

# Australia's **Extinction Crisis** Protecting critical habitat



**AUSTRALIAN  
CONSERVATION  
FOUNDATION**

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# We are Australia's national environment organisation

The Australian Conservation Foundation (ACF) is a growing community of nearly half a million people who speak out, show up and act for a world where reefs, rivers, forests, people and wildlife thrive.

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We acknowledge the Traditional Owners of this country and recognise their continuing connection to land, waters and community. We pay respect to their Elders past and present and to the pivotal role that Aboriginal and Torres Strait Islander people continue to play in caring for country across Australia.

## Australia's extinction crisis

Australia is a land of incredible landscapes, unique wildlife, ancient forests and beautiful reefs. It is one of the few countries in the world designated as 'megadiverse' because of the sheer abundance of plants and animals found nowhere else on earth.

But for all its natural beauty, the sad reality is that Australia leads the world on extinction. It has the highest number of mammals declared extinct since the arrival of Europeans, with 29 mammals lost forever. To put that in context, the United States has only lost two mammals to extinction since Europeans arrived there.<sup>1</sup>

Many of these extinctions have occurred recently. Since 2009 three vertebrates, a bat, a marsupial and a skink, have all gone extinct in Australia. This is despite Australia signing up to global targets in 2010 that aimed to eliminate extinction by 2020 through the United Nations Convention on Biological Diversity (known as the Aichi Targets).

Across the board, indicators for biodiversity are in substantial decline. This was confirmed in the most recent State of the Environment Report, released in 2017, which painted a grim picture for our reefs, rivers, forests and wildlife.

Australia has 1,907 species and ecological communities listed as threatened under national law. The list includes little known insects, frogs, fish and plants, through to iconic species such as the Koala, Cassowary and Leadbeater's Possum. Threatened ecological communities include grasslands, banksia woodlands, rainforest and alpine wetlands.

The threats to these species and communities are diverse and interconnected. These include habitat loss, invasive species, bushfires, disease and climate change.<sup>2</sup> However, the 'primary driver' of the imperilment of threatened wildlife and ecosystems in Australia remains the destruction and loss of habitat.<sup>3</sup>

### **Australia leads the world on extinction.**

It has the highest number of mammals declared extinct since the arrival of Europeans.

<sup>1</sup> US Fish & Wildlife Service, Delisted Species, <https://ecos.fws.gov/ecp0/reports/delisting-report>

<sup>2</sup> Jackson WJ, Argent RM, Bax NJ, Clark GF, Coleman S, Cresswell ID, Emmerson KM, Evans K, Hibberd MF, Johnston EL, Keywood MD, Klekociuk A, Mackay R, Metcalfe D, Murphy H, Rankin A, Smith DC & Wienecke B (2017). Australia state of the environment 2016: overview, independent report to the Australian Government Minister for the Environment and Energy, Australian Government Department of the Environment and Energy, Canberra.

<sup>3</sup> Megan C. Evans, James E. M. Watson, Richard A. Fuller, Oscar Venter, Simon C. Bennett, Peter R. Marsack, and Hugh P. Possingham, The Spatial Distribution of Threats to Species in Australia (April 2011) 61, 4, *Bioscience*.

## The importance of critical habitat in conservation

Habitat loss is the leading cause of biodiversity decline globally. Human activity has caused an unprecedented decline in nature. We are in the grip of a global sixth mass extinction event. The knock-on effects remain unknown.

Habitat is essential if the diversity of plants and animals that occur in Australia are to survive and flourish in the wild. Most species of plants and animals have specific habitat requirements which have been derived from their evolution. For example, some species may need a particular kind of tree which bears a certain size hollow to breed. Others may be found within a very narrow geographic and environmental range. Even widespread species can have very particular habitat needs depending on their biology and ecology.

In the face of increasing threats and loss of habitat, conservation scientists have identified and promoted the concept of 'critical habitat' to highlight the areas that are essential for species and ecosystems to survive into the future. These may include places such as breeding areas, essential wildlife corridors, essential food resources, or areas that enable species to persist in times of hardship, such as drought. In effect, they are areas so important that if destroyed, it would drive species to extinction.

