006 by FNSW during one of their so called 'controlled burns' in the state forest.

2. Boundary Road, Brandy Marys Bago State Forest Perpetual Crown Lease # 1964/1 Compartment 118 Map Co-ords: (approx.) 616398E/6044050N (Yarrangobilly 8526-1-S 1:25 000)

A series of 'roll-overs' built by NPWS/DECCW in 2004 after the 2003 bushfires along with road culverts put in place during the original fire trail construction have totally failed and become totally inadequate in draining stormwater off the road surface and has resulted in massive road surface erosion and road base and adjacent topsoil runoff into Long Creek, a tributary of Tumut River (Talbingo Reservoir).

3. Long Creek log bridge - Boundary Rd Firetrail, Brandy Marys Bago State Forest Perpetual Crown Lease # 1964/1 , Bago SF Compartment 118, Map Co-ords: 616350E/6043950N (Yarrangobilly 8526-I-S 1:25 000)

This bridge had become unserviceable in around 1990 as a result of the collapse of the bridge timbers. Forests NSW have replaced the bridge with a low rock-fill causeway.

It is estimated that approx 20 tonnes of roadbase which formed the old bridge abutments has collapsed into the Tumut River during the recent (2010) storms.

In addition, all drainage works along Boundary Road Firetrail within the Brandy Marys state forest Crown leases south of Long Creek - Boundary Rd crossing, not to mention so many more instances of the same along Boundary Rd south of our leases, have failed with resulting topsoil and roadbase silt draining into adjacent Long Creek and adjacent drainage lines.

4. Forests NSW Cross Track, Between Powerline Rd ('Twin Culverts') and Boundary Rd Firetrail (Compartment 119, Bago State Forest) - immediately north of Brandy Marys Bago State Forest Perpetual Crown Lease # 1964/1. Map Co-ords: (approx.) 613500E/6046600N (Yarrangobilly 8526-I-S 1:25 000)

Grossly inadequate drainage of this FNSW track have lead to a massive infilling of the montane peatland north of Long Creek in Compartment 119 Bago SF.

The peatland in question was severely burnt and showing very poor recovery since FNSW conducted a so called 'controlled burn' of the compartment and associated peatlands.

5. TransGrid Powerline Road Long Creek culvert (transmission line vehicle access easement through Jones Freehold Property, north of McPhersons Plain). Map Co-ords: (approx.) 612950E/6046150N (Courabyra 8526-IV-S 1:25 000). TransGrid drainage works north and south of the Long Creek culvert are failing and resulting in large quantities of eroding roadbase and adjacent topsoil draining into the creek (a tributary of the Tumut River (Talbingo Reservoir).

6. Bago State Forest - TransGrid (Snowy Hydro) Vehicle Powerline Access Easement - Plain Creek - McPhersons Plain Montane Peatland (within 'Brandy Marys' Bago State Forest Perpetual Crown Lease # 1952/1, below the Brandy Marys residence). Map Co-ords: (approx.) 616300E/6041320N (Ravine 8526-II-N 1:25 000)

Existing FNSW road drainage is inadequate and has totally failed resulting in large quantities of eroding roadbase and adjacent topsoil washing into Plain Creek and adjacent areas of montane peatland.

7. Bago State Forest ('Brandy Marys' Bago State Forest Perpetual Crown Lease # 1952/1- Compartment 118) - TransGrid - Snowy Hydro Powerline Vehicle Access Easement and Adjacent Freehold Property. (Map Co-ords: (approx.) 616070E/6042000N (Ravine 8526-II-N 1:25 000)

Failed and grossly inadequate road drainage through freehold land and state forest have resulted in a gradual infilling of a montane peatland with eroding roadbase material. The particular drainage system associated with the peatland that is being impacted by the poor road drainage is a tributary of Plain Creek which in turn drains into the Tumut River and Talbingo Reservoir.

8. Bago State Forest Compartment 117/118 Boundary) - TransGrid / Snowy Hydro Transmission Line Vehicle Access Powerline Road Easement, Compartment 117/118. Map Co-ords: (approx.) 617850E/6038970N (Ravine 8526-II-N 1: 25 000)

Once again, failed road drainage combined with a badly eroded road surface, has resulted in considerable quantities of eroding roadbase and adjacent topsoil running into Logbridge Creek, a tributary of Yorkers Creek and the Tumut River.

9. Bago State Forest Compartment 117/118 Boundary - TransGrid / Snowy Hydro Transmission Line Vehicle Access Easement. Map Co-ords: (approx.) 617640E/6039950N (Ravine 8526-II-N 1: 25 000).

As above ongoing road erosion is draining into adjacent drainage lines which eventually drain into the Tumut River.

We would urge investigation into these matters. Our informant on-ground is Mr Jim Kelton who can provide further information if required.

We sent another breach report on 19 August 2011 after receiving photographs of dead yellow-bellied gliders in a logged compartment:

Dear OEH,

**RE: FNSW breaches of S. 118A-118D of the NPW Act 1974 - Bago Plateau Yellow bellied Glider Population**

## Yellow-bellied Glider population on the Bago Plateau - Murray: Distribution and vegetation associations in the Murray

**Scientific name:** *Petaurus australis* - endangered population  
**Conservation status in NSW:** [Endangered Population](#)

### Distribution of the species within this region

The Yellow-bellied Glider population on the Bago Plateau is known or predicted to occur in the following sub-regions of the Murray Catchment Management Region:

CMA sub-region	Known or predicted to occur	Geographic restrictions within region
Bondo	Known	None
New South Wales Alps	Known	None

### Important habitat requirements within region

Below is a list of the key habitat features for this species in this CMA:

Habitat	Details
<b>Breeding habitat</b>	Trees with hollows >10 cm diameter in eucalypt forest
<b>Foraging habitat</b>	Tall, typically mature, eucalypt forest, generally in areas with high rainfall and nutrient rich soils. Moist gullies or creek flats to montane forests.
<b>Shelter/roosting/refuge habitat</b>	Large trees with hollows greater than 10cm diameter
<b>Time of year species identifiable (if flora) or best detected (if fauna)</b>	All year

2

Yellow-bellied Gliders *Petaurus australis* (Shaw 1791) on the Bago Plateau were listed as an Endangered Population in Part 2 of Schedule 1 of the Act in 2008. The Bago Plateau is a westward extension of the Kosciuszko highlands in southern New South Wales, and the listed yellow-bellied glider population is distributed over Bago and Maragle State Forests, a small area of Kosciuszko National Park, and some freehold land.<sup>3</sup> Proposed Gazettal date: 21/11/08.

The following table sets out to the best of our knowledge the forestry operations that have been conducted since the proposed gazettal date, with also compartments that are flagged on the Plan Of Operations for this financial year.

### Bago/ Maragle State Forests RFA relevant logging history and threatened logging

cpt	operation dates	comments
3		POO11-12 contingency
4		POO11-12 contingency
6	30.12.08 - 30.06.09	POO11-12 July - September
17		POO11-12 contingency
18		
20		POO11-12 contingency
21		
23	18.04.08 - 08.12.08	
26	27.02.08 - 30.12.08	
29		POO11-12 contingency
30		POO11-12 contingency

<sup>2</sup> See OEH website at: [http://www.threatenedspecies.environment.nsw.gov.au/tsprofile/profile\\_data.aspx?id=20102&cma=Murray](http://www.threatenedspecies.environment.nsw.gov.au/tsprofile/profile_data.aspx?id=20102&cma=Murray)

<sup>3</sup> NSW Forest Agreements Implementation Report 2008–2009: Upper North East, Lower North East, Eden and Southern regions. A report prepared by the Minister for Climate Change and the Environment as part of the implementation of the NSW forest agreements and integrated forestry operations approvals. Forest Policy and Regulation Section, Department of Environment, Climate Change and Water NSW, Sydney.

33	14.03.07 - 08.03.08	POO11-12 October - December and contingency
34	22.12.06 - 09.06.10	POO11-12 October - December and contingency
37		POO11-12 contingency
38		POO11-12 January - March12
43		POO11-12 April - June12
45	27.11.08 - 21.05.09	POO11-12 October - December
49	18.02.08 - 31.05.09	
76	03.06.09 - 29.06.09	POO11-12 January - March12
77	03.12.07 - 01.07.08	POO11-12 January - March12
81		POO11-12 October - December
84		POO11-12 April - June12
114		POO11-12 January - March12
115	06.02.06 - 30.06.06	POO11-12 contingency

As per the Tumut Sub-region Threatened Species Licence:

*This licence is issued to the Forestry Commission of New South Wales and any person carrying out forestry operations defined in the Integrated Forestry Operation Approval (IFOA) under Part 4 of the Forestry and National Parks Estate Act 1998 of which this licence is Annexure B. This licence commences on the day on which the IFOA is granted by the Ministers in accordance with Part 4 of the Forestry and National Parks Estate Act 1998 and is to apply to the conduct of the forestry operations covered by the IFOA within the Tumut Sub-region.*

*This licence does not authorise the carrying out of an activity that is likely to:*

1. Harm an endangered population or an endangered ecological community (as far as animals are concerned);
2. Result in the picking of a plant that is part of an endangered population or endangered community;
3. Damage critical habitat; or
4. Damage the habitat of an endangered population or endangered community.

