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Dear Sir/Madam

Re: Draft EPBC Act Policy Statement - Camp Management Guidelines for the Grey headed and Spectacled flying fox

Thank you for the opportunity to comment on the *Draft EPBC Act Policy Statement - Camp Management Guidelines for the Grey headed and Spectacled flying fox*. North Queensland Conservation Council is situated in a region that hosts a large number of flying fox camps and a number of our members have been involved in research projects regarding flying fox ecology, law and management, as well as survey of camps, monitoring of dispersal activities, care of injured and orphaned flying foxes and public education programs. Consequently, we have a strong interest in the conservation of flying foxes, including the two threatened species, grey headed flying fox (GHFF) and spectacled flying fox (SFF).

We welcome the publication of camp management guidelines and commend the Department of Environment for drafting a policy which aims to 'ensure that there are no significant impacts on these EPBC Act listed flying-fox species due to actions to manage their camps'. We are concerned however about serious problems with this document that will need to be rectified if the policy is to achieve this stated aim.

We note the following:

1. Network v local management

The draft policy recognises that the network of flying fox camps is important for the recovery of these species. To provide for the protection of this network overall, the policy needs to establish an integrated national management strategy, yet this policy seems to be mostly focusing on the localized management of a small number of camps. There is nothing in the policy to facilitate the management of the network of camps as a whole, such as collection and publication of data on dispersals to help determine the overall

impact of disturbance on the network; and there are no links with the current national survey of GHFFs and SFFs.

This policy relies heavily on self and State assessment. By devolving its responsibility to assess proposed actions to individuals, State and local governments, the Commonwealth will lose its ability to conduct an effective, integrated national management program.

Education

In the introduction, a number of camp management options are listed and are stated to be preferred over clearing of habitat and dispersal. These options are excellent but the list also needs to include the most sensible option, that is proactive education campaigns for residents living near colonies and the general public. Such campaigns will help overcome ignorance, erroneous beliefs and unjustified fears about flying foxes which are so often at the root of complaints about colonies. The importance of public education and awareness-raising has been acknowledged in the *National Recovery Plan for the Spectacled Flying Fox* and in the *Draft National Recovery Plan for the Grey-headed Flying-fox*. The requirement to conduct education campaigns should be included in the best practice standards.

2. Definition of minor or routine activities

The proposed definition in the draft policy indicates that a determining factor in identifying whether an action is considered to be minor or routine camp management is the intention of the person taking the action not to disperse or clear the camp. This definition is inconsistent with the EPBC Act because intention plays no role in s 18 of the Act, the crucial provision which relates to actions that have, will have or are likely to have a significant impact on threatened species. The *intention* of the person taking an action is irrelevant in the Act and should therefore be irrelevant to the definition of minor or routine activities in this policy - what matters is the resulting impact of the action. Hence, minor or routine activities should be defined instead as activities that do not result in damage to the camp and/or stress, harm, injury or dispersal of the animals.

3. List of minor or routine camp management actions

The list that is provided in Part 1 is unhelpful because all of the actions listed could have a significant impact, depending on how they are carried out and at what time. For instance, mowing of grass, trimming of vegetation, etc could be very disturbing to flying foxes if carried out repetitively or with particularly loud equipment. Weed spraying could have a significant impact if it is not as focused as it should be (there are reports that in mid 2014, persons spraying weeds in the Cairns colony directed their equipment upwards and directly onto the roosting flying foxes and that this may have caused widespread birth defects in flying fox young). Installation of signage could be disruptive and cause the colony to flee if conducted without care. Even mere observation of a camp could have a significant impact if the observers are noisy and cause the animals distress at a time when they are particularly sensitive to disturbance, ie in a maternity colony. Hence there must not be a blanket authorisation for

these activities - it is the outcome that is important, as provided under s 18 of the Act.

4. Fireworks

Fireworks cannot be considered to be a minor action when they are conducted in or near camps. Flying foxes are very sensitive to loud, sudden noises of this sort and fireworks have been used as a tool to disperse colonies (see for instance Charters Towers in 2013). The inclusion of fireworks in this list of minor actions is unacceptable and must be deleted.

5. Definition of nationally important camps

The definition provided in Part 2 and further explained in Attachment A clearly discriminates against small camps. Even though small camps hold only small numbers of animals, they have an important role to play and need protection. First small camps are often maternity camps where females congregate away from the main camps to raise their young. Secondly, they act as stepping stones between larger camps (this is particularly relevant for pregnant females, females carrying young, and juveniles who are not able to fly long distances). Thirdly, it is not unusual for small camps to develop into larger camps, hence the destruction of a small camp could be the loss of a potentially large camp at a later date. Finally, it is common for large camps to split into smaller camps after they have been dispersed by humans or following cyclones.¹ Excluding these small camps from protection means that succour would be denied at a time when the animals are most vulnerable. We consider therefore that it is highly inappropriate to exclude small camps from the protection of the EPBC Act.

