

Soils and Vegetation Team
Department of Industry, Science, Energy and Resources
CANBERRA, ACT 2601
By email: ERFForests@industry.gov.au

27 January 2022

Dear Soils and Vegetation Team,

RE: Submission on the Proposed new requirements for native vegetation regeneration projects under the Emissions Reduction Fund

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Federal Government's consultation on the *Proposed new requirements for native vegetation regeneration projects under the Emissions Reduction Fund* (ERF).

The Government's important work on human induced regeneration and native forest managed regrowth ERF methods provides key opportunities to deliver significant biodiversity outcomes for Australia, including mitigating the impacts of climate change and closing the gap to net zero emissions, reducing extinction risks, and building Australia's protected area system, all of which are in line with Australia's international commitments and the Australian public interest.

ALCA does not support the proposed amendments, as they pose a salient risk to improving Australia's biodiversity and carbon emission reduction outcomes. Further, the proposed amendments significantly limit the income diversification options available to Australian farmers seeking to build their resilience in a changing climate and during times of drought. Carbon markets provide one of the few avenues to attract significant funding to protect Australia's unique habitat and species and native vegetation is an efficient and relative cheap means to store carbon. The creation of a largely unfettered and retrospective Ministerial veto power inserts a substantial sovereign risk into Australia's carbon markets at a time when more confidence is being sought in the future of these markets in Australia.

Please note that ALCA is happy for this submission to be published in full.

About the Australian Land Conservation Alliance

ALCA represents Australia's leading land restoration and conservation organisations working with landholders on privately owned and managed land across Australia. Together, ALCA's members represent a substantial and growing voice in Australia's land management sector. Our eleven members are:

- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- Greening Australia
- Landcare Australia
- Nature Foundation
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- The Nature Conservancy Australia
- Trust for Nature (Victoria)

ALCA land conservation efforts stretch across over 3 million square kilometres with more than 3,000 landholders. We have over 50,000 supporters and our combined annual turnover exceeds \$200 million. Together we work to support some of the most pressing conservation issues across the country – including tackling invasive species and managing national environmental biosecurity threats, restoring endangered ecosystems, and building the protected area estate.

Through their active land management, ALCA member organisations are deeply embedded in regional communities and economies, providing jobs, securing significant regional investment, and safeguarding remaining native habitat for the local community with its many positive spillover effects for agriculture.

ALCA member organisations recognise the importance of operating with a social licence, including the local social licence. As not-for-profits, ALCA members seek to act in our community’s interest. ALCA is not aware of any of carbon projects being operated by its members that have caused any widespread local community concern.

A range of the conservation activities undertaken by ALCA members are financially underwritten by continued access to well-regulated carbon markets. **The proposed Rule amendments pose a genuine strategic and financial risk for land conservation activities and private land conservation organisations**, noting again that ALCA members act in the public environmental interest and to the overwhelming benefit of regional communities and Australia.

Some ALCA members are statutory entities; the views expressed in this submission do not represent the views of the Government administering those statutory entities.

Recommendations

General

1. ALCA recommends that the current proposed amendments to the *Carbon Credits (Carbon Farming Initiative) Rule 2015* do not proceed, on the basis that they:
 - a. Insert financial uncertainty into Australian carbon markets, likely creating a chilling effect on the development of carbon projects, including for potential projects using methods as yet unaffected by the proposed rule change whose proponents may fear similar future Government intervention into their project methods. The net effect is likely to be the deterrence of millions of dollars of carbon project investment into Australia;
 - b. Compromise Australia’s attempts and obligations to close the gap on net zero emissions and improve its biodiversity outcomes;
 - c. Undermine Australia’s recent commitment to the Glasgow Leaders’ Declaration on Forests and Land Use made at the COP-26 to reverse the net loss of forests by 2030¹, and recent commitment to the Kunming Declaration at the Convention on Biological Diversity, specifically, to protect 30 per cent of the world’s land and 30 per cent of the world’s sea by 2030²;
 - d. Provide the Government with wide powers to limit the choice of Australian landholders to determine the best use for their land, and will likely preclude many productive landholders from participating in the ERF and diversifying their revenue streams, particularly those in regions with smaller farm sizes;

¹ See: <https://minister.awe.gov.au/duniam/media-releases/declaration-sustainable-way-forward>