*This licence is issued subject to the licence holder complying with the conditions and requirements set out in the licence. A contravention of the terms of this licence makes the person carrying out the forestry operations liable for an offence under the National Parks and Wildlife Act 1974 for e.g. harming a threatened species under Section 118A of the National Parks and Wildlife Act 1974.*

As per section 118A of the *National Parks and Wildlife Act 1974*:

**118A Harming or picking threatened species, endangered populations or endangered ecological communities**

(1) A person must not:

- (a) harm any animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community, or
- (b) use any substance, animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any such animal.

*Penalty:*

- (a) in respect of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both, and, in a case where an animal of any endangered species, population or ecological community is harmed, an additional 100 penalty units in respect of each animal that is harmed,
- (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both, and, in a case where an animal of any vulnerable species is harmed, an additional 50 penalty units in respect of each animal that is harmed.

(2) A person must not pick any plant that is of, or is part of, a threatened species, an endangered population or an endangered ecological community.

*Penalty:*

- (a) in respect of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both, and an additional 100 penalty units in respect of each whole plant that was affected by or concerned in the action that constituted the offence,
- (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both, and an additional 50 penalty units in respect of each whole plant that was affected by or concerned in the action that constituted the offence.

As per section 118D of the *National Parks and Wildlife Act 1974*:

**118D Damage to habitat of threatened species, endangered populations or endangered ecological communities**

(1) A person must not, by an act or an omission, do anything that causes damage to any habitat (other than a critical habitat) of a threatened species, an endangered population or an endangered ecological community if the person knows that the land concerned is habitat of that kind.

*Penalty:* 1,000 penalty units or imprisonment for 1 year or both.

We contend that the forestry operations listed in the above table have been, or intend to be, conducted in contravention of the IFOA. Would you please inform us of any regulatory action that has been taken in this regard? Would you please inform us of how it is possible that FNSW can propose to resume forestry operations in Bago/Maragle State Forests without being guilty of damaging the habitat of this endangered population?

We have not received a response.

### **Cathcart State Forest**

*ACTING CHAIR: But, from your detection study that you are referring to, you would do better to completely log an area than to selectively log it as far as koalas are concerned.*

*Mr Stirling: I do not know that it is a cause and effect without going through the population analysis and the studies. What we are saying is that you can go back and find them in heavily logged areas more frequently than you can in unlogged or selectively logged areas.*

*ACTING CHAIR: Do you think that might be because you can actually see them on the ground rather than up in the trees?*

James STIRLING, Manager, Planning and Environment, Native Forests Operations, Forests NSW in evidence to the Environment and Communications References Committee Inquiry 1/8/11

Notification of a renewed wave of logging was given by FNSW for the Cathcart area, an icon forest. Upon review of the harvest plans it became apparent that FNSW were still not complying with the IFOA. A breach report was filed with OEH:

20 February, 2011

**Re: Cathcart State Forest Cpts 1376, 1377 and proposed Cpts 1374, 1375, 1378**

South East Forest Rescue again contends that the FNSW koala surveys in relation to the Cathcart State Forest native forest logging operations are not adequate. Further, consultation is required to occur in the pre-planning stage, and that consultation did not occur.

As you are aware information we have reviewed shows koala records within two kilometres of compartments 1376, 1377 and the proposed Cpts 1374, 1375, 1378.

As you are aware this triggers cl 8.8.1 (a) (ii) which states if a reliable survey records evidence of a species pre-logging and pre-roading surveys are required.

To have not done these required surveys is a breach of the Eden TSL cl 8.8.1 and 8.8.12.

Further to have logged compartment 1376 without these surveys and consultation is a breach.

Why was this error not flagged by DECCW in 2005? Particularly when SEFR highlighted the mass movement breaches in this compartment at that time. Surely it would follow that the compartment was thoroughly scrutinised.?

SEFR is of the opinion that those surveys do not meet the requirements as specified in the TSL and as such the pre-logging pre-roading report is invalid and that if harvesting operations recommence within 10 days then Forests NSW will be in breach of the IFOA-TSL, as per Mumbulla State Forest Cpts 2135 and 2133, because surveys must be submitted to DECCW at least ten days before logging commences.

We request that you immediately inform Forests NSW of this situation and advise them that they are not to commence until ten days after submission of surveys to DECCW. And further logging cannot commence until results of any consultation procedure are finalised.

Koala records that were not identified in 2005 have become known in 2010. SEFR sent an email on the 4/3/11:

Could you please inform us of the status of FNSW forestry operations in Cathcart State Forest?

According to their current IFOA monthly report there are five compartments active: 1360/61/75/76/77.

Which was answered thus later that day:

We received updated Koala survey documentation from FNSW for compartments 1374, 75, 77 and 78 of Cathcart SF on Thursday 24 Feb. On Tuesday 1 March DECCW wrote to FNSW indicating that we were satisfied that these surveys complied with the survey requirements of condition 8.8.12(b) of the TSL. The letter further indicated that DECCW is continuing investigations into alleged breaches of the TSL in 1374, 75, 76, 77 and 78 of Cathcart SF. I am not sure of the status of 1360, 61 and 76 except that they are showing on their current monthly report. I have gone back to my previous position and Steve Hartley is now back in the role of Manager, Crown Forestry Policy and Regulation Section. Steven and Meagan will be following this up with Forests NSW and will get back to you as soon as possible.

That is all we have so far.

## Bodalla State Forest

*A high-powered spotlight was shone on the tree-sit whilst the assailants axed down the anchor tree-all done in silence*

SEFR inspected Compartment 3043. This was the same contractors who logged Dampier State Forest. SEFR sent this breach report:

14 February 2011

We are currently in compartment 3043 of Bodalla State Forest and have uncovered several potential breaches of the South Coast TSL and EPL.

At the following GPS locations (WGS84) are felled hollow-bearing trees, as pictured in order below:

1. 0233319/5984586
2. 0233278/5984704
3. 0233290/5984728

After traversing around the vicinity of Dump 7, and the section of Rats Head Road between Dump 7 and Wild Horse Creek Road, and 3043/2 Road we have only identified between 6-8 marked H and accompanying marked R trees in total. It would appear that there has been inadequate marking of trees prior to logging throughout this area.

We also identified soil erosion on the snig tracks heading west from the Dump 7 area. It appeared that the crossbanks on the snig track have proceeded to fail during the previous rain events and that sizeable amount of sediment have been mobilised downslope.

We contend that this operation, which began the day the Harvest Plan was approved on the 14 January 2011 - and which was not listed as proposed to be logged in the January 11 monthly report, has not been conducted in accordance with IFOA requirements; and that except for today, is continuing to be conducted in an illegal manner. As such we call for robust regulatory action in the form of the immediate withdrawal of DECCW approval to conduct forestry operations in this compartment.

Two months later, at the behest of concerned neighbours SEFR inspected the compartment again and found more breaches, so sent another report:

18 April 2011

South East Forest Rescue undertook a further inspection of compartment 3043 of Bodalla State Forest today after receiving locally sourced information describing extremely heavy logging around the Rats Head Road area. Upon inspection we duly report several potential breaches of the South Coast TSL and EPL. The compartment is still active with current logging location at Dump 11.

Our traverses today were concentrated around dumps 5 & 6 down along 3043/2 Road and around dump 9 at the junction of Rats Head and Wild Horse Creek Roads, as depicted by the heavy black and red lines on the clipping below.

All GPS coordinates given are in WGS84 format.

A traverse similar to the heavy black line in the map above from Dump 6 going east down a snig track revealed a cross-bank which had given way from the force of the water. See following photos taken at 0234049/5984767.



This failure of the erosion control structure approved by Forest NSW would indicate that the Environment Protection Licence conditions governing snig track drainage were not implemented correctly. We would contend that upon regulatory investigation further breaches of the EPL would be uncovered.

Both traverses around the area resulted in only two marked H trees being present in that section. One of these, at 0233981/5984855 had debris around its base closer than five metres and more than one metre high.

Neither traverse could discover the mapped Glossy-black Cockatoo Feed Tree north-east of Dump 5, but there was found various destroyed Casuarina trees and several hollows in felled crowns encountered during traverses.

From our previous breach report for this compartment we note that the section of Rats Head Road between Dump 7 and Wild Horse Creek Road, and 3043/2 Road had only been found to have between 6-8 marked H and accompanying marked R trees in total. With the four marked trees we identified in our inspection today, this would appear to reiterate that there has been inadequate marking of trees by Forests NSW prior to logging throughout this area in breach of the conditions of the Threatened Species Licence.

We contend again that this operation, which began the day the Harvest Plan was approved on the 14 January 2011 - and which was not listed as proposed to be logged in the January 11 monthly report, has not been conducted in accordance with IFOA requirements and is continuing to be conducted in an illegal manner.

We understand as you indicated in DOC11/8811 dated 15 February 2011 that you are currently investigating our previous Bodalla 3043 complaints and so would wish to add these further complaints to your investigations.

We also note that our prior call for 'robust regulatory action in the form of the immediate withdrawal of DECCW approval to conduct forestry operations in this compartment' was not heeded and that as a consequence more crimes against the environment and the people of NSW had been perpetrated. We trust that the newly formed Office of Environment & Heritage will do its excellent best at achieving meaningful regulatory outcomes for native forest management of the state.

