Committee Secretary
Senate Standing Committees on Environment and Communications
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19 December 2012

Dear Madam or Sir,

Re: Senate Inquiry - The effectiveness of threatened species and ecological communities' protection in Australia

The National Parks Association of NSW welcomes this opportunity to make a submission to the *Senate Inquiry - The effectiveness of threatened species and ecological communities' protection in Australia* (hereafter the Inquiry). We would welcome an opportunity to present before this Inquiry if public hearings are held.

The National Parks Association of NSW (NPA) was formed in 1957 to promote the concept of a network of national parks in NSW under specialist national parks and wildlife legislation and managed by a professional agency. Today NPA continues to build on this work through a network of 18 branches and over 10,000 members and supporters. NPA has a strong commitment to the protection and best-practice management of Australia's unique natural areas and species, in order to promote better conservation outcomes across the NSW and Australian landscape.

The 2011 Commonwealth State of the Environment report indicated that the status of most Australian species and ecosystems were declining, particularly in the more densely populated areas. Within NSW, approximately 59% of mammal species, 28% of birds, 34% of amphibians,

18% of reptiles and 13% of plants are listed as threatened, according to the 2009 NSW State of the Environment report.

The current conservation actions undertaken in Australia are important, and have had some impact in slowing the loss of biodiversity in this country. However, much stronger, better resourced and better monitored conservation actions are needed, particularly at the federal level, if the current decline in biodiversity is to be halted and reversed.

Protection of threatened species and ecosystems is extremely important as means of protecting the broader landscape of Australia. Threatened species and ecological communities are clear and often iconic illustrations of the pressures on our ecosystems. By addressing key threats and pressures to protect threatened species, within the context of the broader ecosystems, broader biodiversity conservation outcomes can also be achieved. In addition, under the current regulatory systems, protection of threatened species or ecological communities can often be the only means of challenging developments or actions with significant potential to cause environmental damage. This situation is not ideal, and the principles of threatened species protection, and environmental protection more broadly, need to be better integrated across all jurisdictions and all relevant legislative instruments (e.g. planning and mining legislation).

We have provided specific comments on the effectiveness of threatened species and ecological communities' protection in Australia under the Inquiry's terms of reference 1 – 6 below.

ToR 1. Management of key threats to listed species and ecological communities

Within Australia, it is apparent that a much greater and more strategic investment in threatened species protection at all levels is required. The 2011 Commonwealth State of the Environment report identified nine major pressures affecting biodiversity, including local climate, clearing of ecosystems, grazing pressures, invasive species, altered fire regimes and altered hydrology. Despite current conservation and mitigation efforts, all but two of these pressures were assessed as having a high or very high impact and currently deteriorating. It

should be noted that committed conservation actions, if appropriately resourced, do have an impact in mitigating the loss of biodiversity. In an analysis of more than 25,000 vertebrate species, published in the journal *Science*, Hoffmann *et al*. (2010) concluded biodiversity decline would have been at least 20% worse in the absence of successful conservation efforts.

1.1. Monitoring programs

One major problem for undertaking successful management actions is that there is no sustained and well-resourced commitment to monitoring the status of threatened species and ecosystems, let alone the response of threatened species and ecological communities to the management actions taken. The 2011 Commonwealth State of the Environment report notes that across all jurisdictions there is inadequate information available on which to base assessments of and decisions about biodiversity and biodiversity management, and that there is insufficient investment in collecting this data, given the potential benefits it can bring. If Australia is to alleviate the pressures on our biodiversity and protect threatened species and ecosystems, it is vital that the resources allocated to management of threatened species and ecosystems and key threats are greatly increased. This must include providing resources for sustained and thorough monitoring programs, both to collect baseline data and to assess the effectiveness of management actions and the impacts of various threatening processes over time.

Citizen science, the systematic collection of scientific data about local biodiversity by trained community volunteers, has the potential to play an important complimentary role to monitoring programs conducted by government or scientific institutions. Citizen science projects can both provide data about threatened species and promote community interest in and engagement with the species, particularly with those in their local area. Because citizen science projects promote community engagement and a sense of community ownership, they have the potential to be long-term, self sustaining programs providing local data on threatened species populations.

There are already substantial existing citizen science initiatives and resources in Australia. The Atlas of Living Australia, which is supported by the Australian government, is an important means of collating observations made by citizen scientists about threatened species. NPA is currently developing a Great Koala Count event in NSW, which will mobilise large numbers of interested citizens to collect data about Koala distribution and numbers in their local areas. This will be modelled on the successful Great Koala Count in South Australia earlier in November 2012, which was affiliated with the Atlas of Living Australia and attracted over 1000 people. The information collected will provide valuable baseline data about this vulnerable species. Another example of the potential of citizen science is the substantial collection of data about birds, including threatened bird species, collected by BirdLife Australia's volunteer network.