Critical habitat primarily relates to the protection and preservation of threatened species. It found prominence through the application in the United States' *Endangered Species Act 1973* (See Box 1).

As threats from climate change, wildfires, invasive species and habitat loss continue to increase, identifying and protecting critical habitat is essential to prevent further population declines and the extinction of threatened species and ecosystems.

If the Australian government fails to protect critical habitat, Australia will fail to meet our international obligations to conserve nature, achieve our national conservation objectives and prevent extinctions.

**Preventing the extinctions of threatened species** simply cannot be achieved without protecting the habitat they need to survive.

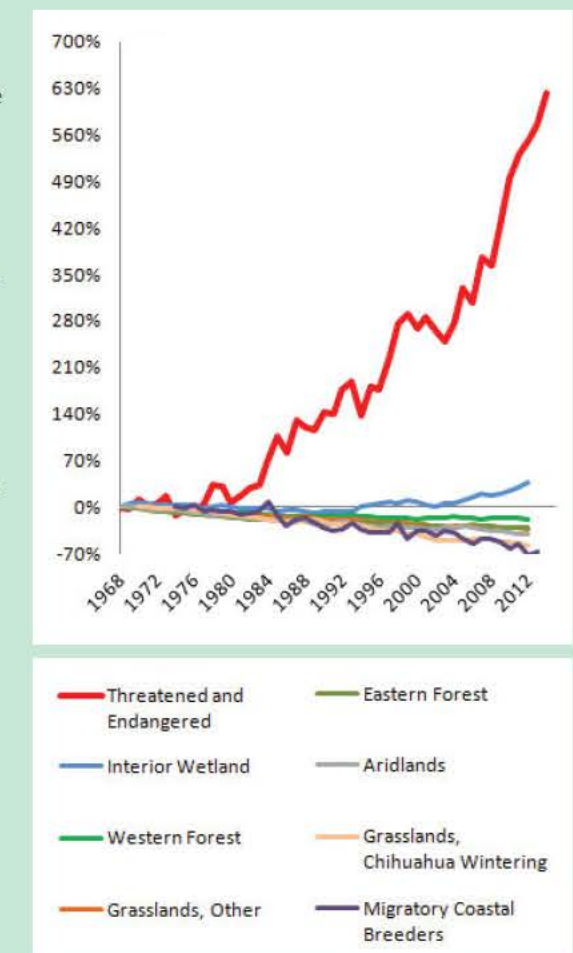
## Box 1: Critical Habitat Protections in the United States

The critical habitat approach taken by the US through its *Endangered Species Act* demonstrates that critical habitat protection can result in substantial gains for threatened species when implemented properly.

Research has found that endangered species which had critical habitat listed in the US were more likely to be stable or improving than species that had no critical habitat protection within two years of the listing. Beyond two years, the data showed that species with critical habitat protections were twice as likely to be improving in terms of population size than those without protections.<sup>4</sup>

In fact, critical habitat listing in the US has resulted in gains which exceed that of basic species listing and even implementation of some recovery plans.<sup>5</sup> When looked at holistically, the *Endangered Species Act* and the protection of critical habitat have played a significant role in reversing the declines in large numbers of threatened species (see Figure 1).

**Figure 1:** Average population growth of Threatened & Endangered vs Sensitive, Unprotected birds: 1968-2014<sup>6</sup>



<sup>4</sup> Martin Taylor, Kieran Suckling and Jeff Rachlinski 'The Effectiveness of the Endangered Species Act: A Quantitative Analysis' (April 2005) *BioScience*, 55, 4, 360-367.

<sup>5</sup> Martin Taylor, Kieran Suckling and Jeff Rachlinski 'The Effectiveness of the Endangered Species Act: A Quantitative Analysis' (April 2005) *BioScience*, 55, 4, 360-367.