Which was acknowledged the next day with the standard reply. No final determinations have been provided thus far.

In April SEFR again conducted an audit of this compartment and became aware of the following information:

28/04/2011

Dear Sir,

**Re: Fraud of Tasmanian Forest Contractors Exit Assistance Program**

We are reporting to you that a Tasmanian logging company is logging in the foothills of Gulaga Mountain, in Bodalla State Forest Compartment 3043, in southern New South Wales for the State run agency Forests NSW.

It seems that the company, Kasun Logging, received \$825 000 to exit the native forest logging industry.<sup>4</sup> The Tasmanian Forest Contractors Exit Assistance Program provided up to \$17 million for exit assistance to harvest and/or haulage contracting businesses in the Tasmanian native forest harvest and haulage contracting sector who wish to leave the industry.<sup>5</sup> Funding was to be capped at \$750 000, however there was an additional GST bonus.<sup>6</sup>

It is our understanding that a fraud team from the federal Department of Agriculture, Fisheries and Forestry visited Tasmania to conduct interviews over detailed allegations of corruption and rorts.<sup>7</sup>

We would state that we have strong clear evidence that this company has not exited the native forest logging industry.

We would ask that you investigate this situation immediately.

There has been no reply from the Commonwealth.

## **Tallaganda State Forest**

*Access roads must be maintained free of debris and in a trafficable state*

from page 12 of the harvest plan for compartments 2241/41/42, approved 22/2/11

SEFR sent this breach report on Tallaganda Cpt 2240/41:

26 April, 2011

Upon travelling to Tallaganda State Forest Cpt 2240 heading west on Slap Up Road we came upon trees felled/bulldozed over a road which we will call 2241/1 Rd. This road runs north off Slap Up Rd.

The road seems to be the border between Gourock National Park and Tallaganda State Forest.

There are obvious bulldozer marks on the first tree on the road. This tree was a hollow bearing tree and contained obvious hollows. The second tree was a stag. It was bulldozed and then turned and placed butt end to the crown of the first. Ten metres up this road three smaller trees were felled/bulldozed across the road.

The harvest plan for these compartments states:

### **National Parks**

*National Park forms the southern boundary of the planning unit. Slap Up Road and 2241/1 Road form the boundary. A 20m Road maintenance corridor applies along these roads to allow for road maintenance activities. Harvesting is not permitted within the road corridor.*

- *No harvest disturbance is permitted in within National Park.*
- *Access roads must be maintained free of debris and in a trafficable state.*

The Southern Region IFOA TSL Appendix B provides:

*Routine road maintenance means the clearing, scraping or treating of a revegetated road where all of the trees growing on the road have a dbhob of less than 20cm.*

This compartment was not marked up. The access road was not free and certainly was not ‘trafficable’. We state large habitat trees being felled across the road is a breach of the harvest plan and IFOA TSL.

SEFR requests that an immediate investigation be undertaken by OEH of these breaches.

<sup>4</sup> See <[http://daff.gov.au/forestry/national/tfceap/successful\\_applicants](http://daff.gov.au/forestry/national/tfceap/successful_applicants)>.

See <[http://www.themercury.com.au/article/2011/02/18/208081\\_tasmania-news.html](http://www.themercury.com.au/article/2011/02/18/208081_tasmania-news.html)>.

<sup>5</sup> Tasmanian Forest Contractors Exit Assistance Program Grant Program Guidelines November 2010

<sup>6</sup> Tasmanian Forest Contractors Exit Assistance Program Grant Program Guidelines, above n2.

<sup>7</sup> See <[http://www.themercury.com.au/article/2011/02/18/208081\\_tasmania-news.html](http://www.themercury.com.au/article/2011/02/18/208081_tasmania-news.html)>.



**Felled hollow-bearing tree to block road in Tallaganda**

## **Eden IFOA Breaches in Nullica and Bombala State Forests**

14 May 2011

### **Re: Eden IFOA breach of clause 5.11.B.b**

Dear EPRG,

It has come to our attention that two recently prepared Forests NSW harvest plans, namely Nullica 655 and Bombala (Coolungubra) 1325, have been approved in contravention of the provisions of the Eden IFOA.

#### ***5. Description of forestry operations to which this approval applies***

##### ***(11) In this clause:***

***“alternate coupe harvesting” refers to a silvicultural practice carried out in a compartment of State forest having the following elements:***

##### ***(B) in any one harvesting operation:***

***(b) the area logged comprises no more than 60% of the net harvestable area of the compartment in existence immediately prior to logging, and***

Upon analysis, it is found that both of these harvest plans have approved the logging of an area greater than the sixty percent allowed.

**Breach 1: Nullica SF cpt 655** (plan approved 20/4/11)

The area stated to be logged in the harvest plan is:

Area Identification and Yield Estimates						
State Forest	Compartment/s	Coupe/s	Region	Management Area	Certification	Harvest Plan ID
Nullica	654 655	2 1,4,5,6	Southern	Eden	AS4708:2007 ISO 14001	3733

	Cpt 655	Cpt 654	Total
Event ID	14586	14585	N/A
Gross Area (ha)	206.49	188.11	394.71
Net Harvest Area (ha)	121.84	95.08	216.9
Estimated Yield Pulp (t)	3500 t	4500 t	8000 t
Estimated Yield Sawlog (m3)	1500 m3	1000 m3	2500 m3

The first fatal error is that the ‘Area Identification’ section (as pasted above) of the harvest plan has the coupes the wrong way around. As it clearly depicts on the Operational Map, compartment 654 has coupes 1,4,5, and 6, not compartment 655. Further, Forests NSW have merged coupes 2 & 3 in compartment 655 into one coupe, thereafter calling that coupe 2. This error saps the credibility of this document markedly.

The second error relates to the proposed logging area. The net harvest area information given by the Bureau of Rural Science for this compartment is:

cpt 655 Gross Area	206.12681 ha
cpt 655 Net Area	176.97302 ha

Sixty percent of the BRS net area equals 106.18381ha, which means the harvest plan has planned to log over 15 hectares more than the Eden IFOA clause 5.11.B.b allows.

**Breach 2: Bombala(Coolungubra) SF cpt 1325 (plan approved 21/4/11)**

The area stated to be logged in the harvest plan is:

Area Identification and Yield Estimates						
State Forest	Compartment/s	Coupe/s	Region	Management Area	Certification	Harvest Plan ID
Bombala	1325	1, 3 (part) & 5	Southern	Eden	AS4708:2007 ISO 14001	3729
					Cpt 1325	
					Total	
					14579	
					N/A	
					199	
					199	
					127.2	
					127.2	
					14,545 t	
					14,545 t	
					3,014 m3	
					3,014 m3	

Yet, the area information given by the Bureau of Rural Science for this area is:

cpt 1325 Gross Area	198.8722 ha
cpt 1325 Net Area	181.4187 ha

Sixty percent of the BRS net area equals 108.8512ha, which means the harvest plan has planned to log over 18 hectares more than the Eden IFOA clause 5.11.B.b allows.

As such we contend that both these compartment must not be allowed to proceed with any forestry operations due to this planning breach. Forests NSW must issue new harvest plans that are correct in all material aspects before any legal forestry operations can commence.

We are yet to be notified of the OEH determination of these matters.

## Burning and Koalas in Bodalla State Forest

SEFR attempted to halt a FNSW burn as it was in breach of the Southern TSL:

19 May 2011

## Re: IFOA and TSL BREACHES BODALLA STATE FOREST

Forests NSW announced on ABC South East that they were planning to burn Bodalla State Forest by dropping incendiary devices from a helicopter this morning. It is our understanding that this type of burning is termed 'aerial ignition burning'. We spoke to Julian Armstrong of the FNSW Batemans Bay regional office. He informed us the burn would be near Reedy Ck Rd. We requested that this plan of burning be halted. This plan states the burn will cover Compartments 3061, 3062 and 3063.

When we did not obtain relief we rang Daniel Tuan the regional manager and requested the halting of this burning.

Koala records appear in Compartments 3065 and 3066 dating from Forests NSW harvest plans approved 2001.

In the Southern region where a koala record appears in or within two kilometres of compartments this triggers cl.6.11 of the IFOA Appendix B Threatened Species Licence.

### 1. TSL Breach: Southern IFOA TSL 6.11

The Southern TSL states:

#### *6.11 Koala *Phascolarctos cinereus**

*For all specified forestry activities:*

*a) When koalas or evidence of koalas are detected in a compartment, habitat will be retained according to this Condition. Habitat retained under this condition must be mapped in the Harvesting Plan.*

*h) Browse Tree Retention*

*iii. Specified forestry activities and post-logging burning must minimise damage to retained Koala browse trees. The potential for damage should be minimised by techniques of directional felling. Felled heads must be flattened or removed from five metres of stems retained to meet this prescription.*

Hazard reduction is a 'specified forestry activity' as defined in the Southern TSL Appendix B, page 8:

*"Specified forestry activities" means:*

- i. Tree felling or killing (excluding miscellaneous forestry operations);*
- ii. Construction and operation of log dumps;*
- iii. Construction and operation of snig tracks;*
- iv. Road construction (NB. routine road maintenance is not a specified forestry activity);*
- v. Road re-opening;*
- vi. Commercial collection of firewood;*
- vii. Bush fire hazard reduction work;*

### 2. TSL Breach: Southern IFOA TSL 8.8.10

In our view this action triggers the Southern IFOA TSL 8.8.10 Koala prescriptions. It is our understanding that Forests NSW have not undertaken adequate koala surveys for this area. Further as there are previous records we state this habitat is defined as 'core habitat'.

