



ABN 85 763 839 004
C/o- EDO NSW
Level 5, 263 Clarence Street
Sydney NSW 2000 AUSTRALIA
T: + 61 2 9262 6989
F: + 61 2 9264 2414

30 January 2015

Department of the Environment
Species Information and Policy Section
Department of the Environment
GPO Box 787,
CANBERRA ACT 2601

By email: speciespolicy@environment.gov.au

Draft EPBC Act Policy Statement - Camp management guidelines for the Grey-headed and Spectacled flying-fox

As a network of community legal centres specialising in public interest environmental law, the Australian Network of Environmental Defender's Offices Inc (**ANEDO**) welcomes the opportunity to make a submission on the Draft EPBC Act Policy Statement - Camp management guidelines for the Grey-headed and Spectacled flying-fox (**draft policy**).

A number of EDOs have been contacted by community members, local councils, and wildlife groups concerned about the management and protection of flying-foxes over recent years. A common theme, in addition to concerns about the management of impacts on individual camps, is the management of cumulative impacts on populations from actions such as the Pacific Highway upgrade in NSW. See, for example, the recent EDO NSW submission to the Draft Flying-fox Camp Management Policy (December 2014) - [Download PDF](#).

We reiterate our support for non-lethal methods of management for both species of flying-fox covered by the draft policy, as species protected by Commonwealth and various state and territory legislation, in recognition of their biodiversity, ecosystem services and other social values.

ANEDO supports the Commonwealth acknowledgement that "(m)aintaining a network of flying-fox camps and foraging habitat across both species' range is important for their recovery". We suggest that this acknowledgement should be strengthened to recognise the critical role flying-foxes play in propagating and pollinating native and rainforest vegetation. We also support the intention of the policy to "ensure that there are no significant impacts on these EPBC Act listed flying-fox species due to actions to manage their camps". However, we are concerned that the implementation of the draft policy would not achieve this intention.

The most significant concern with the draft policy is the proposal to allow dispersal of flying-fox camps, including camps recognised as being nationally important, without referral to the Federal Minister for the Environment. This proposal will seriously weaken the protections that the EPBC Act ostensibly extends to these threatened species of animal, and to the

AUSTRALIAN CAPITAL TERRITORY GPO Box 574, Canberra 2601, T: (02) 62433460, E: edoact@edo.org.au
NEW SOUTH WALES 5/263 Clarence St, Sydney NSW 2000, T: (02) 9262 6989, E: edonsw@edonsw.org.au
NORTHERN TERRITORY GPO Box 4289, Darwin NT 0801, T: (08) 8981 5883 edont@edont.org.au
NORTHERN QUEENSLAND 1/ 96-98 Lake St, Cairns QLD 4870 T: (07) 4031 4766, E: edonq@edonq.org.au
QUEENSLAND 30 Hardgrave Road, West End QLD 4101, T: (07) 3211 4466, E: edoqld@edo.org.au
SOUTH AUSTRALIA 1/ 408 King William St, Adelaide SA 5000, T: (08) 8410 3833 E: edosa@edo.org.au
TASMANIA 131 Macquarie Street, Hobart TAS 7000, T: (03) 6223 2770, E: edotas@edo.org.au
WESTERN AUSTRALIA Suite 4, 544 Hay St, Perth WA 6000, T: (08) 9221 3030, E: edowa@edowa.org.au



ABN 85 763 839 004
C/o- EDO NSW
Level 5, 263 Clarence Street
Sydney NSW 2000 AUSTRALIA
T: + 61 2 9262 6989
F: + 61 2 9264 2414

important ecological role that flying-foxes play in propagating native vegetation through their foraging and seed-dispersal function. Should the draft policy proceed, only activities defined as routine camp management or camp boundary management should be included and these activities must be explicitly limited in scale, timing (so as not to interfere with breeding and nursing cycles) and in the range of activities allowed. We outline our specific concerns below.

In ANEDO's view, **any** camp dispersal activities create a high likelihood of significant impact on flying fox species. This is particularly true given the lack of knowledge on what makes attractive flying-fox habitat, which precludes any certainty that dispersal will result in successful camp relocation. As such, even if best practice standards are applied, ANEDO does not support dispersal activities being broadly and presumptively categorised as having a low risk of significant impact (and therefore avoiding referral under the EPBC Act).

Recommendation 1: Dispersal activities should be removed from the list of activities that do not require EPBC referral.

The draft policy limits the application of best practice standards to nationally significant camps. Given that these two species of flying-fox are nationally listed as threatened, and given that (as the draft policy acknowledges at p 4) flying-foxes move over long distances throughout their range and are considered as “national” populations, any camp is nationally significant. Accordingly, best practice standards should apply to **all** camp management activities, including clearing of canopy trees and disturbance of animals at the boundary of all camps.