<sup>6</sup> Centre for Biological Diversity, *A Wild Success: A Systemic Review of Bird Recovery Under the Endangered Species Act* - June 2016

## Protection of critical habitat under national law

Australia currently has over 1900 species and ecological communities listed as threatened with extinction under our preeminent national nature law, the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). The EPBC Act provides for the listing of threatened species and ecological communities and regulates destructive developments that may impact upon them.

Alongside the regulation of development, the EPBC Act gives the Australian Government powers to protect threatened species. This includes overseeing the development of recovery plans for threatened species and ecological communities and the provision to list habitat that is critical to the survival of a species on a national, critical habitat register.

The EPBC Act defines critical habitat as 'habitat critical to the survival of a listed threatened species or ecological community.'<sup>7</sup> The law establishes a wide variety of matters that may be taken into account when identifying critical habitat. This includes whether the habitat is used during times of stress (for example; fire, flood, drought), is essential during any part of a species life cycle, is used by important populations, is necessary to maintain genetic diversity and evolutionary potential, provides a corridor, or any other way habitat may be critical.<sup>8</sup>

The designation of critical habitat in Australia primarily occurs through the national critical habitat register. It is important to note that critical habitat designation does not create parks or reserves. Instead it places restrictions on actions which would result in the destruction of critical habitat, including fines and even imprisonment for persons who knowingly damage critical habitat.

Improving Australia's approach to the management and protection of critical habitat will have important benefits for the recovery of threatened species and the awareness of species conservation in the broader Australian public. Paired with an improvement in recovery planning processes and threatened species list management, stronger critical habitat laws will greatly improve transparency and accountability in threatened species conservation. Similarly, such measures will also provide important signals to governments and developers regarding the location of critically important environmental values that must be avoided when planning development projects.

<sup>7</sup> 207A (4)

<sup>8</sup> The EPBC Regulations 2000 sub-section 7.09

# Let's stand up for big old trees, wildlife and the living world we share



## The failure of national law in protecting critical habitat

Despite having over 1900 nationally listed threatened species and ecological communities, Australia's national critical habitat register lists only five places as critical habitat (see Table 1). The most recent critical habitat listing on the register was in 2005.

**Table 1:**  
Register of Critical Habitat<sup>9</sup>

REGISTER OF CRITICAL HABITAT	EFFECTIVE
<i>Diomedea exulans</i> (Wandering Albatross) - Macquarie Island	01 Jul 2002
<i>Lepidium ginninderense</i> (Ginninderra Peppercreese) - Northwest corner Belconnen Naval Transmission Station, ACT	28 Feb 2005
<i>Manorina melanotis</i> (Black-eared Miner) - Gluepot Reserve, Taylorville Station and Calperum Station, excluding the area of Calperum Station south and east of Main Wentworth Road	05 May 2004
<i>Thalassarche cauta</i> (Shy Albatross) - Albatross Island, The Mewstone, Pedra Branca	01 Jul 2002
<i>Thalassarche chrysostoma</i> (Grey-headed Albatross) - Macquarie Island	01 Jul 2002

The Australian Conservation Foundation undertook analysis of existing recovery plans for animals listed as critically endangered and endangered under the EPBC Act. Out of 230 listed species it was identified that 127 (55%) had recovery plans and 105 (45%) had clearly identified critical habitat that was essential to their survival. These included specific areas and locations as well as specific environmental values that would easily enable the listing of critical habitat. Of the species surveyed, 25 (10%) had identified critical habitat wholly or partly located on Commonwealth land. Despite this, only two had habitat listed on the national critical habitat register (See Figure 2).

**Figure 2:**  
Total for fauna listed as Critically Endangered and Endangered



Given the immediacy of threats and the importance of conservation actions for protecting critically endangered and endangered wildlife, it is of significant concern that no critical habitat has been listed for any species since 2005. It is clear that there are species on both Commonwealth and other land tenures that have sufficient scientific knowledge to warrant the listing of their critical habitat.

Why then is Australia's national legal system failing to protect the most important places for our threatened wildlife? Because our pre-eminent law for conserving biodiversity and protecting the environment has not lived up to its name or its objectives when it comes to conserving threatened species.