#### *Southern IFOA TSL 8.8.10*

*Where there is a Koala record within two kilometres of a compartment boundary, or local knowledge indicates that koalas are likely to be present, the following surveys must be implemented:*

*a) Survey Method*

*i. Where habitat within the compartment has been identified as core Koala habitat by the Modelled Areas of Habitat Significance for Vertebrate Fauna in the Southern CRA, Condition 8.8.10 b) Transect Survey with Quadrats must be carried out in the modelled habitat.*

### 3. IFOA Breach: Southern IFOA cl.44

This burn has not appeared on FNSW plan of burning operations as aerial ignition, only as broad area ground ignition.

#### *44. Planning burning operations*

##### *Annual plan of burning operations*

*(1) SFNSW is to prepare an annual plan ("annual plan of burning operations") in relation to proposed burning for the purposes of bush fire hazard reduction or regeneration ("burning operations") in the Southern Region.*

*(2) The annual plan of burning operations is to specify the following matters in respect of the 12 months to which the plan relates:*

*(a) the location and timing (including season and frequency) of proposed burning operations by reference to State forest name and compartment number or other identifying particulars (in the case of Crown-timber lands other than State forests); and*

- (b) any other matter relating to the matters set out in paragraph (a) that DoP informs SFNSW is to be specified.
- (3) Burning operations may only be carried out in the locations and at the times specified in the annual plan of burning operations.
- (4) SFNSW may, from time to time, amend the annual plan of burning operations, and where it does so, burning operations may be carried out in accordance with the amended plan.

Further it is our understanding that Forests NSW must carry out a comparative assessment of the potential impacts on the environment.

#### 4. IFOA Breach: Southern IFOA cl.44(5)

##### *Assessment prior to burning*

- (5) Prior to burning operations being carried out on any tract of forested land in the Southern Region, SFNSW must carry out a comparative assessment of the potential impacts on the environment of proceeding with the operations and the potential impacts on the environment of not proceeding with the operations.
- (6) Without limiting the generality of subclause (5), in carrying out the comparative assessment, SFNSW must consider the frequency and intensity of any fires (including wildfires) that have occurred on the relevant tract of forested land.

#### 5. IFOA Breach: Southern IFOA cl.44(7)

##### *Site specific plan of burning operations*

- (7) Subject to subclause (13), prior to burning operations being carried out on any tract of forested land in the Southern Region, SFNSW must prepare a plan in respect of the tract ("site specific plan of burning operations") which specifies the following:
  - (a) the measures to be taken to minimise any adverse impacts of the operations on the environment and the risk of wildfire resulting from the operations; and
  - (b) the steps to be taken to monitor the impacts of the operations on the environment.
- (8) SFNSW must give effect to the site specific plan of burning operations.
- (9) SFNSW may amend the site specific plan of burning operations (wholly or in part), and where it does so, SFNSW must give effect to the plan as amended and subclause (8) no longer applies.
- (10) To the extent of any inconsistency between this approval and a site specific plan of burning operations (including an amended site specific plan of burning operations), this approval prevails.

#### 6. TSL Breach: Southern TSL 5.16

To our knowledge there has been no Bush Fire Risk Management Plan undertaken for this area.

##### *Southern TSL 5.16 Burning*

When fulfilling its responsibilities under the Rural Fires Act 1997, SFNSW must take account of the following principles:

- a) Hazard reduction work must take account of wildfire history, intensity, frequency and seasonality, and reflect the ecological requirements of any threatened species, or their habitat, known or likely to occur in the area.
- b) Hazard reduction work must be conducted in a manner which promotes and maintains an understorey mosaic which includes significant areas of dense understorey vegetation.
- c) Hazard reduction work must be conducted in a manner which minimises the impact on large fallen logs (greater than 40 centimetres diameter and greater than five metres in length).

(Note: It is acknowledged that hazard reduction work will be covered by a Bush Fire Risk Management Plan and that this plan is required to take into account the impact of burning activities on threatened species including areas where fire intervals are less than five years.)

#### 7. Fuel Management Plan Breach: Model Regional Fuel Management Plan (6.5)

The Model Regional Fuel Management Plan states that modelled habitat must not be deliberately ignited. It also states that Ridge and Headwater Habitat must not be deliberately ignited.

##### *6.5 Corporate Prescriptions in IFOA areas*

Where fuel management burning operations are carried out within IFOA areas, a number of features and their exclusion/protection zones require special treatment. Prescriptions for these features/zones are listed in Table 11.

##### *Ridge and Headwater Habitat*

*Ridge and Headwater Habitat will not be deliberately ignited.*

##### *Modelled Habitat*

*Modelled Habitat will not be deliberately ignited.*

Of note is that there is an application lodged with the Commonwealth (DEWHA) under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) s.9 and s.10. The area under investigation is in the burning drop zone. Further, there is concern as the last time FNSW undertook burning in the area the fire 'jumped containment lines' and burned the whole of Gulaga Mountain.

And closely followed with this detailed breach report:

26 May 2011

[edited 28May2011 to correct mapping]

**Re: Southern South Coast sub-region IFOA Southern RFA**

**Koala habitat logging breaches in Bodalla State Forest**

Upon review of what information we are able to obtain from Forests NSW, OEH and independent sources thus far, our level of concern regarding the Southern South Coast sub-region IFOA Southern RFA forestry operations in the Bodalla State Forest and its resultant impacts on koala habitat and what actual koalas may still be persisting in the region has deepened considerably.

We contend that Forests NSW forestry operations have been, and currently are being, conducted in contravention of the Integrated Forestry Operations Approval South Coast sub-region Threatened Species Licence. As a matter of urgency, we call on all specified forestry activities and forestry operations in Bodalla State Forest to be suspended forthwith, and that a full and penetrating investigation be undertaken into these matters by the Office of Environment & Heritage.

As pursuant to the IFOA TSL condition:

**8.8.10 Koala survey**

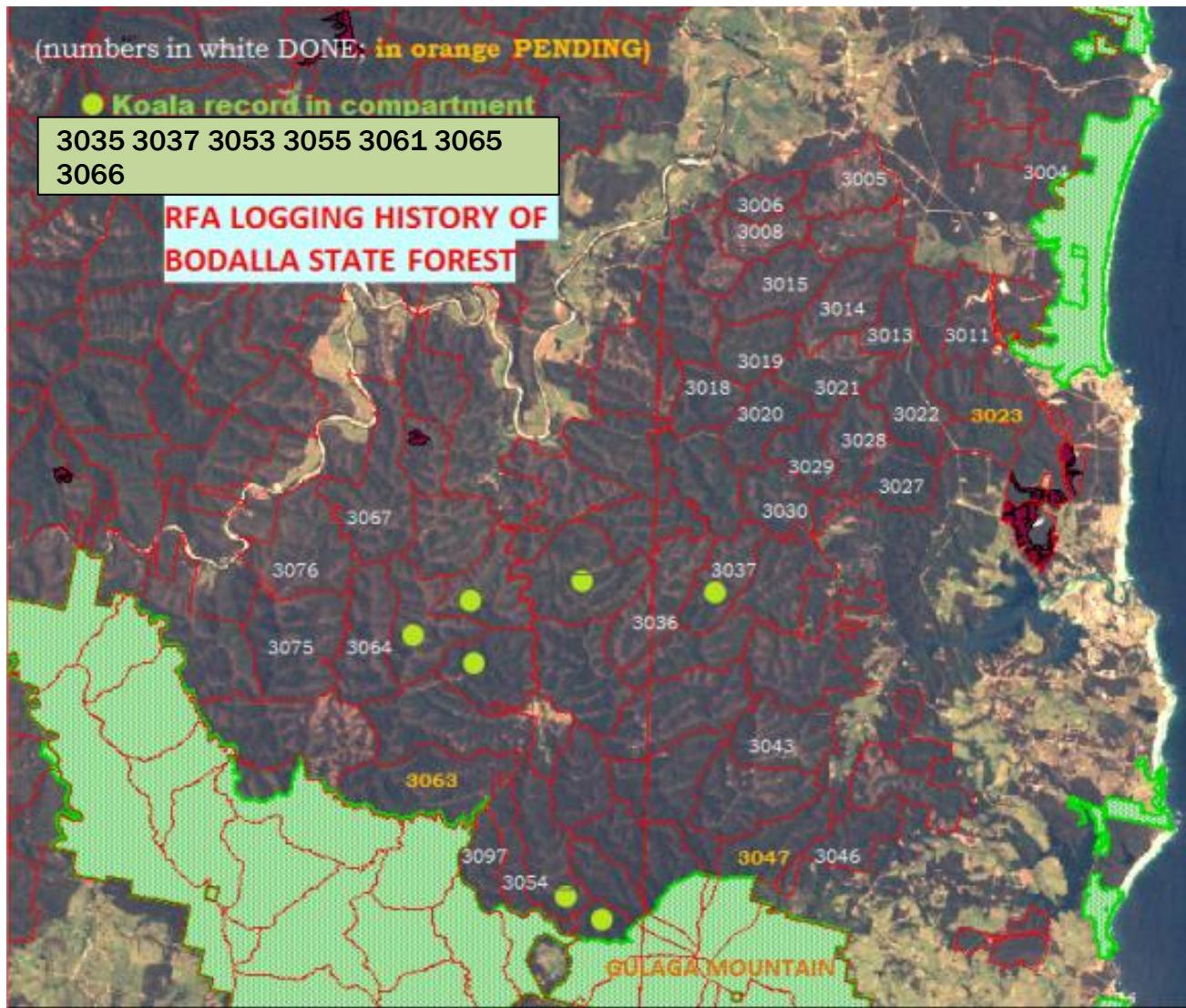
*Where there is a Koala record within two kilometres of a compartment boundary, or local knowledge indicates that koalas are likely to be present, the following surveys must be implemented.*