Similarly, the definition of nationally important camps discriminates against ephemeral camps. Some large but ephemeral camps are common throughout the range of these species, even though why they are formed is not completely clear. To give effect to the precautionary principle, and given the large number of animals involved, these camps must be considered to be nationally important.

6. List of camps

In addition to including all small and ephemeral camps, nationally important camps should include Ingham Botanic Gardens, the camp with the most northern record of GHFFs and Finch Hatton, the camp with the most southern record of SFFs. In both camps the presence of the four species of flying foxes has been recorded simultaneously (Deborah Melville, Biosecurity Qld, *pers. com*). These camps are rare and ecologically significant, even if they are not especially large - they must be protected.

7. Impact on nationally important camps

Part 2 identifies actions that *may have* a significant impact on nationally important camps, and this includes the clearing of all vegetation in a camp. Surely if all vegetation of a nationally important camp is destroyed, the camp

¹ Shilton, L., Latch, P., McKeown, A., Birt, P. and Westcott, D. (2008). Landscape scale redistribution of a highly mobile threatened species, *Pteropus conspicillatus* (Chiroptera, Pteropodidae), in response to tropical cyclone Larry. *Austral Ecology*.**33**: 549-561.

itself will be destroyed and this ***will have or is likely to have*** a significant impact on the camp and consequently the species. This needs to be corrected.

This section also refers to dispersal 'through disturbance by noise, water, smoke or light'. This list can lead to confusion because many other techniques have been used to attempt to disperse colonies, including helicopters, paintballs, fireworks, fake birds of prey, fogging with assorted chemicals, cutting of trees or branches, etc. These other methods may also have a significant impact on colonies, hence the list should end with 'or any other means of dispersal'. Alternatively, examples need not be provided since it is the outcome (ie the dispersal) that is important, not the means by which it is achieved.

8. State/Territory protection

It is naïve to state that camps that fall below the size threshold will be protected under State/Territory requirements. The Queensland government has reintroduced the shooting of flying foxes for crop protection and has put in place a new regime to facilitate and encourage the dispersal of flying fox camps. The Queensland Premier and the Minister for the Environment have repeatedly stated that they will put the interests of people *above flying foxes and proposed at one stage to send bat-squads if councils did not remove colonies perceived by some residents as problematic.*² There is little protection available for camps under this regime and law enforcement is almost non-existent. For instance no action was taken against the Charters Towers Regional Council for the multiple breaches of the *Nature Conservation Act* which were reported in relation to the dispersals in 2013 and 2014.

9. Cumulative impact

We approve of the policy noting the need to group concurrent or reasonably foreseeable actions as these could have a cumulative impact. Yet this requirement must be extended to actions taken by several proponents, not merely by actions taken by one proponent. For instance if several adjacent councils are proposing to disperse their colonies concurrently or within a short time frame, the animals will have nowhere to go in the region and the impact on the population could be significant.

In addition cumulative impact should not consider merely actions which are likely to have a significant impact but also:

- actions which are considered to have minor impact but which are conducted repeatedly in the same colony or conducted in various adjacent colonies during the same period;
- actions which are excluded from the application of the policy, ie illegal actions in camps, lethal dispersal, killing for crop protection or actions that will impact on the foraging habitat of the two species.

In short, to properly determine whether an action has, will have or is likely to have a significant impact on these species, it is essential to consider the broader context of cumulative impacts.

² <http://www.abc.net.au/news/2013-03-27/newman-flags-bat-squads-for-regional-areas/4597070>

10. Standards

- i. We agree that disturbance should not take place while the camp contains females that are heavily pregnant and until the young can fly independently. However such observations (especially the former) can be quite difficult to make for untrained eyes. This will definitely require assessment by a person with recognised expertise.

Disturbance during the mating season should also be prohibited because this is a time when males work hard at defending territories, and disturbance can have a significant impact on breeding success³ and hence on the species as a whole.

- ii. This is too narrow: these actions should not occur when climatic extremes or periods of significant food stress are likely to occur within the next few weeks or have happened over the past few months as it can take months for animals and/or for the food source to recover.
- iii. Footnote 4 requires that the physical disturbance will not cause harm or injury to the flying foxes. This is welcome. It should be noted that loud noises traditionally used in dispersals are likely to cause hearing impairment, bright light may cause temporary or permanent vision impairment and the use of water cannons may cause physical injuries if too strong. The first two types of harm will be very difficult if not impossible to detect, even to a trained eye, hence these methods should not be used. In addition, all traditional means of dispersing flying foxes cause the animals stress (a form of harm). To ensure that disturbances in or near colonies will not cause harm, the policy needs to prohibit any of the above methods.
- iv. This standard should include a provision that the action should be subject to a stop work trigger.
- v. This should not be limited to felling trees but also include burning trees as well as lopping of individual branches.
- vi. The person should be able to identify the species of flying fox present, pregnant females as well as dependent young.