<sup>9</sup> Register of Critical Habitat <http://www.environment.gov.au/cgi-bin/sprat/public/publicregisterofcriticalhabitat.pl>

## Lack of legal enforceability across tenures

The existing critical habitat provisions in the EPBC Act apply to all types of land tenure. However, due to an anomaly in the legislation, the penalty provisions for willfully damaging critical habitat only apply to habitat in or on a Commonwealth area. There is no penalty for harming critical habitat listed on private or state owned land, rendering the listing legally useless. As a result, there is no meaningful protection under current national environment law for the majority of areas of critical habitat. This in part explains some of the lack of listing on the critical habitat register. However, it does not explain the complete lack of action on the register over the past 13 years. As outlined in Figure 2, 10% of species surveyed in this report had both clearly identified areas of critical habitat which occurred wholly or partly on Commonwealth land. This fact would make these species suitable for having at least some, if not all, of their habitat listed on the existing critical habitat register. Yet this is not the case.

In nature, threatened species are not concerned by jurisdictional borders and types of land tenure. Under the EPBC Act, environmental impacts and development assessments and approvals are tenure blind, yet the critical habitat register is tenure constrained. The lack of application of critical habitat penalties and enforcement provisions across tenures is a significant flaw in national conservation policy and legislative design. The majority of critical habitat locations lie outside Commonwealth land (as identified in Figure 2). This means that in order to achieve effective legal protection for critical habitat, as well as greater public awareness through prominence on a publicly accessible register, the critical habitat provisions are in urgent need of reform and proper utilisation.

Despite the lack of penalty provisions outside of Commonwealth land, there remains a significant community benefit from having transparent and easily accessible listings of critical habitat on the public record. It provides a tool that conservationists can use to educate the public, encourage awareness of threatened species management, and sends an important signal to governments, developers and planners as to which areas are to be avoided.

### Case study – Leadbeater's Possum

The Leadbeater's Possum, the faunal emblem of Victoria, is a small, fast-moving, tree-dwelling marsupial with a distinctive club-shaped tail. The possum was believed extinct until it was rediscovered in 1961. The Leadbeater's lives almost exclusively in the Montane Ash forests of Victoria's Central Highlands. These forests, which stretch east from Melbourne's doorstep, are some of the most carbon-dense on earth and provide essential drinking water for Melbourne and regional Victoria.

Leadbeater's Possum numbers have declined 80% since the 1980s, and in 2015 the species was up-listed to critically endangered – the last step before extinction. The main threat to the survival of this iconic species is the 'ongoing reduction in the extent, quality and connectivity of its habitat'.<sup>10</sup> The key drivers of this habitat loss are severe bushfire and logging, and the subsequent loss of old hollow-bearing trees. While bushfire is a natural process, peer-reviewed science has demonstrated that logging increases the severity of fire in the Leadbeater's Montane Ash habitat.<sup>11</sup>

In 2015, the Federal Environment Minister received important conservation advice from the government's own Threatened Species Scientific Committee (TSSC). The TSSC advised that the 'most effective way to prevent further decline

Photo: Jean-Paul Ferrero / AUSSCAPE



<sup>10</sup> National Recovery Plan for Leadbeater's possum (*Gymnobelideus leadbeateri*), Commonwealth of Australia 2016', 43.

<sup>11</sup> Chris Taylor, Michael A. McCarthy, David B. Lindenmayer, /Nonlinear Effects of Stand Age on Fire Severity (July 2014) 7, 4, Conservation Letters.

and rebuild the population of Leadbeater's Possum is to cease timber harvesting within the Mountain Ash forests of the Central Highlands'.<sup>12</sup> Despite that unequivocal advice, destructive clearfell logging has continued, destroying thousands of hectares of critical habitat for the species and pushing it ever closer to extinction. Just 1% of these forests are now old growth. Current 80 year logging rotations are keeping Ash forests young, preventing the establishment of the big, old, hollow-bearing trees this species needs for nesting and breeding, effectively depriving future possum generations of the habitat they will need to survive.