**a) Survey Method**

- i. Where habitat within the compartment has been identified as core Koala habitat by the Modelled Areas of Habitat Significance for Vertebrate Fauna in the Southern CRA, Condition 8.8.10 b) **Transect Survey with Quadrats** must be carried out in the modelled habitat.*
- ii. Where habitat within the compartment has been identified as intermediate Koala habitat by the Modelled Areas of Habitat Significance for Vertebrate Fauna in the Southern CRA, Condition 8.8.10 c) **Transect Survey** must be carried out in the modelled habitat.*
- iii. Where habitat within the compartment has been identified as marginal habitat by the Modelled Areas of Habitat Significance for Vertebrate Fauna in the Southern CRA, Condition 8.8.10 d) **Traverse Survey with Quadrats** must be carried out in the modelled habitat.*

The best available information we have been able to gather thus far gives this map following which notes koala records in the following compartments:

3035 3037 [started 13/10/05 - suspended 15-Dec-05 (according to May2006 IFOA monthly report)]  
3053 3055 3061 3065 3066



As this map image shows, there have been several compartments in which forestry operations have been conducted that fall within the two kilometre zone, or where local knowledge would have concluded that koalas were potentially likely to be present. The koala records under consideration here start in 1995, the newer ones appear in 2001, the year the Southern Regional Forest Agreement commenced.

Our latest information from OEH Wildlife ATLAS shows the following:

FNSW reported koala records In Eurobodalla, as held by OEH Wildlife ATLAS @ 20/5/11.							
1.	06/02/1976	-36.344630709	149.98068709	55	767500	5973500	pp Dignams Creek
2.	01/01/1980	-36.35967269	149.98676794	55	768000	5972000	pp Dignams Creek
3.	01/10/1982	-36.29466857	149.95534167	55	765400	5979300	cpt 3097 now NP
4.	01/01/1985	-36.35967269	149.98676794	55	768000	5972000	pp Dignams Creek
5.	28/02/1995	-36.28867268	149.97904819	55	767550	5979900	cpt 3053
6.	14/02/1996	-36.2962144	149.98378821	55	767950	5979050	cpt 3055
7.	05/01/2001	-36.22858883	149.94895811	55	765050	5986650	cpt 3065
8.	05/01/2001	-36.21418353	149.93006727	55	763400	5988300	cpt 3065
9.	05/01/2001	-36.22520366	149.93270314	55	763600	5987070	cpt 3065
10.	05/01/2001	-36.22535647	149.93382112	55	763700	5987050	cpt 3065
11.	05/01/2001	-36.2258748	149.93105981	55	763450	5987000	cpt 3065

[note: all 5/1/2001 records also show at same locations on 28/05/2002.]

There is no mention here of the koala record in compartment 3037. This is an investigation point that needs explaining. The relevant FNSW obligation applicable under the TSL is condition 4.1.e which states:

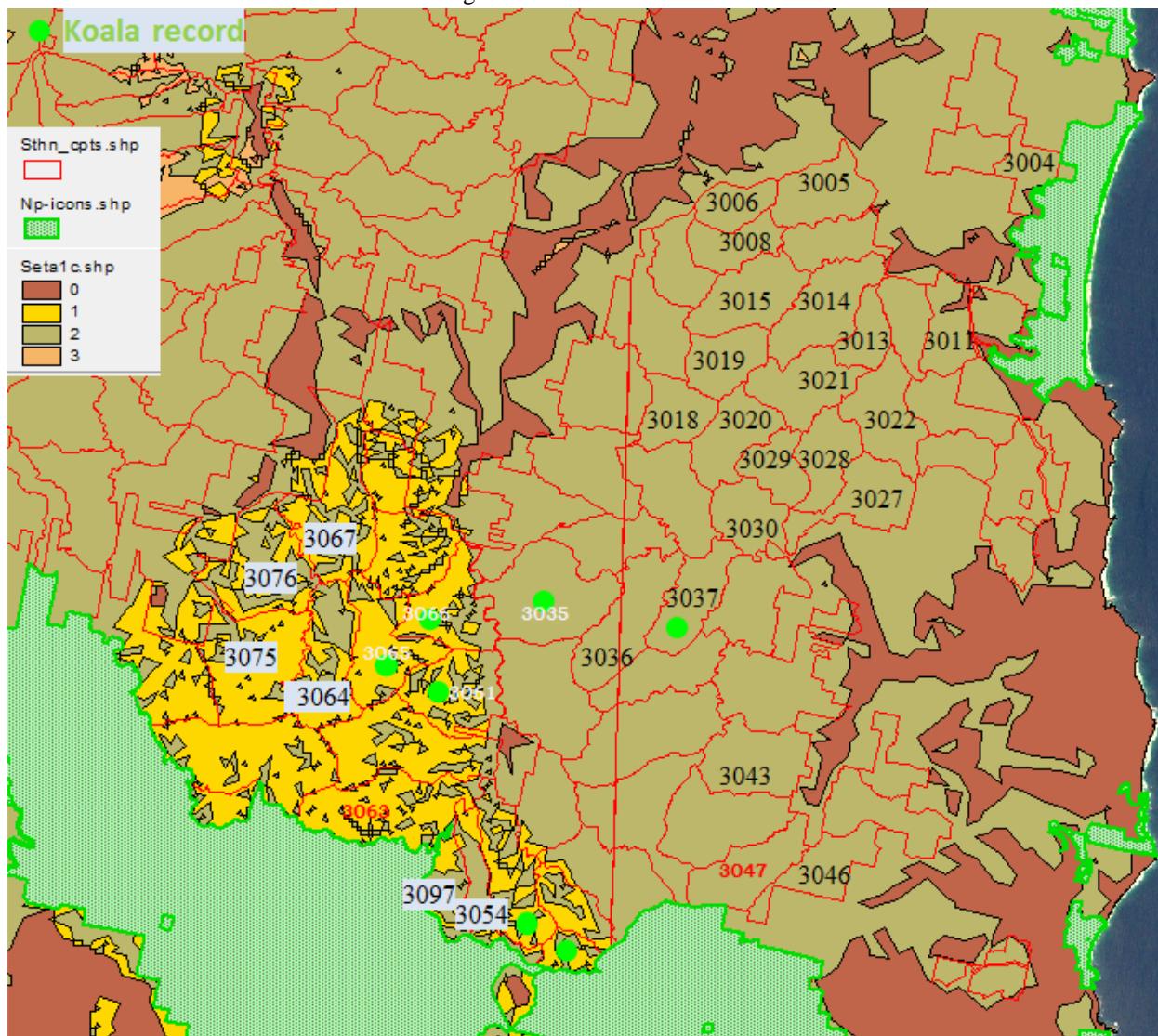
#### 4.1 Provision of Data to the NPWS

SFNSW must provide the NPWS with:

e) Records suitable for the NPWS Atlas of NSW Wildlife for all threatened species recorded on SFNSW estate. These must be forwarded by agreed electronic means to NPWS Head Office GIS Unit at three monthly intervals.

Obviously the process has failed and gives reasonable cause for us to contend that this is another breach of the IFOA and RFA.

At this point, with a fresh update on actual modelled koala habitat mapping of the region provided by OEH, we see the extent of koala habitat for the Bodalla State Forest region:



As per the legend: 0=non koala habitat; 1=core, 2=intermediate, and 3=marginal koala habitat.