It should be noted that citizen science cannot and should not be considered as a replacement for investment in professional monitoring programs by government, as there are many monitoring tasks that cannot feasibly, safely or legally be undertaken by the public, and there can more imprecision and inaccuracies in the data gathered. However, citizen science projects relating to threatened species (and biodiversity generally) are an important and cost-effective complement to professional monitoring, and should be an important additional area for government investment.

1.2 Accountability and transparency

It is also important to increase accountability and transparency in reporting the impacts of management actions on threatened species. This will provide a much greater incentive for ensuring that management actions are effective and that resources are being wisely allocated for maximum effect. Simply acknowledging a threat to a listed species or ecosystem, and deciding that it should be managed, without monitoring or reporting the success of management actions, is unlikely to produce any real benefit for threatened species. For example, NPA recently viewed a draft project plan prepared by the Office of Environment and Heritage for the Booroolong Frog (*Litoria booroolongensis*), which is listed as endangered under

both the *Environment Protection and Biodiversity Conservation Act 1999* (*EPBC Act*) and the NSW *Threatened Species Conservation Act 1995*. One site-specific management action was "Horse control", which aimed to "minimise the rate of increase of horse populations so that numbers are maintained at a sustainable level". This is supposed to be achieved by continuing current trapping programs in Kosciuszko National Park. However, current trapping programs are ineffective, with surveys and anecdotal evidence suggesting that horse populations are growing at rates between 23% and 50% in recent years. With only minimal funds were assigned for all management actions across multiple sites, the project has no chance of substantially increasing feral horse control in order to maintain populations at a sustainable level. Transparent monitoring and reporting is needed to ensure that management actions are actually successful and cost-effective.

ToR 2. Development and implementation of recovery plans

There are a number of ways in which the development and implementation of recovery plans could be improved. It is important that recovery plans put recommended actions for a listed species or community in the context of the whole ecosystem of which they are part. In addition, there is often a significant time lag between listing of threatened species and ecological communities, and the development of recovery plans. For example, there are more than 1000 threatened species and ecological communities listed under NSW legislation, but less than 10% of these have finalised recovery plans. As another example, the recovery plan for the Grey-headed Flying-fox, which was listed as vulnerable under Commonwealth and NSW legislation in 2001, is still at the draft stage.

There also needs to be much greater resourcing of recovery plan development and implementation. The lack of funding for implementation means that many of the plans have not been properly implemented. Actually implementing all existing recovery plans would make a significant contribution to the protection of Australia's biodiversity. There are currently no publicly available measures of recovery plan implementation. It would be much easier to evaluate the success of these plans if they included specific, measurable, time-limited

objectives. It is also important that governments resource effective and timely reviews of recovery plans, as this process is currently slow and inefficient.

ToR 3. Management of critical habitat across all land tenures

In NSW, declaration of critical habitat under the *Threatened Species Conservation Act 1995* (*TSC Act*) gives an area a number of protections. Planning authorities must consider the register of critical habitat when deciding whether to grant development consent, public authorities must consider the habitat when using land they control, and development applications and licence applications for activities carried out on the land require a species impact statement.

Unfortunately, critical habitat listing is a very under-used conservation tool for endangered and critically endangered habitat in NSW. Only four areas have been declared as critical habitat under the *TSC Act* (three of which are already within existing protected areas), which highlights several weaknesses in this system. One key weakness is that the decision to list critical habitat is made by the Minister, who must have regard to the likely social and economic consequences of a declaration. This has resulted in economic considerations preventing the listing of critical habitats, despite strong scientific support. In addition, the NSW definition of critical habitat does not include habitat where species aren't currently found, but which are expected to become important as corridors, habitat or refugia due to climate change in the future. It would be better for this definition to be aligned with the Queensland definition, which includes areas considered essential for the conservation of protected wildlife, even if they are not currently occupied by that species. Mechanisms for critical habitat listing under the *EPBC Act* could also be more extensively used.

It is important for these problems to be overcome, in order to provide stronger protection of critical habitat that is found outside of the reserve system, such as on private conservation reserves and public land such as Travelling Stock Routes (TSRs). Currently, private protected areas in NSW, unlike national parks, are not secure against threats posed by mining, nor are public lands such as TSRs.

It is also important to note the important role of a comprehensive, adequate and representative National Reserve System in protecting important habitat for threatened species and biodiversity more generally. A well managed and well designed National Reserve System provides vital "core areas" of relatively intact habitat, which are the cornerstone of cross-tenure connectivity conservation networks. It should not be assumed, though, that just because a species or community occurs within the National Reserve System that it is safe. The management of critical habitat and survival of threatened species and communities should be explicitly stated and worked towards as key outcomes for all national parks and reserves.