A National Recovery Plan for the possum was prepared in 2016 but has still not been released, despite a final draft being completed over two years ago, and an extensive community and stakeholder consultation process being undertaken. As required under the EPBC Act, the draft recovery plan identifies the species' critical habitat, stating that 'all current and prospective suitable habitat for the species is critical for its survival, and necessary for its recovery'.<sup>13</sup>

If Australia's critical habitat laws were tenure blind, and all suitable Montane Ash forests in Victoria's Central Highlands were protected under national environment law, logging, as recommended by the TSSC, would have to cease. An end to logging in these forests would give the Leadbeater's Possum its best chance of recovery and long-term survival. Yet as documents obtained through Freedom of Information reveal, the TSSC agreed at its September 2016 meeting to advise the Environment Minister that under Australia's current tenure constrained critical habitat laws, 'there would be no clear conservation benefit from pursuing a listing on the Register of Critical Habitat for this species'.<sup>14</sup>

## Under-utilisation and ministerial discretion

The EPBC Act affords significant discretion to Ministerial decision makers regarding the rigour and manner with which certain provisions are applied. The extent of the under-utilisation of critical habitat protections is a notable example. The Humane Society International has provided the Australian Government with data that would allow the Federal Environment Minister to register critical habitat for well over 60 species.<sup>15</sup> It also has advocated extensively for the listing of critical marine habitat on Commonwealth waters,<sup>16</sup> but no such listings have eventuated. It would appear that the lack of effective application of critical habitat laws in Australia is primarily due to a lack of political will.

The Federal Environment Minister is obliged to maintain a register, but is not legally obliged to list critical habitat on it. While the Minister is required to consider conservation benefit and scientific advice when listing critical habitat, economic and social matters are allowed to outweigh these considerations. In contrast, the US *Endangered Species Act* makes listing of critical habitat obligatory within 12 months of a species being listed.

The Grassland Earless Dragon is a prime example of the failure to effectively implement Australia's critical habitat laws. This endangered reptile occurs across the Australian Capital Territory (ACT) and the Monaro plains regions of New South Wales. The species has critical habitat identified across a range of tenures, including on several Commonwealth defence sites across the ACT. Despite the clear identification of these sites in the species recovery plan, and a number of these important areas occurring on

Commonwealth land, no critical habitat has been listed on the register for the Grassland Earless Dragon.

EPBC Act Regulations identify matters the Minister may consider when listing critical habitat. These include a species' small, important populations, dependence on habitat to meet essential life requirements or to persist during periods of stress, their reliance on habitat for connectivity or as corridors in fragmented landscapes, and their reliance on habitat for genetic diversity, adequate population recovery and long-term future. The majority of Australia's endangered and critically endangered species easily meet one or more of these criteria. If the Minister was required by law to list critical habitat for these species after considering such factors, the majority of Australia's most threatened species would benefit both from having their habitat protected and from increased community awareness of the habitats they require to avoid extinction.

### Case study – Golden-shouldered Parrot

Once found over most of Cape York Peninsula, the brilliantly-coloured Golden-shouldered Parrot is now restricted to two populations in the south of the region. The parrot is a priority species under both Queensland and Commonwealth law.<sup>17</sup> Threats to the species include grazing, loss of habitat structure arising from altered fire regimes, land clearing and mining and exploration, and disturbance of termite mounds by feral pigs.

Alwal National Park, which was declared in 2010, is the only substantial protected area containing Golden-shouldered Parrot

<sup>12</sup> Threatened Species Scientific Committee, Conservation Advice *Gymnobelideus leadbeateri* Leadbeater's possum, 22/4/2015, 33.

<sup>13</sup> National Recovery Plan for Leadbeater's possum (*Gymnobelideus leadbeateri*), Commonwealth of Australia 2016', 38.

<sup>14</sup> Draft Minutes, 65th Meeting of the Threatened Species Scientific Committee, 6-8 September 2016.