#### Bodalla compartments logged under the RFA regime since 2005

From our records, the RFA logging history of Bodalla State Forest is listed in the following table.

cpt	operation one	operation two
3027	2/11/01 - 30/4/02	21/6/05 - 22/8/05
3022	20/2/02 - 20/12/02	6/2/03 - 23/3/03
3005	17/6/02 - 27/12/02	
3006	17/6/02 - 27/12/02	
3008	17/6/02 - 27/12/02	
3054	20/6/02 - 17/12/02	
3097	20/6/02 - 17/12/02	
3015	30/12/02 - 24/5/04	
3028	28/4/03 - 2/2/04	29/11/04 - 23/5/05

3029	23/2/04 - 6/7/04	18/10/04 - 9/3/05
3019	21/4/04 - 26/11/04	
3064	6/2/03 - 26/2/03	18/1/05 - 13/5/05
3021	2/2/05 - 15/6/05	24/2/11 - current
3036	10/3/05 - 12/10/05	
3018	12/9/05 - ??	
3037	13/10/05 - 15/12/05	
3004	6/3/06 - ??	
3030	23/10/06 - ??	
3046	14/5/07 - 19/9/07	
3011	30/5/07 - ??/5/08	
3075	22/10/08 - 8/12/08	
3076	22/10/08 - 8/12/08	
3067	10/12/08 - 27/3/09	
3020	12/1/09 - ??/4/09	
3013	7/3/09 - 7/7/10	
3014	7/6/10 - 28/2/11	
3043	14/1/11 - current	

Thirty three separate forestry operations have been conducted in the period, two of which are currently active. As the above map clearly depicts, all these compartments fall within mapped modelled koala habitat, either core, or intermediate, even the most coastal compartment, 3004 on the shore of Lake Brou. As such, under the TSL, all of these compartments require transect surveys searching for signs or actual koalas before any specified forestry activities can commence.

Twenty seven harvesting plans were approved for these operations, we have not been able to review all of these harvesting plans (22/27 reviewed) due to difficulties with Forests NSW provision of information. However we contend that all of these harvest plans which do not consider koalas at all must be considered as having been in breach of the TSL 8.8.10 prescriptions and therefore conducted illegally.

We contend further that the current forestry operations in compartment 3043 and 3021 are also in breach of the TSL and are being conducted illegally. There are penalty units applicable for this behavior.

This legacy of breaches of the IFOA and RFAs is of very grave concern. There has, on this evidence, been systemic due diligence errors committed by Forests NSW which must be fully investigated and remedied. For this negligence to have occurred for such a notable species gives rise to heightened concerns for other forest-dependent species of the region. We call on the strongest possible action from the regulator on this issue. We reiterate our call that all current forestry operations must be suspended immediately, and any future operations be disallowed.

There is no resolution to these latest Bodalla breaches at this stage.

### **Bodalla State Forest Cpt 3043 Revisited**

In July SEFR had cause to audit Cpt 3043 again:

15/07/2011

Upon inspection of Bodalla State Forest Compartment 3043 on 15 July 2011 we have found that even though the operation is nearly finished there is still a lack of marked up habitat and recruitment trees. Of note is that the compartment is being burned while operations are in progress.

#### **Breach of TSL r.5.4(d)**

In many places there has been no exclusion zone for what is clearly rainforest. Further the exclusion zone around both the mapped rainforest and the unmapped rainforest has possibly been breached in a number of places.

*d) A 20 metre wide exclusion zone must be implemented around all areas of Warm Temperate Rainforest and Cool Temperate Rainforest.*

*Prohibitions on activities in Rainforest and Rainforest exclusion zones*

#### **Breach of TSL r.5.4(e)**

In a number of places the rainforest area has been breached for example at 56H0234704/UTM5985054, 56H0234711/UTM5985033, 56H0234690/5984850 (photo 117).

*e) The following rules apply to any area that is, or is within, Rainforest or an exclusion zone established around Warm Temperate Rainforest or Cool Temperate Rainforest ("a Rainforest exclusion zone"), except as varied by this condition (being condition 5.4) or condition 5.20 (relating to beekeeping):*

- i. specified forestry activities are prohibited in Rainforest and Rainforest exclusion zones;*
- ii. no tree is to be felled into Rainforest or a Rainforest exclusion zone. If a tree falls into Rainforest or a Rainforest exclusion zone, then no part of the tree can be removed;*
- iii. harvesting machinery is not to be used within Rainforest and Rainforest exclusion zones.*

There is also a log at 56H0234726/5984860 which is questionable.(Photo 116)

#### **Breach of EPL Schedule 4(6)**

We state that there was incursion into the rainforest and buffer zone for the second order stream at 56H0234791/UTM5984905 (GDA/UTM UPS) (Photo 115)

#### ***DRAINAGE FEATURE PROTECTION FOR NATIVE FORESTS***

- 6. Filter strips must be retained along all drainage lines, prescribed streams and watercourses and must have a minimum width in accordance with Table 1.*

We would also state that this obvious rainforest and failure to mark up is a breach of the Sthn TSL 5.4:

- b) The on ground identification and location of Rainforest and exclusion zones established around Warm Temperate and Cool Temperate Rainforest, must be undertaken before or during prelogging mark-up.*
- c) The location of all Rainforest and exclusion zones established around Warm Temperate and Cool Temperate Rainforest identified in accordance with condition 5.4 b) must be shown on a map at the same scale as the harvesting plan operational map and included in the compartment history planning documentation.*

The logging contractor stated he had no need to read the IFOA. There has been no response from OEH thus far.

#### **Bermagui SF Cpt 2001**

FNSW began logging of Bermagui SF Compartment 2001 in June 2011 immediately putting in place a prohibited area zone making it illegal for SEFR to conduct audits. The logging contractor is the same contractor who logged Glenbog and Yambulla. Nevertheless:

7 July 2011

Dear EPRG,

Regarding the current forestry operations in Bermagui State Forest compartment 2001, we have information we wish to report concerning allegations of illegal logging having occurred. GPS points given below are in WGS84 format. The map extract below indicates the area surveyed.

1. Incorrect marking up of the Forest Management Zone 3aC Exclusion (Catchment 50m width from mean high water mark) adjacent to Black Lagoon (Batemans Marine Park) resulting in tree removal from within the 50 metre protection zone. At point 0235426/5968284 is a stump. A walk directly from that stump to the edge of Black Lagoon to point 0235385/5968235 was measured out to be less than 50 metres.
2. Not very far away from this above stump is a retained R tree with debris within 5 metres and greater than 1 metre high. Eden TSL 5.6.k.ii breach. [Photo 1]
3. At point 0235144/5968520 is a retained H tree with no obvious hollows, very poor canopy, and of a smaller size class than what would have been available. This H tree also had debris within 5 metres and greater than 1 metre high. Eden TSL 5.6.f.iv and 5.6.k.ii breaches. [Photo 2]
4. At point 0235002/5968520 is a retained R tree with debris within 5 metres and greater than 1 metre high. Eden TSL 5.6.k.ii breach. [Photo 3]
5. At point 0235154/5968488 is what seems to be a logging incursion into an unmapped rainforest community. The vegetation consisted of predominantly Grey Myrtle with Lilli Pilli, and scattered eucalypts as overstorey. The rainforest canopy was evidently well above head height and well established prior to machine entry. Eden TSL 5.4 breach.

These breaches of the Eden IFOA are more evidence of the systemic failure of logging contractors under FNSW control to comply with their licence conditions.

We contend that on further inspection of this compartment other breaches of the IFOA conditions would be found.

We request regulatory action on this matter and that the Minister is notified of these breaches.

SEFR also noticed an administrative breach in the harvest plan. We requested an explanation from the planning manager of FNSW who adamantly stated there was no breach and laughingly dismissed our evaluation. We submitted a breach report to OEH:

14 July 2011

We write to bring to your attention the following matters:

**1. Eden EPL Breach**

We note our telephone conversation with your department and submit this report in conjunction.

The harvest plan operation map is different to the relevant Land Information Centre topographic map in contravention of the Eden EPL:

***Schedule 1 Part B***

***OPERATIONAL MAP REQUIREMENTS (Condition 8)***

***Information to be provided on the harvesting or roading operational map***

*The following environmental and operational factors must be presented by State Forests on an operational map for each compartment or roading area, as required by conditions 8 and 9 of this licence. The harvesting or roading operational map must be presented at a map scale of 1:15 000 or larger.*

***A. Operational Area***

*A1. net harvest area;*

*A2. non-harvest area;*

*A3. areas of inherent hazard level 4 (indicative boundary);*

*A4. compartment or roading area boundaries;*

*A5. coupe boundaries (if applicable);*

*A6. State Forests boundary (if applicable);*

A7. areas of plantation (only applicable to areas of mixed native forest and plantation operations);

A8. areas of mass movement hazard.

#### **B. Drainage Feature Protection**

B1. location of watercourses and drainage lines as marked on a 1:25 000 topographic map;

B2. filter strip widths for all identified watercourses and drainage lines within the compartment or roading area;

B3. location of swamps and wetlands as identified on a 1:25 000 topographic map (as supplied by the Land Information Centre).

#### **SCHEDULE 2 (Conditions 9; 11; Schedules 1, 3,4& 5)**

#### **Factors to be taken into account when planning scheduled and non-scheduled forestry activities Part A: Information to be assessed during the pre-operational planning and assessment of scheduled and non-scheduled forestry activities**

*The following environmental and operational factors must be assessed by State Forests during the planning of forestry activities in each compartment or roading area, as required by conditions 9 and 11 of this licence. State Forests must be able to demonstrate the manner in which the relevant factors were considered during the pre-operational planning process, and must identify special site-specific conditions to mitigate against water pollution associated with scheduled or non-scheduled forestry activities. This planning documentation, including the special site-specific conditions that have been developed to mitigate against water pollution must be kept on file in the Regional Office.*

#### **ENVIRONMENTAL FEATURES**

##### **E. Hydrology**

E1. location of drainage lines, watercourses, swamps and wetlands;

E2. drainage pattern and density;

E3. stream order as determined according to the methodology specified in part B of this Schedule;

E4. stability of drainage lines and watercourses;

E5. catchments to which drainage features within the compartment or roading area flow, including the delineation of catchment boundaries; and

E6. forestry activities which were carried out in the last two years or are proposed to occur in the next two years in the catchment (both immediate and larger catchments). This must be documented on a map by locating the compartments and indicating the type of forestry activities that occurred or are proposed to occur.