² See: <https://minister.awe.gov.au/ley/media-releases/australia-signs-international-biodiversity-declaration>

- e. Are neither an effective nor proportionate response in addressing the perceived public policy concern (namely, purported adverse impacts to communities from carbon projects);
 - f. There are existing mechanisms to address the perceived policy concern, namely:
 - i. Existing requirements for carbon projects to align with Natural Resource Management (NRM) organisation plans, which could be strengthened to incorporate an NRM's assessment of the carbon project;
 - ii. State and Territory legislation, particularly regarding feral and pest management on pastoral leases; and
 - iii. Existing carbon rules related to Land Management Plans that include management of feral animals and weeds, which could be strengthened by way of outcome vegetation condition assessments.
 - g. Create additional, unnecessary bureaucratic red-tape for farmers and future carbon projects, at odds with Government commitments to improve the efficiency of carbon markets³;
 - h. Create genuine strategic and financial risk for private land conservation organisations acting in the public environmental interest, including several of ALCA member organisations;
 - i. Undermine confidence in projects that deliver economies of scale, specifically obstructing large scale collaborative environmental planning at landscape scale (i.e. regional planning, a Commonwealth Government priority); and
 - j. Needlessly limit the ability for Government to achieve other national priorities such as conservation of threatened species and ecological communities.
2. Alternative means for addressing the outlined policy concerns could include requiring improved monitoring standards for carbon projects and ongoing project impact measurement that addresses community concerns and is transparent to the market, with the market (including the Government) then acting accordingly.
 3. At minimum, amendments to the *Carbon Credits (Carbon Farming Initiative) Rule 2015* should not operate retrospectively to their promulgation.
 4. Provisions under the amended Rule should not come into operation until at least 1 July 2022 to allow the sector time to adjust; specifically (amended text in **bold**):
 - a. Section 122 (1) could instead read: "Section 20C only applies to applications submitted under section 22 of the Act or subsection 23(3) after **1 July 2022.**"

However, should amendments to the *Carbon Credits (Carbon Farming Initiative) Rule 2015* proceed, ALCA recommends the following:

Exclusion of projects / Ministerial veto

5. Properties with in-perpetuity conservation covenants/agreements and/or State or Territory stewardship support should also be excluded from the operation of the Ministerial veto.
6. In recognition of the unique cultural rights of Indigenous Australians, projects in Indigenous-Protected Areas and Indigenous-owned or managed land, should be excluded from the operation of the Ministerial veto.

³ See: The King Review; <https://www.industry.gov.au/sites/default/files/2020-05/government-response-to-the-expert-panel-report-examining-additional-sources-of-low-cost-abatement.pdf>

7. Where State and Territory Governments may seek to rely upon income flows from carbon projects in funding purchases of land for National Parks, Conservation Parks/Areas, and Nature Reserves (and similar). The introduction of the Ministerial veto could now put at risk the viability of that investment; as such, all Government-owned land should also be excluded from the operation of the Ministerial veto.
8. Further to Recommendation 7, private land purchases for conservation which received financial support and co-investment from Commonwealth, State or Territory Government funding – but one example being land purchased under the Commonwealth’s National Reserve System program⁴ – should similarly be excluded from the operation of the Ministerial veto.
9. Areas of high carbon and biodiversity conservation value should be excluded from the operation of the Ministerial veto, specifically, areas that enhance ecosystem function for high conservation value habitats, highly intact ecosystems and sites critical to persistence of biodiversity, including, at minimum:
 - a. Ramsar wetlands⁵ or Directory of Important Wetlands⁶;
 - b. Key Biodiversity Areas⁷;
 - c. World Heritage List areas⁸;
 - d. Threatened ecological communities (whether under Commonwealth, State or Territory listings);
 - e. Regional ecosystems that contribute to National Reserve System CAR targets⁹;
 - f. Critical or priority habitat for threatened species (in accordance with Commonwealth, State or Territory strategies, recovery plans and programs);
 - g. Priority mapped biodiversity corridors (such as mapped areas in catchment plans, and State, Territory or local government planning documents); and
 - h. Areas of outstanding biodiversity value, as identified under Commonwealth, State or Territory legislation and delegated legislation (for example, the *Biodiversity Conservation Act 2016* (NSW)).
10. To minimise sovereign risk and financial uncertainty, the definition for “**adverse impact finding**” requires additional clarity articulating the considerations that the Minister will take into account; it should be based on relevant and substantiated facts. Specifically:
 - a. Section 20C, 2(b)(ii)(B) would be strengthened by the following proposed amendments (amended text in **bold**):

