



Stephen Palethorpe
Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
By email to: ec.sen@aph.gov.au

9 April 2024

Dear Mr Palethorpe

Re: Senate inquiry into Australia's extinction crisis

For over 50 years the Australian Marine Conservation Society (AMCS) has worked through scientific research, policy reform, community engagement and education to protect Australia's oceans for the sake of current and future generations. We represent over 300,000 Australians from all walks of life. AMCS welcomes the opportunity to provide the Senate Standing Committee on Environment and Communications with this second supplementary submission to the inquiry on Australia's extinction crisis, further to our submissions of 15th August 2019 and 14th September 2022. This submission builds on rather than seeking to repeat the content of our previous submissions. We note the publication of the interim report in the previous Parliament.¹ This submission focuses on the government's implementation of the recommendations of the Independent Review of the EPBC Act undertaken by Professor Graeme Samuel AC (the Samuel review)²; the Nature Positive Plan³; and the ongoing consultation process on draft legislation, currently termed 'Nature Positive' legislation. It sets out the firm view of AMCS that reform of the EPBC Act and introduction into Parliament of the new comprehensive package of 'Nature Positive' legislation is urgently required to address the extinction crisis.

Delay in the midst of an extinction crisis

¹ The Senate, Environment and Communications References Committee, Australia's faunal extinction crisis - Interim Report, April 2019, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Faunalextinction/Interim_report

² <https://epbcactreview.environment.gov.au/>

³ <https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>

Australian Marine Conservation Society

w marineconservation.org.au

PO Box 5815, West End QLD 4101 **p** 07 3846 6777 **e** amcs@amcs.org.au

It is now more than three years since Professor Samuel delivered a comprehensive and scathing review to the Morrison Government. It is almost two years since the most recent State of the Environment report laid bare the dire state of nature in Australia. In October 2022 Minister Plibersek released the *Threatened Species Action Plan: Towards Zero Extinctions*, which has the stated objective to prevent new extinctions.⁴ In the marine environment extinction is a very real and pressing issue, compounded by the impact of climate change on species and ecological communities.

Extinction and the Maugean skate

A key example at the forefront of this crisis is the Maugean skate, an endemic small ray-like fish that once inhabited the murky, brackish waters of Bathurst and Macquarie harbours on Tasmania's west coast, listed on the EPBC Act as endangered on 4th March 2004. The skate was formally discovered by Dr Graham Edgar of the University of Tasmania only 16 years earlier, despite being around since the days of the dinosaurs. Now, with as few as 1,000 individuals remaining, scientists have assessed that we may lose the Maugean skate in as little as 10 years.⁵ It is clear that the EPBC Act has failed to protect the Maugean skate.

Environmental DNA surveys suggest the skate is now likely extinct in Bathurst Harbour, having not been seen there since 1992, and its sole remaining habitat of Macquarie Harbour has been impacted by the introduction of salmon farming, damming of the King and Gordon Rivers, and pollution from mining and forestry.

The Maugean skate population in Macquarie Harbour has declined by 47% from 2014 to 2021, whilst there has been a 20-fold expansion of salmon biomass in Macquarie Harbour, from less than 1,000 tonnes in 2004 to 20,000 tonnes in 2015. This corresponded with declining oxygen levels, ultimately resulting in mass mortality events of the skate.

Population monitoring established in 2012 show that Maugean skate numbers have declined so significantly it is now being considered for listing as critically endangered under the EPBC Act, the last classification before extinction. A recommendation on this listing is expected to be provided by the Threatened Species Scientific Committee to Minister Plibersek in October 2024.

This has rightly triggered urgent conservation action, with a number of individuals and eggs recently being taken into captivity to establish a captive breeding population as insurance in December 2023, in an effort to rapidly rebuild skate numbers. Sadly of the four adults and 50 eggs taken, two of the adults died within weeks and the hatching success of the eggs is not yet known.⁶ The Maugean skate has also been included as one of the 110 priority species in the Threatened Species Action Plan 2022-2032.⁴

⁴ <https://www.dcceew.gov.au/environment/biodiversity/threatened/action-plan>

⁵ Grant MI, Moreno D, Semmens J & Simpfendorfer C (2023) Population viability analysis of the Maugean skate *Zearaja maugeana*. Report prepared for the Australian Government Department of Climate Change, Energy, the Environment and Water.

⁶ <https://www.abc.net.au/news/2024-01-16/maugean-skate-insurance-population-issues/103321266>

The prioritisation of recovery actions such as the captive breeding program, and the oxygen pumping trial that got underway in early 2024 are an important step, but much more should have been done sooner to improve oxygen levels and the harbour's health, to ensure the viability of the Maugean skate and to protect its habitat. Captive breeding alone will not guarantee the skate's future if they have nowhere to live. The most immediate and effective measure is removing salmon biomass. River flows will also have to be managed to support harbour health. Federal environmental legislation, including the role of a strong, independent Environmental Protection Authority has a key role to play in this, however the EPBC Act has failed to play this role. The Nature Positive legislation must ensure it does not repeat these failures.

Extinction and the handfish

The handfishes are a unique group of 14 species endemic to southern Australia, predominantly Tasmania. They are famous for their modified fins that resemble oversized hands, which they use to 'walk' across the sea floor rather than swim. They tend to be found grouped together within small ranges of their habitat on the Great Southern Reef.