Similarly, for marine species, marine parks and specifically marine sanctuary zones are a vital element of marine species and ecosystem conservation, as part of a broader, well-managed marine estate. This was acknowledged in the Scientific Audit of Marine Parks conducted recently for the NSW government, which stated that a network of marine parks including sanctuary zones are an important mechanism in mitigating the effects of climate change on biodiversity, by spanning a range of latitudes and depths, providing species with access to refugee from changing temperatures, sequestering "blue carbon" in habitat features, and reduction of damage caused by storms, floods, droughts and sea level rise; protecting threatened or sensitive species, environments and cultural sites from damage caused by extractive resource use; controlling or preventing threatening land-based processes or maritime activities and reducing disturbance to sensitive areas, thus reducing the risk of bioinvasion?[1]. Both marine sanctuary zones and terrestrial reserves are important refuges for biodiversity, as they are areas where avoidable pressures such as extractive resource use and high impact recreation are (for the most part) excluded, giving species and ecosystems the best possible chance of coping with less-avoidable pressures such as climate change.

[1] Beeton RJS, Buxton CD, Cutbush GC, Fairweather PG, Johnston EL & Ryan R (2012) Report of the Independent Scientific Audit of Marine Parks in New South Wales. NSW Department of Primary Industries and Office of Environment and Heritage, NSW.

ToR 4. Regulatory and funding arrangements at all levels of government

4.1 Regulatory arrangements

NPA notes the findings of the Australian Network of Environmental Defender's Offices (ANEDO) in their recent assessment of the adequacy of threatened species and planning laws across all Australian jurisdictions, which noted that no jurisdiction has regulatory arrangements that meet best-practice standards for environmental assessment. We support ANEDO's recommendation that threatened species laws in all jurisdictions need to be reviewed, strengthened and fully resourced and implemented, to incorporate core elements of best practice threatened species legislation, including:

- An overarching object to protect and conserve biodiversity
- Object operationalised by all decision-makers under the legislation
- Implementation of an ecosystem approach
- A strong Commonwealth oversight and approval role
- Independent Scientific Committee
- Listing based on scientific considerations only
- Expanded listing categories
- Strengthened mandatory EIA and species impact assessment processes
- Focus on avoiding and mitigating impacts
- Significantly increased resourcing for recovery and threat abatement planning
- Increased enforcement and increased penalties
- Public participation provision, in relation to listing, planning and civil enforcement
- Clear integration with planning and natural resource management legislation
- Easily accessible publicly available information on listing, habitat mapping, government research and enforcement.

4.2 Concerns about weakening of federal environmental powers

NPA has been seriously concerned by the proposals for the Federal Government's environmental approval powers to be devolved to the State governments, which would have significant adverse effects on threatened species and ecological communities and jeopardise

protection measures. NPA strongly supports the Federal government's recent decision to suspend this process, and we urge the Federal government to retain and significantly strengthen its environmental powers.

State governments cannot be relied upon to exercise powers of approval in a way that adequately protects threatened species, their habitat and ecological communities. As detailed under ToR 6 below, the NSW Government's recent track record of damaging environmental decisions, including allowing recreational hunting and 'scientific trials' of grazing and logging in national parks, indicates that it is prepared to disregard even the existing regulatory requirements for threatened species, and gives conservationists and scientists very little hope that it can successfully improve threatened species protection without strong federal oversight and leadership.

The recent attempt by the Victorian state government to reintroduce cattle grazing into the national-heritage listed Alpine National Park provides a very clear illustration of the need for the Federal Government to retain its environmental powers in order to protect threatened species and ecological communities. Four of the six trial sites into which cattle were introduced by the Victorian government were recorded as containing federally-listed threatened species and ecological communities (the vulnerable Alpine Tree Frog, endangered Spotted Tree Frog, vulnerable Dwarf Sedge, vulnerable Montane Leafy Greenhood Orchid and the endangered Alpine Sphagnum Bogs and Fens ecological community), and many of the sites were also adjacent to EPBC-listed species and ecological communities, without adequate fencing to prevent cattle from straying out of the site.[2] Intervention by the Federal environment minister, under the *EPBC Act*, was necessary to stop these trials and provide protection for the affected threatened species and communities.

[2] Victorian National Parks Association (2011) Issue Paper: Nationally threatened species at risk from alpine cattle grazing. Accessed online 12.12.12 from http://vnpa.org.au/admin/library/attachments/PDFs/Issues%20papers/ISSUES%20PAPER%20-%20Alps%20grazing%20risks%20threatened%20species.pdf

Australia's responsibilities under international conventions such as the World Heritage Convention, the Convention on Biological Diversity and various other agreements such as the JAMBA, CAMBA and ROKAMBA agreements on migratory bird species are also best dealt with at a national rather than a state level, given the cross-jurisdictional nature of these conventions. Federal intervention in state government decisions has also been necessary on a number of occasions in order to protect significant places and species under these conventions, such as Federal decision making preventing the Queensland state government from oil drilling in the Great Barrier Reef in the 1970s and 1980s.