#### **2. Consultation: Eden TSL**

Forests NSW allege that all the necessary consultation was undergone a couple of years ago. We contend that this is not the case. WIRES, NANA and other conservation groups were not consulted in any due diligent manner or following due process at the time, nor at present.

##### **8.8.12. Koala survey**

*Where a Koala has been detected within two kilometres of a compartment boundary in the period since 1980, or local knowledge indicates that koalas are likely to be present, the following survey regimes and habitat protection measures must be implemented.*

*a) Consultation with the local community should be undertaken during the harvest planning stage. As a minimum this should include contact and exchange of information with neighbours, local animal welfare and conservation groups.*

### **3. The Country Energy issue: Harvest Plan Variation Eden IFOA**

We contend that the harvest plan has not been adhered to in that the Visual Protection zone along the Wallaga Lake - Bermagui Road has been logged in excess of the stipulated canopy removal rate.

#### ***Eden IFOA***

##### ***23. Site specific plans of harvesting operations***

- (1) Before any harvesting operation is carried out, SFNSW is to prepare a site specific plan in respect of the harvesting operation.*
- (2) The plan is to contain one or more maps identifying the following:*
  - (a) the location of the proposed harvesting operation, and where this is a State forest, the relevant State forest name and compartment number; and*
  - (b) any area within this location where harvesting is not to be carried out, including any area within which harvesting is prohibited under this approval.*
- (5) A harvesting operation should only be carried out in accordance with a plan prepared under this clause. However, if a harvesting operation varies from a plan prepared under this clause, then SFNSW must:*
  - (a) prepare a document that sets out the reason for such a variation; and*
  - (b) amend the plan, or prepare a document that sets out how the harvesting operation varies from the plan and keep this document with the plan.*
- (6) To the extent of any inconsistency between this approval and a plan prepared under this clause, this approval prevails.*

In a conversation with a local resident the SFO indicated that it was he that decided what forestry operations should be conducted in the zone adjacent to the FMZ7 section of the compartment:  
Thank you for investigating these concerns we raise on behalf of community members.

SEFR has had response from OEH on breach 1 of the second report in that FNSW has been made to amend the harvest plan.

#### **Buckenbowra SF Cpt 533/534**

SEFR audited Buckenbowra state forest west of Mogo, another icon forest, on 25/7/11. This is the same company that logged Mumbulla, however not the same crew:

We write to report RFA, IFOA and Threatened Species Licence logging breaches in the abovementioned state forest compartments. GPS unit was set at AGD format.

#### **BREACH 1: TS 2.1.c & d, and 5.4.**

##### ***2.1 General***

- c) All specified forestry activities and miscellaneous forestry operations must be conducted in accordance with the conditions of this licence.*
- d) All specified forestry activities and miscellaneous forestry operations to which this licence applies must be carried out in a competent and reasonable manner.*

##### ***5.4 Rainforest***

- a) At the time of harvest planning, all known locations of Rainforest and exclusion zones to be established around Warm Temperate and Cool Temperate Rainforest, must be shown on the harvesting plan operational map.*

*(Note: known locations of Rainforest must include CRAFTI rainforest.)*

- b) The on ground identification and location of Rainforest and exclusion zones established around Warm Temperate and Cool Temperate Rainforest, must be undertaken before or during prelogging mark-up.
- c) The location of all Rainforest and exclusion zones established around Warm Temperate and Cool Temperate Rainforest identified in accordance with condition 5.4 b) must be shown on a map at the same scale as the harvesting plan operational map and included in the compartment history planning documentation.
- d) A 20 metre wide exclusion zone must be implemented around all areas of Warm Temperate Rainforest and Cool Temperate Rainforest.

The first area inspected was adjacent and to the east of Dump 1 on the Operational Map, following a snig track that ran easterly downhill towards the mapped Rocky Outcrop.

The logged area ended at about 0232490/6048498 and was before encroaching on the mapped Rocky Outcrop. It became apparent though during the transect that there had been damage to unmapped rainforest communities. These rainforest elements such as tree ferns, cabbage tree palms, sassafras etc should have been protected from disturbance.

## **BREACH 2: TSL 2.1.c & d, 3.c, and 5.2.**

### **3 Planning Documentation**

- c) The Harvesting or Operational Plan must contain the Site-specific Conditions relevant to the area of operations as approved by and provided in writing by NPWS (as per Condition 1.2 of this licence).

### **5.2 Compartment Mark-up Surveys**

- a) An adequately trained person must conduct a thorough search for, record and appropriately mark the following threatened and protected species features during the marking-up of a compartment.
  - v. Latrine and den sites of the Spotted-tailed Quoll;
  - vi. Distinctive scats (e.g. Spotted-tailed Quoll, Koala);
- b) Searches for threatened species features must be conducted within that portion of the net logging area where harvesting will occur, and within 50 metres outside this area.
- c) Harvesting operations are prohibited in areas which have not been subject to compartment markup surveys.
- d) Where any of these features are found, the feature must be recorded, the Harvesting Plan (including the Operational Map) must be amended accordingly and the appropriate Condition applied.

A possible Spotted-tailed Quoll scat located on snig track running off Dump 1 at 0232173/6048728. The harvest plan notes records nearby but not within the compartments. We contend that FNSW surveying is inadequate.

## **BREACH 3: TSL 2.1.c & d, and 5.6.g.ii.**

### **5.6 Tree Retention**

*The following condition must be applied within the non-regrowth zone:*

#### *g) Protection of retained trees*

- i. When conducting specified forestry activities and post-logging burning, damage to trees retained under conditions 5.6 a), 5.6 b), 5.6 c), 5.6 d), 5.6 e) and 5.6 f) of this licence must be minimised to the greatest extent practicable. During harvesting operations, the potential for damage to these trees must be minimised by utilising techniques of directional felling.
- ii. In the course of conducting specified forestry activities, logging debris must not, to the greatest extent practicable, be allowed to accumulate within five metres of a retained hollow-bearing tree, recruitment tree, stag, Allocasuarina with more than 30 crushed cones beneath, eucalypt feed tree, or Yellow-bellied Glider or Squirrel Glider sap feed tree.

*Logging debris within a five metres radius of retained trees must be removed or flattened to a height of less than one metre. Mechanical disturbance to ground and understorey must be minimised to the greatest extent practicable within this five metres radius.*

*Habitat and recruitment trees must not be used as bumper trees during harvesting operations.*

It was discovered that there is a H Tree with debris and no obvious hollows directly adjacent to Dump 1.

## **BREACH 4: TSL 2.1.c & d, and 5.4.**

South of Dump 1 is a patch of mapped rainforest that is marked without the requisite 20 metre buffer and has consequently suffered logging damage contrary to TSL condition 5.4.

## **BREACH 5: TSL 2.1.c & d, 5.11.**

### *5.11 Rocky Outcrops and Cliffs*

*a) Specified forestry activities are prohibited within areas of rocky outcrops and cliffs.*

*b) In addition, exclusion zones of at least 20 metres wide must be implemented around all rocky outcrops more than 0.1 hectare (approx. 30m x 30m), and all cliffs.*

*(Note: it is not intended to exclude SFNSW from all areas that have a scattered or stony or rocky ground cover, only those areas where rocks and exposed boulders cover greater than 70% of at least a 0.1 hectare area. Those areas that fall within the definition of Rocky Outcrops and Cliffs are considered to contain likely habitat for threatened flora and fauna.)*

At the western extremity of the logging area we contend there to be a logged unmapped Rocky Outcrop. The area in the map section below with red lines through is the general vicinity. The logged outcrop meet the definition in extent and greater than 70% coverage. There has been no exclusion zone implemented for this rocky outcrop.

## **BREACH 6: TSL 2.1.c & d, and 5.6.g.i.**

*During harvesting operations, the potential for damage to these trees must be minimised by utilising techniques of directional felling.*

A headless H tree is located at 0231740/6048271.

## **BREACH 7: TSL 2.1.c & d, and 5.4.**

More unmapped rainforest damage at 0231959/6048100 and at 0231976/6048086.

## **BREACH 8: IFOA.**

We would contend also that there are evident canopy retention issues within the logged area, but realise that FNSW would argue that over the tract there has been 50% or more canopy retained.

Once again we find that an area of native forest that should have been included in the CAR reserve, had the RFA been conducted in good faith, has been given the woodchip treatment. The rainforest aspects of this logged zone give all the more reason for concern that this area of nationally significant high conservation value forest ecosystem has been severely damaged for many years to come. We request regulatory action on this matter.