Recommendation 2: Best practice standards should apply to all camp management activities, not to just nationally significant camps or dispersal activities.

ANEDO recognises that some *in situ* camp management activities, such as those listed in the draft policy as minor or routine camp management activities, may be able to be undertaken without significant impact – provided that best practice guidelines are rigorously followed and (more importantly) rigorously enforced, and the scale of such activities are limited. However, any policy, standards and indeed EPBC approvals should contain clearly defined and readily enforceable conditions. The draft policy currently lacks clarity regarding such critical issues as what constitutes a camp, the scale of activities that may be allowed as “minor” or “routine”, and how often or during what life-cycle seasons such activities are allowed.

The “minor” and “routine” management activities are also troubling in their lack of clarity. For example, “mowing of grass and similar grounds-keeping actions” are identified as “minor” or “routine” management that is deemed to have a low risk of impact. However, it is unclear whether the application of pesticides, herbicides, fungicides or fertilisers – chemical agents that may cause considerable harm to adult, pregnant or immature flying-foxes - may be included in the scope of “similar grounds-keeping actions”. The draft policy must be revised to make it clear that application of any chemical agents in association with any grounds-



ABN 85 763 839 004
C/o- EDO NSW
Level 5, 263 Clarence Street
Sydney NSW 2000 AUSTRALIA
T: + 61 2 9262 6989
F: + 61 2 9264 2414

keeping activity are excluded from being classified as “minor” or “routine” camp management activities.

Further there is no specific planning, record keeping, reporting or monitoring requirements associated with “minor or routine camp management”, which renders effective enforcement of breaches of the guidelines highly unlikely.

ANEDO is also concerned that low impact, *in situ* management of camps may be expanded to include selectively clearing canopy trees at the camp boundary, and disturbing animals at the boundary, when these activities are done with the aim of retaining the camp while reducing human/flying-fox interactions. Again, no specific limitations on the scale of these activities has been proposed, and as such the scale of impact is indeterminate. In this regard the policy cannot ensure that the impact of such activities presents a low risk of significant impact to the affected populations.

For example, EDO Northern Queensland (NQ) has had considerable involvement in legal issues arising from the attempted dispersal of the Cairns CBD Spectacled flying-fox colony in April-May 2014 by the Cairns Regional Council, and remains concerned about the impacts on this colony of the referral decision permitting removal of 11 of the colony’s roost trees.

Recommendation 3: Clearing canopy trees at the camp boundary and disturbing animals at the boundary should not be considered to be activities that can be undertaken without referral, unless specific limitations are placed on the scale of activities that can be undertaken, along with requirements to document the activity and any response, and triggers to determine if the activity is likely to have high impact.

The draft policy allows dispersal proponents to implement either the standards proposed in the policy itself or “a state or territory standard that achieves the same outcome”. No further information is provided on what would be required to achieve the “same outcome”, but the policy suggests that the Queensland *Code of Practice: Ecologically sustainable management of flying-fox roosts* (2013) would be consistent with these standards.

EDO NQ has had experience with the Queensland code of practice, parts of which are reflected in the draft policy’s standards. In EDO NQ’s experience, practical implementation of Queensland’s code of practice has been inadequate in limiting harm from dispersal actions, including significant tree-logging, to the Cairns CBD Spectacled flying-fox camp. In that case, evidence of potential breaches has been referred to State and Federal government investigators but no enforcement or remedial actions appear forthcoming in response to these breaches.

Furthermore, the Queensland code’s requirement, as summarised in this draft policy that “all management actions to immediately **cease** if flying-foxes appear to have been killed or injured” (our emphasis), is demonstrably different from the proposed best practice management standards that require proponents to minimise impacts, including avoiding any

AUSTRALIAN CAPITAL TERRITORY GPO Box 574, Canberra 2601, T: (02) 62433460, E: edoact@edo.org.au
NEW SOUTH WALES 5/263 Clarence St, Sydney NSW 2000, T: (02) 9262 6989, E: edonsw@edonsw.org.au
NORTHERN TERRITORY GPO Box 4289, Darwin NT 0801, T: (08) 8981 5883 edont@edont.org.au
NORTHERN QUEENSLAND 1/ 96-98 Lake St, Cairns QLD 4870 T: (07) 4031 4766, E: edonq@edonq.org.au
QUEENSLAND 30 Hardgrave Road, West End QLD 4101, T: (07) 3211 4466, E: edoqld@edo.org.au
SOUTH AUSTRALIA 1/ 408 King William St, Adelaide SA 5000, T: (08) 8410 3833 E: edosa@edo.org.au
TASMANIA 131 Macquarie Street, Hobart TAS 7000, T: (03) 6223 2770, E: edotas@edo.org.au
WESTERN AUSTRALIA Suite 4, 544 Hay St, Perth WA 6000, T: (08) 9221 3030, E: edowa@edowa.org.au