<sup>15</sup> Nicola Beynon, Michael Kennedy and Alistair Graham, 'Grumpy Old Greenies - lament waiting lists, wasted opportunities and wayward pork barrelling in Australia's biodiversity programs' Humane Society International, 2005.

<sup>16</sup> Lydia Gibson and Alexia Wellbelove, 'Protecting Critical Marine Habitats: The key to conserving our threatened marine species' A Humane Society International and WWF-Australia Report, 2010.

<sup>17</sup> Australian Government, Department of Environment, '20 birds by 2020' <http://www.environment.gov.au/biodiversity/threatened/species/20-birds-by-2020>

Golden Shouldered Parrot. Photo: Chris Tzaros

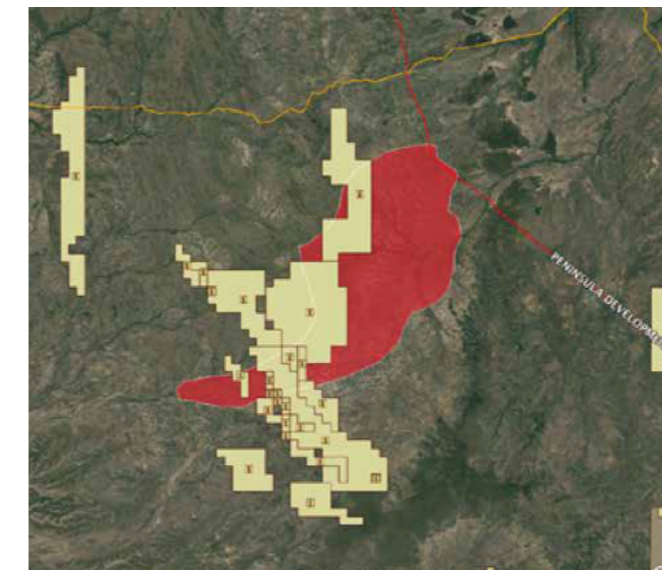


## Lack of precautionary approach

habitat and is jointly managed by the Olkola Aboriginal Corporation and the Queensland Parks and Wildlife Service. Outside of the national park, the recovery plan maps the distribution of the two populations of the Golden-shouldered Parrot.

Figure 3 maps the extent of mining and exploration against the distribution of the Morehead River population of the Golden-shouldered Parrot. The recovery plan for this species describes habitat critical for its survival in association with the maps, however the Federal Environment Minister has not listed this critical habitat on the register.

**Figure 3:**  
Mining interests and Golden-shouldered Parrot critical habitat<sup>18</sup>



The EPBC Act requires that the Environment Minister must consider the 'precautionary principle', which dictates that a 'lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.'<sup>19</sup> However, this principle does not explicitly apply to critical habitat provisions. In direct contrast to the precautionary principle, a lack of full scientific certainty is being used as a reason to continue destructive development and not list critical habitat, rather than to take preventative action to protect the habitat of particularly vulnerable species. This lack of precaution also contravenes adaptive management principles which are essential for protecting our biodiversity in the face of climate change and pressures on species to shift their ranges.

To avert Australia's extinction crisis, and ensure species persist into the future, strong action is needed now to protect the best areas of habitat that remain. Effectively protecting critical habitat is dependent on both the time required for scientific accuracy of identification and the point at which opportunities to recover a species are lost.<sup>20</sup> Scientific uncertainty should not be able to be used as a justification for the lack of political will to take action or as a strategy for parties who benefit from delays in protection by calling for more information. In short, waiting to identify critical habitat until better data is available results in habitat loss in the interim. This has particular relevance for critically endangered and endangered species, many of which are most threatened by continued habitat loss. The absence of full scientific certainty should not be a limit on protecting areas that are likely to be essential to a species' survival.

<sup>18</sup> Golden-shouldered Parrot habitat (red) redrawn from the national recovery plan. Image from Google Earth and mining interests derived from Queensland Globe data. (<https://data.qld.gov.au/dataset/queensland-globe>).

<sup>19</sup> EPBC Act s 391.