Whilst very little is known about handfish, three species - Spotted, Red and Ziebell's handfish - are critically endangered due to habitat destruction, pollution and climate change.⁷

The Spotted handfish, found only in the Derwent Estuary, is the most numerous of the three species, thought to have fewer than 3,000 individuals remaining in the wild. The Spotted handfish was listed as endangered under the EPBC Act in July 2000, and in October 2012 the species listing was upgraded to critically endangered.⁸

The Red handfish is found on only two small 50 metre patches of reef in south-eastern Tasmania, making it one of the rarest fish in Australia and globally, with an estimated population of only 50 to 100 individuals. In March 2004 the red handfish was listed as vulnerable under the EPBC Act, and in October 2012 this listing was upgraded to critically endangered.⁹ The Red handfish is now one of the 110 priority species listed on the Threatened Species Action Plan 2022-2032.⁴

The Ziebell's handfish has sadly not been sighted since 2007, but was previously found on rocky reefs of the Tasman Peninsula.¹⁰ It was listed under the EPBC Act as vulnerable in July 2000.

Despite a Recovery Plan being made in 2005 jointly for all three handfish species, which was updated in December 2015, the conservation status of all three species has declined since being listed on the EPBC Act. This seemingly defeats the purpose of listing under the Act, if all it does is cement decline.

⁷ <https://handfish.org.au/species-overview/>

⁸ http://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=64418

⁹ <http://www.environment.gov.au/biodiversity/threatened/species/pubs/83756-conservation-advice.pdf>

¹⁰ https://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=66673

Actions taken to date include the establishment of a captive breeding program for the Red handfish, including most recently in December 2023, when Minister Plibersek approved an emergency measure under the EPBC Act using the National Interest Exemption, for scientists to collect up to 25 individuals from the wild (possibly equivalent to half the wild population).¹¹ This is a last ditch attempt to stave off extinction for the Red handfish, noting that it is possibly already too late for the Ziebell's handfish.

What is needed?

It is clear from these examples that simply being listed on the EPBC Act does not result in species recovery, and in the cases above their trajectory of decline has been entrenched and conservation status worsened. The EPBC Act has failed to prevent the decline of these and many other species. Australia has made a global commitment to zero extinctions, and without the urgent introduction of a comprehensive new package of reforms this commitment will not be able to be met.

It is essential that strong, new federal environment laws are urgently introduced that provide what nature needs. The listing process for threatened species should trigger the development and implementation of a well funded recovery plan or strategy. To be effective, this strategy needs to ensure that critical habitat is identified and protected, and clear criteria set out that identifies how recovery will be undertaken, with clear definitions of what are considered unacceptable impacts for each threatened species or protected matters so that actions causing these impacts can be prevented or stopped. The new legislation, as suggested by Professor Samuel, must also have a clear focus on desired outcomes, for example in the case of threatened species halting and reversing species' decline.

Nature Positive Plan, consultation and legislation

AMCS has been deeply involved in consultations, which began in early 2023 following the publication of the Nature Positive plan in December 2022. Since October 2023, we have attended all four 'lock up' consultation meetings (held in October and December 2023, and February and March 2024). Following each of these meetings, together with our colleagues in the Places You Love alliance (PYL) we have submitted detailed comments on the documentation we have seen (see separate Senate inquiry submission from the Places You Love alliance). Documents reviewed have been a combination of policy papers setting out the policy intent of the Nature Positive reforms, and subsequently some (but not all) exposure draft legislation. This consultation was substantially delayed, and AMCS holds significant concerns that the consultation and legislative drafting process will not be complete in time for the Nature Positive legislation to be introduced and passed through Parliament in this parliamentary term. Nature needs stronger laws urgently.

Based on the material we have seen to date, we consider that there are a number of positive new features being proposed in the consultation, including unacceptable

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<https://minister.dcceew.gov.au/plibersek/media-releases/tasmanian-red-handfish-saved-possible-extinction>

impacts, National Environmental Standards (Standards), mandatory recovery strategies, improved welfare provisions in wildlife trade, and a broader suite of compliance and enforcement tools.

However, many of these positive aspects fall short of our expectations. There is also a real risk that any improvements made through these positive features will be undermined by other aspects of the reform package, such as Ministerial discretion, relaxed offsetting rules and fast-tracked development pathways. However, with political will, all of these problems are fixable and AMCS and our PYL colleagues have provided detailed recommendations to this effect.

In launching the Nature Positive Plan, the Minister was very clear that the new laws would involve a 'conceptual shift' from the EPBC Act. This shift is not yet evident; the draft objects and other proposals are simply incremental changes rather than the transformational change required by species such as the Maugean skate and handfishes to avoid their extinction. In fact, a number of proposed changes are a regression from the current regime, including allowing payments to meet offsets obligations, removing protections for many migratory species, and significantly increasing decision-maker discretion, including for example allowing the Minister to make decisions that are inconsistent with a Recovery Strategy.

Changes must be made to ensure that new features aimed at delivering nature positive outcomes can have proper effect under the laws and deliver the transformational change required for nature.

We also hold significant concerns that the new up front protections for threatened species and other matters of national environmental significance will not deliver the clear protections needed to halt the destruction of nature (a key element of 'nature positive') and stop new extinctions.

Conclusion

The delivery of a comprehensive package of Nature Positive legislation to replace the falling EPBC Act must be a political priority for this term. It is the view of AMCS, shared by our colleagues, that any further delay would be unacceptable and will likely result in more destruction of irreplaceable wildlife habitat on land and in our seas, and potentially also the extinction of endemic species such as the Maugean skate and handfish species.

Yours sincerely

Alexia Wellbelove
Campaign Manager - Fisheries and Threatened Species