## **Miscellaneous**

We raised questions on 14/9/10 regarding our concerns about cattle grazing in the region:

Good morning,

As 'a review of NSW Forest Agreements and IFOAs has commenced' could you please inform us of the status of the FNSW Grazing Management Plans. Under the TSL:

### **5.15 Grazing**

a) The areal extent of grazing authorities issued by SFNSW must not be extended except where they fulfill SFNSW responsibilities under the Rural Fires Act 1997.

b) Grazing Management Plans for all SFNSW estate subject to domestic grazing must be prepared by the first five yearly review of the Integrated Forestry Operations Approval. Grazing Management Plans must consider the habitat

requirements of threatened species and include management actions to protect threatened species and their habitats.

SFNSW should consult with NPWS during the preparation of these Plans.

Are these plans available yet?

OEH has informed on 23/9/10 us that:

The Department of Environment, Climate Change and Water are currently consulting with Forests NSW with a view to completing the plans you have requested. Once completed by Forests NSW the regional grazing plans will be made publicly available, as per the requirements of the Southern and Eden Integrated Forestry Operations Approvals.

FNSW response on 2/3/11 regarding sustainable yield audits:

In regard to your inquiry on the comparison of harvest results with yield estimates that was due in February 2011. I am advised that recent changes to the yield estimate methodology have meant that this work will take an additional one to two months to complete. This work will be made available on the website when it is finalised.

FNSW response on 4/3/11 regarding ESFM plan reviews:

The ESFM review has been delayed due to the delay in the completion of the Regional Forest Agreement (RFA) and NSW Forest Agreement (FA) review. The intent was to incorporate any potential agreed outcomes from the reviews into the revised ESFM Plans. The RFA and the FA reviews are now complete, however FNSW and DECCW are now finalising the ESFM Criteria and Indicators (in the Forest Agreement) for future reporting. I am told that the ESFM Plan reviews are to commence this year.

Lifting of Special Protection zones – FMZ 3bC for water catchment:

Tantawangalo SF:

Forest Management Zone 3bC (Catchment) exists over the majority of Compartment 2433. The Forest Management Zone 3bC (Catchment) area within Coupe 2 and 4 of Compartment 2433 forms part of the net harvest area for this harvesting operation. The effects on downstream water yield and water quality was considered and discussed with the appropriate Council and FNSW Soil and Water Specialist. It was determined due to the ratio of area proposed to be harvested versus total catchment area, the alternative coupe harvesting pattern in conjunction with existing stream exclusions, protection zones, and non harvest areas due to inaccessibility, that the impact on water yield and quality in the immediate or long term future is negligible. Harvesting of FMZ3bC areas within Tantawangalo Catchment does therefore not require additional modified harvesting prescriptions.

Curambene SF Cpts 1039 1040 1041 1042:

This FMZ 3B zone covers the majority of all 4 compartments...FMZ 3B zoning of this area contributes in part to the wildlife corridors as described in the Jervis Bay Catchment Rural Management Plan in which Forests NSW is required to maintain forest cover within this management zone. As only a small proportion of area (**approx. 212 ha in total**) will be disturbed significant forests cover shall remain and be maintained during this operation.

## **Responses from the Federal Government**

*With respect to the Southern Brown Bandicoot, the logging activities are unlikely to reduce the area of suitable habitat for the species in the long term given that the understorey of these areas is likely to regenerate to an extent that there will be sufficient habitat and protection*

Thanks for your letter to our Assistant Secretary, Rose Webb. She has passed your letter on to me in the EPBC Act Compliance Section.

I note that you are happy to provide further instances of non-compliance. It would be great if you could give me a call on the number below so that I can get a better feel for what these non-compliances are. For instance, have FNSW failed to undertake a pre-fauna survey at all or is it that they have undertaken one, but not for the full time/full area as required? It is more likely that a non-compliance will be proven for a more serious omission or activity (ie. failure to undertake a pre-fauna survey at all), rather than one that was undertaken, but was done poorly or was incomplete. In addition (if a breach of the RFA is found), the Department then needs to show that the act or omission has had a significant impact on the EPBC listed species.

It is easier to demonstrate such an impact to a species with a higher listing classification such as 'endangered' (rather than vulnerable), so I would suggest that you could best focus your efforts on species in the endangered category.

8/06/2010 2:38 PM by email

We provided information to the Commonwealth on all compartments that contained EPBC Act listed species. This was the reply:

I refer to your letter of 19 August 2010 to the Minister for the Environment Protection, Heritage and the Arts, the Hon Peter Garrett AM MP and previous correspondence (dated 3 June 2010, 8 June 2010, 13 June 2010 and 28 August 2010) to this Department regarding the impacts of logging operations in south-east New South Wales by Forests New South Wales. I have been asked to respond.

As you may be aware, the management and protection of forest areas in New South Wales is undertaken in accordance with the Regional Forest Agreements (RFAs) signed by the Australian and New South Wales Governments between 1999 and 2001.

The Australian Government is committed to the RFAs which seek to balance the conservation of New South Wales' biodiversity, old-growth forests, wilderness, and other natural and cultural values with a sustainable forest industry that can provide employment security and regional prosperity. Striking this balance is inevitably a matter of judgement and the RFAs provide a robust means for governments to work together to meet our respective responsibilities over time.

Under the RFA, all harvesting operations must comply with State Forest management plans and the principles of ecologically sustainable forest management. Ongoing forest management, including harvesting operations and protection of threatened species, is the responsibility of the New South Wales Government. However, as a party to the RFA the Australian Government has an ongoing role in working with the State to ensure the provisions and intent of the RFA are met.

As noted in previous correspondence, this Department is not able to directly investigate claims of non-compliance with an RFA. However, the Department is able to refer matters to the Department of Agriculture, Fisheries and Forestry if there is sufficient evidence to prove both non-compliance with the RFA and likelihood of, or actual, significant impact to the threatened species. The Department has reviewed the information that you have provided regarding forestry activities in Nadgee, Mumbulla, Bodalla and South Broome State Forest's in relation to potential impacts upon the Southern Brown Bandicoot, Smoky Mouse, Long-footed potoroo, Swift Parrot and the Tiger Quoll. In this instance, it is unlikely that the forestry activities (or alleged failure to conduct surveys prior to forestry) would have had or will have a significant impact on the Smoky Mouse or Long-footed potoroo as these species are not known to occur in South Broome, Mumbulla or Bodalla State Forests. It is also unlikely that there has or will be a significant impact on the Swift Parrot given the availability of other suitable food resources within the vicinity. Unfortunately, despite the presence of a Tiger Quoll on your neighbour's property, the presence of a single Quoll is unlikely to constitute a significant impact on the species.

With respect to the Southern Brown Bandicoot, the logging activities are unlikely to reduce the area of suitable habitat for the species in the long term given that the understorey of these areas is likely to regenerate to an extent that there will be sufficient habitat and protection for the Southern Brown Bandicoot.

On the basis of the information above, the Department does not believe that there is sufficient evidence of significant impact to warrant referral of this matter to the Department of Agriculture, Fisheries and Forestry for investigation.

If you have not already done so, you may wish to bring your broader concerns to the attention of the Department of Agriculture, Fisheries and Forestry (DAFF) as the Australian Government agency responsible for forestry matters or

continue to raise your concerns with the NSW Government as they are the legally responsible managers for state forests in NSW.

In relation to your request for the Minister for the Environment Protection, Heritage and the Arts to make an Interim Conservation Order under the *Forestry and National Park Estate Act 1998*, the Minister is unable to make an order under legislation that has been enacted by the State Government. The Minister can only act within the boundaries of the Commonwealth's environment legislation.

## Conclusion

We state that FNSW conduct does manifest a reckless attitude towards compliance with its environmental obligations. During the drafting of this report Forests NSW were before the NSW Land and Environment Court for the first time on the south coast. This was also the first TSL prosecution since enactment of the RFAs.

### Government Forestry departments not above law

ABC Online posted June 10. 2011 10:00:00

The State Government says it is cracking down on breaches in New South Wales south east forests after this week's judgement in the Land and Environment Court.

Forests New South Wales has been fined for burning an exclusion zone west of Eden which caused potential harm to the critically endangered Smoky Mouse.

The Environment Minister, Robyn Parker, says it proves the effectiveness of a new compliance program, and sends a message that departments are just as accountable as individuals.

She says it is clear the Government needs to do more.

'There's always more that we can do, but with limited resources you have to target appropriately,' Ms Parker said

'We've had two instances now: that certainly send us a clear message that we need to be more vigilant. So that's what we will do, and it sends a message to Forests New South Wales that they have to pay far more attention to it.'

While we see this as a step in the right direction in our view the fine FNSW received was minimal. We would also note that our audits in this monitoring report would only amount to less than a quarter of what has actually been logged during this reporting period.

Much old growth native forest and essential threatened species habitat features have been destroyed in a heedless way with negligible benefit to the actual owners of the forest, namely the citizens of NSW.

We would suggest that with our auditing being confirmed by OEH currently rating at over 80% we feel vindicated that our voluntary monitoring efforts are valid. We do accept that we are not always right in our evaluations, however we have many instances where it seems we are more cognisant of the licence conditions than some OEH officers. Nonetheless, we await with keen interest what the regulatory response and appropriate enforcement action will be for the various outstanding matters.

### 33. Ecological viability of species

*SFNSW must ensure that the scale and intensity at which it carries out, or authorises the carrying out of, forest products operations in any part of the Southern Region, does not hinder the sustained ecological viability of the relevant species of tree, shrub or other vegetation within the part.*