<sup>20</sup> Tara G. Martin, Abbey E. Camaclang, Hugh P. Possingham, Lynn A. Maguire, Iadine Chadès, 'Timing of Protection of Critical Habitat Matters' Conservation Letters, 1 July 2016.

# Failure to account for climate change

The US *Endangered Species Act* has a broad approach which defines critical habitat to include areas which will be essential for the future conservation of a species. Some species, such as certain plants, may be relatively immobile, whereas others may require the capacity to move relatively rapidly as environmental conditions change. Over the coming decades, Australia will experience the increasing effects of global warming. Species ranges are likely to be dramatically affected as they move to cooler areas as the temperature warms. It is likely, under even optimistic emissions abatement scenarios, that suitable habitat ranges for many species will shift significantly. This will also mean that in the future, critical habitat will also shift.

Central to adapting to the challenge of climate change will be ensuring our legislative frameworks and conservation interventions are fit for purpose. Moving towards an adaptation focus would require expanding the definition of adaptive management critical habitat to include existing habitat and modelled future habitat as a result of climate change. This is a particularly important inclusion where habitat loss and degradation has strongly influenced a species' decline, has fragmented a species' existing range and has limited a species' capacity to move across the landscape.

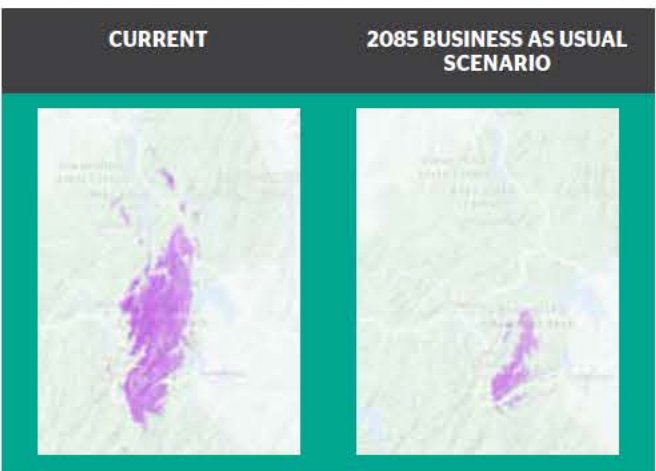
Likewise, a stronger, broader definition of critical habitat must give significant emphasis to species persistence. This should be evaluated in terms of the extinction risk, population size, and /or number of patches needed to achieve viable populations into the future.<sup>21,22</sup>

## Case study – Corroboree frog

The Southern Corroboree Frog is a spectacularly-patterned black and yellow amphibian which lives in the Australian Alps. It has experienced substantial decline as a result of introduced Chytrid fungus and other threats and is now listed as critically endangered. The species is thought to be highly susceptible to climate change, due to its limited capacity for long migration and the fact it already occupies some of the highest altitude areas in Australia. In many cases there is simply nowhere higher for the Corroboree frog to go.

The image below shows the current range of the Southern Corroboree Frog (Table 2). It shows range shifts where limited alpine wetland habitat is available under modelled climate change impacts. To provide adequate critical habitat protection now and into the future, range shifts and contractions must be taken into account in defining and identifying critical habitat for this species. The incorporation of data on both current and future habitat is essential to ensure the accuracy of critical habitat selection, particularly in the context of global warming.

**Table 2:**  
Current and modeled future distributions of the critically endangered Southern Corroboree Frog<sup>23</sup>



<sup>21</sup> Reed et al. 2006; Rosenfeld & Hatfield 2006.

<sup>22</sup> Camarlang, A.E., Maron, M., Martin, T.G. and Possingham, H.P., 2015. Current practices in the identification of critical habitat for threatened species. *Conservation Biology*, 29(2), pp.482-492.