ABN 85 763 839 004
C/o- EDO NSW
Level 5, 263 Clarence Street
Sydney NSW 2000 AUSTRALIA
T: + 61 2 9262 6989
F: + 61 2 9264 2414

impacts at times of high risk to flying-foxes (such as during climatic extremes or when females are heavily pregnant or have dependent young).

The final policy should set out a process for determining (in essence, accrediting) how state policies will be verified as specifying the same standards (such as by an independent scientific advisory committee), and after this process, equivalent state policies should be listed as an attachment to the final policy.

Recommendation 4: Any state or territory policies that are to be deemed equivalent must specify the same standards as the EPBC policy, and these standards must be assessed and verified based on best available science.

The status of the elements of 'more detailed' risk assessment and planning outlined in Part 3 is uncertain. It is not clear if or when (i.e. to camps of which size) these elements must be applied.

Recommendation 5: The best practice standards should include the more detailed risk assessment and planning elements (outlined in Part 3) and clarify when these apply.

The standards employ unclear language or provisions that should be revised in order to ensure that flying-fox populations are protected through application of the best practice standards.

For example, item (i) of the standards proposes that "[t]he action must not occur if the camp contains females that are heavily pregnant and until the young can fly independently". Just what constitutes "heavily pregnant", and who and how that determination is made is entirely undefined. Rather than leaving such questions to the subjective determination of proponents, the standards should adopt fixed time periods – based on flying-fox breeding, nesting, nursery cycles and providing an adequate margin of safety – during which such camp management practices are altogether prohibited.

Similarly, item (ii) of the standards proposes that "[t]he action must not occur during or immediately after climatic extremes (heat stress event; cyclone event, or during a period of significant food stress". This standard is clearly deficient. For example, heat stress event is defined (in a footnote), as a "a day on which the maximum temperature does (or is predicted to) meet or exceed 38°C". Rather than basing the standard on temperature, the standard should be based on heat index, which accounts for both humidity and temperature to ensure heat stress events at lower temperatures are included where humidity is high.

Similarly, "significant food stress events" are undefined, though it is suggested that wildlife carers' reports of "large numbers" of "low body weight animals" could constitute such an event. The uncertainty of the formulation of "significant food stress events" is concerning. What is considered "large numbers" – is this an absolute or is it in some way calibrated to the size of the local population of flying-foxes? This is altogether unclear. Moreover, the



Australian Network of Environmental
Defender's Offices Inc

ABN 85 763 839 004
C/o- EDO NSW
Level 5, 263 Clarence Street
Sydney NSW 2000 AUSTRALIA
T: + 61 2 9262 6989
F: + 61 2 9264 2414

formulation relies on the presence of wildlife carers and their conscientiousness in reporting body weights. ANEDO suggests that this formulation, instead, should be tied to objective observations of climatic or botanical data, such as drought or agricultural records demonstrating low fruit production. When such observations have been reported, then camp management activities subject to the standards should be halted. Finally, ANEDO notes that there is no objective measure for defining what is or is not “immediately after” the events identified in item (ii). Rather than incorporating such a vague notion, the standards should fix the time period during which such management activities are prohibited after the enumerated events. ANEDO suggests a minimum “lock out” period of 30 calendar days is reasonable and sufficiently protective of these threatened species.

Recommendation 6: The terminology and specific provisions of the best practice standards need to be tightened substantially.

Finally, the draft policy does not set out any documentation or notification requirements for proponents to demonstrate compliance with the best practice standards, nor does it require sufficient monitoring of actual impacts. A pre-activity notification system should be in place, and post dispersal monitoring must be required to determine whether reproductive output (and therefore recovery potential) is maintained. This should apply to all camps, and the monitoring data should be made public, in accordance with open government principles.

Recommendation 7: The policy should set out record-keeping, notification and monitoring requirements for proponents to demonstrate compliance with the best practice standards.

Recommendation 8: The policy should make it clear that, where actions are undertaken that result in significant impacts to flying-fox populations, the proponent of the action remains liable to be required to undertake remedial action to restore the environment pursuant to s499 of the EPBC Act.

For further information, please contact [rachel.walmsley\[at\]edonsw.org.au](mailto:rachel.walmsley[at]edonsw.org.au) or (02) 92626989.