



edotasmania

using the law to protect the natural and built environment

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27 May 2019

Robert Hrubes Brendan Grad
FSC Lead Auditor SCS Director Forest Management

SCS Global Services
2000 Powell St, Suite 600
Emeryville CA 94608

By email: FSCConsultation@scsglobalservices.com

Dear Mr Hrubes and Mr Grad

FSC Certification Evaluation of Sustainable Timber Tasmania

I am writing to you as a stakeholder regarding the audit of Sustainable Timber Tasmania for the purposes of Forest Stewardship Council (FSC) certification.

I welcome the opportunity to provide comment on the potential certification of Sustainable Timber Tasmania by the FSC.

The Environmental Defenders Office (Tasmania) Inc (EDO Tasmania) is a non-profit community legal centre specialising in environmental and planning law. Our organisation provides legal representation and advice, community legal education services and engages in law reform to secure best practice environmental regulation outcomes.

EDO Tasmania has a long-standing interest and concern about the regulation and operation of the forestry industry in Tasmania, including the operations of Sustainable Timber Tasmania (formerly Forestry Tasmania).

We do not make substantive comments about the practical operation of Sustainable Timber Tasmania and understand that others will provide this detail.

EDO Tasmania's comments necessarily focus on the legal framework for delivering protections to the environment and an ecologically sustainable forestry industry. EDO Tasmania's previous work has examined whether the forest management practices endorsed under the legal framework is appropriately assessed, monitored and enforced, and whether they appropriately protect threatened species and communities, and their habitat.

Legal Framework

Our analysis of the overall operation of the forest practices system is found in our publication *State forests, national interests* (copy **attached**).

This report analysed Tasmania's forest practices against the standards under Australian environmental law, the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. We found that Tasmania's forest practices laws are failing to meet national standards for protection of threatened species and biodiversity. This failure is relevant to Principles 1.6 and 6.4 of the FSC International Standard *FSC Principles and Criteria for Forest Stewardship*.





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The report found:¹

"Given the lack of environmental integrity and transparency required by the forest management framework, unless significant changes are made the RFA regime will not achieve 'ecologically sustainable forest management'. Instead, the exclusion of forestry operations under the RFA regime from the operation of the EPBC Act may compromise the protection of matters of national environmental significance and threaten Australia's ability to comply with international obligations."

The key findings of our report are as follows:

- current "duty of care" provisions under the Forest Practices Code effectively prevent forestry officers from refusing to certify forest practices plans, or certifying subject to stringent conditions, where they are concerned about impacts on threatened species and ecological communities;
- the Australian government is largely unable to take action in response to failings in the forest practices system which lead to adverse impacts on matters of national environmental significance;
- lack of enforcement means there is little effective deterrence against non-compliance;
- monitoring of biodiversity losses and on-ground compliance is inadequate;
- delegating assessment to internal forestry officers and under-resourced councils, based on standardised management prescriptions, continues to compromise the protection of threatened species in Tasmania's forest estate;
- the current regime that regulates forestry does not effectively apply the precautionary principle to ensure new information is factored into decision making;
- the forest practices system provides very limited public access to information or opportunities for public participation in decision-making processes;
- opportunities for third parties to challenge forestry decisions that will impact on threatened species and ecological communities are extremely limited. Given the lack of rigorous monitoring and enforcement programmes within government, the absence of third-party appeal rights may result in a number of breaches going unenforced.

This report was prepared prior to a review of the Tasmanian Regional Forests Agreement in 2015, which was extended by agreement between the State and Commonwealth governments on 18 August 2017 on substantially the same terms for another 20 years (expiring August 2037). The findings of our 2015 report have continuing relevance.

Other supporting information

We also **attach** for your benefit:

- Our submission to the Third Five-Yearly Review of the Tasmanian Regional Forests Agreement. This submission provides an overview of Tasmanian legal framework applying to forestry, including forestry operations conducted by STT (pp3-8) and analysis of its provisions.
- A joint publication between EDO Tasmania, EDO Victoria and EDO NSW reviewing the operation of the Regional Forest Agreements for threatened species: *One Stop Chop; How*

¹ EDO Tasmania (2015). *State forests, national interests: A review of the Tasmanian RFA*, pp4-5.



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Regional Forest Agreements Streamline Environmental Destruction. In particular, we refer you to pp14-15 regarding inference by Forestry Tasmania (the predecessor to STT) and on p25 in relation to compliance by Forestry Tasmania.

This work also supports a conclusion that Tasmania's forestry laws fail to protect threatened species and communities, and are poorly enforced and monitored.

Compliance with FSC Principles

The legal framework within which STT operates does not ensure that the relevant principles of the FSC International Standard are met, in particular:

- Principle 1.6 – compliance with applicable national laws, local laws, international conventions and obligatory codes of practice;
- Principle 6.4 – protection of rare species, threatened species and their habitats in the management unit, proportionate to the scale, intensity and risk of management activities and to the conservation status and geographic range and ecological requirements of rare and threatened species.

STT has not demonstrated compliance with laws, and cannot in the absence of monitoring and compliance. Further, and more fundamentally, the legal framework does not ensure that there is adequate protection of threatened species and their habitats. We refer to the findings of our report in support of this submission.

The primary species at risk from forest practices operations in Tasmania is the Swift Parrot *Lathamus discolor* which is identified as critically endangered under the IUCN Red List and Australia's national environmental law, the *Environment Protection and Biodiversity Conservation Act 1999*, with a population of less than 2500 and on a trajectory to extinction.