<sup>23</sup> CliMAS Climate change and biodiversity in Australia <http://climas.hpc.jcu.edu.au/maps/>



Rusty Coupe, Toolangi. Photo: Dale Cochrane

## Critical habitat versus other protection mechanisms

Australia's National Reserve System (NRS), which is made up of public, private and Indigenous protected areas, is the backbone of our conservation estate and efforts. Australia is fortunate to have an abundance of intact nature and has enjoyed significant growth of the NRS, especially of highly protected areas, at least up until 2013. There are a range of mechanisms available for conserving threatened species. Large-scale protected areas are the preferred tool for safeguarding big, intact ecosystems important for biodiversity, such as the Mountain Ash forests of the Central Highlands of Victoria.

Yet Australia's capacity to protect its threatened species solely through the protected-area system is limited. Supporting legal frameworks and environmental impact assessment regimes are also vital. A 2011 study highlighted significant gaps in the protected area estate when it came to threatened species conservation. Specifically, it found that 166 (12.6%) threatened species occurred entirely outside protected areas and target levels of protection were met for only 259 (19.6%) species.<sup>24</sup>

Critical habitat designation can strengthen legal protection for threatened species. As a regulatory mechanism, it can supplement and support existing conservation tools, such as protected areas. Critical habitat designation is particularly useful because it can limit the loss of habitat outside of formal protected areas.

Alongside critical habitat designation, binding directives can guide decision making regarding the loss of habitat for threatened species. For example, biodiversity offsets are too often used to excuse the destruction of irreplaceable habitat for threatened species. Critical habitat designation and binding directives can make clear the limits to biodiversity trade-offs that occur routinely in regulatory decision making under the EPBC Act.

**Australia's capacity to protect its threatened species solely through the protected-area system is limited.**

<sup>24</sup> Watson, J.E., Evans, M.C., Carwardine, J., Fuller, R.A., Joseph, L.N., Segan, D.B., Taylor, M.F., Fensham, R.J. and Possingham, H.P., 2011. 'The Capacity of Australia's Protected-Area System to Represent Threatened Species', *Conservation Biology*, 25(2), pp.324-332.

# It's time for a new generation of laws to protect nature



## Fixing the system to protect critical habitat

The effective protection of critical habitat for threatened species requires more than passing mentions in recovery plans, threat abatement plans or conservation advice. It also requires that more than five places are listed on a reformed critical habitat register that can offer legal protection across multiple tenures. Subsuming critical habitat into existing, similarly inadequate EPBC Act protection is also not an alternative. It will only reduce visibility and ensure our threatened wildlife remains on its existing path to extinction. The existing legislation fails on a number of fronts. It fails in building public, industry and government awareness of critical habitat areas. It is subject to the political whims of ministers who are afforded broad ministerial discretion and may be subject to the pull of vested industry interests. Our current law provides patently inadequate legal protection to prevent the destruction of critical habitat. Addressing these issues requires clear legal protection that places prescriptive limits on the destruction and loss of critical habitat.

The EPBC Act, Australia's key piece of environmental law, has fundamentally failed at its task of protecting biodiversity. A new generation of environmental law that protects Australia's vanishing threatened species is desperately needed. A key to improving the outcomes for threatened species will be ensuring there is an effective critical habitat register which provides effective legal protection and increased public awareness

Australia, as one of the few megadiverse developed nations in the world, must move from a global laggard to a leader when it comes to biodiversity conservation. Failure to change the trajectory of our current extinction crisis will spell disaster for our iconic wildlife, leave future generations poorer and leave Australia as a global embarrassment.

Key reforms are needed to effectively protect critical habitat and our nationally threatened species.

### Recommendations:

Establish new national environmental laws which include strong provisions to protect critical habitats and climate refuge for species.

Establish a national sustainability commission to set national threatened species recovery standards, including working with the Threatened Species Scientific Committee to identify and list critical habitat.

Establish a new national critical habitat register which applies across all land tenures, with mandatory consultation and education programs.

Ensure the registering of critical habitat occurs within 12 months of a species being added to the national threatened species list.

Adopt a persistence approach to critical habitat listing, which accounts for climate change adaptation and impacts.

Establish an independent national Environmental Protection Agency that would be bound by conservation directives, critical habitat designations and recovery plans.

Establish a \$200 million per annum national threatened species fund to directly implement threatened species recovery plans.

# We love our beautiful planet

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