In addition, to be truly 'best practice' these standards will need to feature a requirement for a management plan that includes the following:

- objectives of the management plan;
- history of the camp;
- nature of the conflict and documentation of any other prior action conducted to reduce the conflict (including educating nearby residents);
- identification of alternative roost sites;

³ JA Welbergen (2005) *The social organisation of the grey-headed flying fox (Pteropus poliocephalus)*, PhD thesis, Department of Zoology, University of Cambridge, UK.

- identification of prior activities at or near the site that have had or are likely to have an impact on the camp or on the animals individually; and identification of activities at nearby camps that have had or are likely to have an impact on the species generally (cumulative impacts);
- proposed strategies and methods for dispersal, including stop work triggers and contingency plans;
- proposed contribution to species conservation by habitat and roost offsets;
- pre and post dispersal monitoring of the vacated and new camps;
- suitable public consultation at all stages of the plan development'
- in addition, for councils, provisions should be made to protect camps in the local planning scheme.

11. Self-assessment by proponents

As mentioned above, there is a great depth of ignorance, prevalence of erroneous beliefs and unjustified fears about flying foxes in the community. We are therefore concerned that proponents will not have the level of knowledge required to adequately identify flying fox species, assess their breeding status, assess the nature of camps and determine whether their actions will be consistent with best practice and identify other concurrent actions. This could lead many to underestimate the impacts of their actions, overestimate their ability to manage impacts, and fail to refer actions that are likely to have a significant impact on the species. This will be especially the case for proponents acting individually on their own land and for the many councils that, over the years, have made unsubstantiated and uninformed claims about flying foxes and who have a vested interest in the dispersal of flying fox colonies.

It is important to note that many flying fox dispersals have been plagued by illegal actions. For instance in Charters Towers (2013), paintballs were used in a manner that breached the firearms legislation; and helicopters were used in a manner inconsistent with the Civil Aviation safety legislation; in Cairns (2014), trees were lopped in breach of the State heritage legislation.

It is clear that self-assessment is likely to be subject to abuse and should not be used without a strong and clearly structured role for Commonwealth oversight.

At the very least, if proponents are allowed to self-assess their actions, they should be required to send a notice to the Department to indicate their intentions. Such notices would be made publicly available on the Department's website to enable full scrutiny of the claims by members of the public.

12. State standards

The Queensland *Code of Practice: Ecologically sustainable management of flying-fox roosts* (2013) is given as an example of a comparable standard as it 'requires all management actions to immediately cease if flying-foxes appear to have been killed or injured.' This comparison is unhelpful because focusing on animals being killed or injured is too narrow - some activities such as loud noises, inappropriate use of weed killers, etc) can lead to high levels of stress or disease which can in turn lead to higher than normal levels of mortality, abortions and/or birth defects some time after the activities have been

conducted. In any case, from our experience in Queensland, if animals are found to be killed or injured during dispersals, the activities are not stopped immediately because there are insufficient personnel trained to identify such problems. In the rare cases where the dispersal activity is stopped, it is then recommenced promptly, hence this provision of the code is useless under current practices.

13. Animal welfare

Although animal welfare is not at the core of the EPBC's concerns, other programs that involve the killing or management of wildlife generally contain requirements for humane treatment - for instance management plans for the captive breeding and export of crocodiles; management plan for the harvest of macropods; export and import of live specimens. To ensure consistency with these programs, this policy needs to require explicitly that any action that has or will have a minor or significant impact on the threatened species must be conducted in a humane way, and be consistent with the state anti-cruelty legislation.

This will involve avoiding actions that cause harm (physical or otherwise), and putting in place humane measures to deal with injured and orphaned animals.

Conclusion

In conclusion, we are concerned that the *Draft EPBC Act Policy Statement - Camp Management Guidelines for the Grey headed and Spectacled flying fox* is so weak that implementing it as it stands will encourage and facilitate the destruction and/or dispersal of camps. We believe that this will lead to potentially significant impacts on the two EPBC Act listed flying-fox species. The policy as it stands appears incapable of achieving its own aim to 'ensure that there are no significant impacts on these EPBC Act listed flying-fox species due to actions to manage their camps', nor will it be able to contribute to the *EPBC Act's* aim to 'promote the recovery of threatened species',⁴ an aim which has been interpreted as not merely keeping these species alive but 'actually restoring their populations so that they cease to be threatened'.⁵ In general, it undermines the Commonwealth's ability to fulfil its responsibilities.

We therefore strongly urge you to abandon this policy or comprehensively review its contents.

Yours sincerely



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⁴ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 3(2)(e)(i).

⁵ *Brown v Forestry Tasmania* (No 4) [2006] FCA 1729 (19 December 2006), [300] (Marshall J). Note that this case has been overturned on appeal in *Forestry Tasmania v Brown* [2007] FCAFC 186 (30 November 2007) although not on this point.