The management prescriptions for the Swift Parrot in the Forest Practices Code have been questioned by the Federal Court in *Brown v Forestry Tasmania* (No 4) [2006] FCA 1729. Referring to evidence that Forestry Tasmania had ignored recommendations from the Senior Zoologist in relation to Swift Parrot habitat, Justice Marshall concluded that, in practice, "recommendations from senior zoologists in accordance with the Advisor [the management prescription] are negotiable, if Forestry Tasmania objects".²

Justice Marshall also found evidence of non-compliance with the management prescriptions (at [291]):

There was also evidence of a reservation area in coupe 17E, designed to protect the swift parrot, being logged 'by mistake' as well as evidence of a road being put through a swift parrot reserve area 'by mistake'.

Concluding (at [292]):

These matters illustrate the difficulty not only in having adequate management prescriptions to protect threatened species, and promote their recovery, but also the difficulty of actually implementing management prescriptions.

A case study on the operation of the forest practices system on this species is set out in our report *State forests, national interests*, which confirms these are not isolated findings. In short, the report

² ## per Justice Marshall at [289]



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found that forest practices plans are endorsed despite advice from expert agencies that there will be impacts on Swift Parrot habitat and the maintenance of the species.³

We refer you to the detail in the documents enclosed with this submission. These reports evidence that the issues identified in our reports are endemic to the operation of STT and the forest practices system in Tasmania.

The impacts to Swift Parrot set out in these reports are evidence of the failures of the legal framework in which STT operate, and the failure of STT itself to adequately manage its forestry operations to protect threatened species or comply with Australian and Tasmanian laws. There consequently can be no confidence that the operations of STT can comply with the FSC certification criteria and principles, and we submit, certification should not be granted on this basis.

Future Potential Production Forest Land

In 2014, the Tasmanian Parliament made laws which will open access to 400,000 ha of public land for forestry in 2020.⁴ Any such forestry would necessarily be carried out by STS as it is Crown land. This 400,000 ha was set aside as potential reserves under the Tasmanian Forests Agreement in 2013, but was subsequently identified as "Future Potential Production Forest Land (FPPF Land) under the *Forests (Rebuilding the Forest Industry) Act 2014 (Tas)*. From April 2020, FPPF Land may be converted to production forest, and can be exchanged for any other production forest land on Crown land.

The FPPF Land contains breeding habitat for a variety of threatened flora and fauna species, including Wedge-tailed eagle, Masked owl, Spotted-tailed quoll, Eastern quoll, Swift parrot, Grey goshawk, White-bellied sea eagle and Tasmanian devil.⁵

Part of the FPPF Land was brought within the Tasmanian Wilderness World Heritage Area (35,000 ha) by extension approved by the World Heritage Committee at its meeting in June 2013. The Committee accepted the Australian government's proposal to modify the TWWHA boundary to include an additional 170,000ha of adjoining forest areas, such as the Great Western Tiers, Weld, Styx and Florentine Valleys.

All Australian properties that are included in the World Heritage List are subject to the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act). Under the EPBC Act:

- the Federal government and each of its agencies must take all reasonable steps to ensure it exercises its powers and performs its functions in a way that is not inconsistent with the World Heritage Convention and the Australian World Heritage management principles;
- it is an offence to take an action that has, will have, or is likely to have a significant impact on the World Heritage Values of a listed property without approval from the Federal Minister.

The World Heritage Committee refused later attempts to undo this extension area to *inter alia* allow for forestry operations in FPPF Land. Any forestry operations on this land would be contrary to Australia's international obligations under the World Heritage Convention, with consequential impacts on the outstanding universal values of that property.

³ EDO Tasmania (2015), p12.

⁴ *Forestry (Rebuilding the Forest Industry) Act 2014 (Tas)*.

⁵ DPIWWE, *Conservation Assessment of Future Potential Production Forest Land (FPPF land)*, A report to the Department of State Growth, accessed:

https://www.stategrowth.tas.gov.au/__data/assets/pdf_file/0014/152402/Conservation_Assessment_on_FPPF_Land_Report_Final_July_2017.PDF



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That the FPPF Land could be opened up for forestry activity undertaken by STT in the current regulatory framework is of grave concern. Forest production practices in this area should not be considered consistent with the FSC certification criteria and principles.

Conclusion

We trust that this submission and supporting documents will be considered by you in determining whether STT meets the FSC certification criteria and principles.

We submit that the application for certification by the FSC ought to be refused and provide in this submission the basis that the current legal framework does not enable STT to demonstrate compliance with Principle 1.6 and Principle 6.4.

Noting that "all certified Management Units must comply with all Principles and Criteria and the Preamble",⁶ for the reasons set out in this submission, FSC cannot be satisfied that the operations of STT are FSC compliant.

Should you require any further information or if I can be of further assistance, please do not hesitate to contact me on +613 6223 2770 or by email at nicole.sommer@edotas.org.au.

Your faithfully

Nicole Sommer
CEO & Principal Lawyer

Enc: EDO Tasmania (2015). *State forests, national interests: A review of the Tasmanian RFA*.
EDO Tasmania submission to Tasmanian Regional Forest Agreement Five Yearly Review
Feehely, J., Hammond-Deakin, N. and Millner, F. (2013). *One Stop Chop: How Regional Forest Agreements streamline environmental destruction*, Lawyers for Forests, Melbourne, Australia.

⁶ Clause 4, *FSC Principles and Criteria for Forest Stewardship* (FSC-STD-01-001 V5-2EN), p8.