“(B) within 45 days of sending the written statement referenced in subparagraph (2)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator making an adverse impact finding in relation to the notification, **including the impact assessment upon which the Minister has relied to make that adverse impact finding;**”

⁴ See: <https://www.awe.gov.au/agriculture-land/land/nrs>

⁵ See: <https://www.awe.gov.au/water/wetlands/ramsar>

⁶ See: <https://www.awe.gov.au/water/wetlands/australian-wetlands-database/directory-important-wetlands>

⁷ See: <https://www.iucn.org/commissions/world-commission-protected-areas/our-work/biodiversity-and-protected-areas/key-biodiversity-areas>

⁸ See: <https://www.awe.gov.au/parks-heritage/heritage/places/world-heritage-list>

⁹ See: <https://www.awe.gov.au/agriculture-land/land/nrs/publications/strategy-national-reserve-system>

- b. The definition for “**adverse impact finding**” within both (a) and (b) could be refined from: “...in the opinion of the Minister,” to: “...**according to the impact assessment relied upon by the Minister**”.
11. We recommend the development of relevant guidance materials that outline how material adverse impacts – and their counterfactuals – are to be assessed as they relate to (separately):
 - a. agricultural production; and
 - b. communities.
12. Accountability and transparency would be strengthened with a public register of ‘adverse impact findings’, which should include the facts upon which the Minister has relied to make that adverse impact finding. This register would be made publicly available on the Department’s website.
13. Part (c) of the definition for “**farm**” should be omitted; it is our view that requiring agriculturally unproductive land to lay fallow for at least 10 years before it could be considered for an alternative land use is unreasonably long and challenges the principle of inalienable land rights in Australia. Within reasonable limits, farmers should be able to control their property as they see fit, with 5 years being much closer to a reasonable limit.
14. We recommend that the area requirements under the definition for “**notifiable regeneration project**”:
 - a. Be enlarged from “15 hectares” to at least “25 hectares”;
 - b. Be enlarged from “one third” to at least “one half” of a farm;
 - c. Exclude from its calculations all land that cannot – either legally or de facto – be used for the purpose of commercial agricultural production, and consider also excluding marginal land with poor productivity; and
 - d. Consistent with Recommendations 5 through 9 above, exclude properties with in-perpetuity conservation agreements, State or Territory stewardship support, Indigenous Protected Areas, Indigenous-owned land, Government-owned land, and, at minimum, areas that enhance ecosystem function for high conservation value habitats, highly intact ecosystems and sites critical to persistence of biodiversity.

Monitoring of pest and weed management

15. Although supportive of the intent of the proposed amendments to section 70, ALCA recommends that the Government use pre-existing mechanisms to manage the outlined concerns, such as requirements for projects to demonstrate consistency with local Natural Resource Management plans, and to have received development approval (as per Recommendation 1(f) above).

Strengthening accountability and transparency

16. Clarify the availability of the right of administrative review of a Ministerial finding that a project would be a material adverse impact.
17. Include a transparent avenue to appeal the Minister’s decision.

18. Given the substantive proposed changes, the Rule should be subject to a review at 18 months after promulgation, and then subject to 5-yearly reviews as recommended in the consultation paper¹⁰.
19. In all reviews of the amended Rule, including the 18-month review proposed above, consideration should be given to assessing:
 - a. The total carbon credits foregone from projects excluded by the Minister;
 - b. The total investment value of projects excluded by the Minister; and
 - c. The total estimated indirect economic benefit foregone from projects excluded by the Minister.

Thank you again for the opportunity to contribute to the Federal Government's consultation on the *Proposed new requirements for native vegetation regeneration projects under the ERF*.

ALCA looks forward to an ongoing engagement with Government to help address and support Australia's response to the dual challenges of climate change and biodiversity loss in the context of the private land sector.

Australian Land Conservation Alliance

¹⁰ See: p3, Consultation Paper; https://storage.googleapis.com/converlens-au-industry/industry/p/prj1c095c1d0ac09fb0dedf5/public_assets/ERF-consultation-paper-vegetation-projects.pdf