The recent report prepared by the Australian Network of Environmental Defender's Offices (ANEDO) noted that the *Environment Protection and Biodiversity Conservation Act 1999* (*EPBC Act*) allows the public to have a 'watchdog' role in identifying and reporting breaches of the Act, and challenging decisions. This role is absent under the threatened species and conservation legislation of many states.

4.3 Funding arrangements

As discussed in ToR1 above, current funding arrangements at the Federal and State levels are not sufficient to ensure that the decline in biodiversity can be reversed. In particular, state and territory governments have very limited resources, and in NSW and a number of other states, governments are currently making cuts and cost-saving measures across the public sector, leading to loss of staff, positions and programs relating to threatened species and conservation. As discussed under ToR1, it is important to increase levels of investment in monitoring and research to ensure that on-ground threatened species management actions are actually having the desired effect, reflect best practice and are cost-effective.

4.4 Tax concessions and reform to encourage investment in private land conservation programs

We consider tax concessions and reforms could greatly assist the further protection of Australia's unique flora and fauna on private land through increased philanthropic activity.

Acting in the nation's interests, there are now dozens of organisations, along with countless individuals, including thousands of primary producers, across Australia that are dedicated to long-term stewardship of land for nature conservation and the provision of sustainable environments. Approaches range from property-based management activities with no formal agreements, to the management of land through a legal covenant, to the acquisition and management of land specifically for the purpose of nature conservation.

These approaches need support, and with that support the public benefit would be greatly enhanced.

ToR 5. Timeliness and risk management within the listings processes

In many jurisdictions, risk management within the listings process needs to be improved. For example, in NSW, the current listing process shows a strong bias towards iconic species, particularly mammals and birds. Less iconic, poorly-studied taxa such as invertebrates and fungi are very poorly represented on the threatened species list. In many cases, there is insufficient data available for assessing the status of species or ecological communities. Because of the severe lack of resources for threatened species protection, further research is very rarely undertaken, even when available data suggests that it would probably lead to listing of the species or community. In addition, fish and marine vegetation are not listed under the NSW *Threatened Species Conservation Act 1995* (TSC Act), but under the *Fisheries Management Act 1997* (FM Act). This is an illogical arrangement and leads to a conflict of interest, as the FM Act is administered by the Minister for Primary Industries, who oversees the exploitation of marine resources, and should not also oversee biodiversity protection.

A number of state jurisdictions, including Victoria and South Australia, do not make reference to the precautionary principle in their legislation, meaning that listing is unlikely to occur if resourcing constraints prevent collection of adequate data about a species.

ToR 6. The historical record of state and territory governments on these matters

The historical record of many state and territory governments on matters relating to species and ecological community protection has been poor, and has been particularly bad in recent times. This situation is hardly surprising, as state and territory government have considerably more limited resources than the Federal government. Financial constraints can mean cuts to staff and resources devoted to threatened species and ecological community protection. More critically, there will frequently be circumstances in which the short term financial and political rewards of approving a development, allowing resource extraction or making a political deal with particular interest groups will provide a strong incentive for state governments to severely compromise threatened species protection. This situation is worsened by the fact that threatened species protection measures can be overridden by state development and planning laws and by a high degree of ministerial discretion, and there is often a conflict of interest, with state governments being proponents of projects as well as having responsibility for approvals and environmental protection.

In NSW, the quality of environmental decision making appears to be getting worse over time. This is clearly illustrated by a string of damaging environmental decisions recently made by the NSW state government in areas such as mining, planning, forestry, and protected area management, which have significant implications for threatened species and ecological communities. A number of examples of these damaging decisions are given below.
In addition, the concepts of biobanking and adaptive management are currently being interpreted by the NSW Government in ways that appear to be driven more by the desires of industry and interest groups than by principles of biodiversity protection and good environmental management.

6.1 Mining

The NSW government has recently given its approval to a proposal for a massive open cut mine at Maules Creek in northern NSW, despite the fact that this land is mapped as “Tier 1 Biodiversity Land” in the NSW government’s own strategic regional land use plan for the area.

This will result in destruction of parts of the Leard State Forest, which is the largest forest remnant on the heavily-cleared Liverpool plains. The forest is habitat for up to 34 threatened species, such as the Koala and the Masked Owl, and contains over 1,500 hectares of the federally-listed critically endangered Box Gum Woodland ecological community, much of which is earmarked for clearing.[3] Federal government approval for this project has not been granted at this stage, but if environmental approval powers rested solely with the states, this project would already be proceeding and impacting negatively on threatened species and ecological communities.

6.2 Planning

The current NSW planning system provides significant mechanisms by which environmental and threatened species considerations can be overridden. The current NSW government, as part of an election promise, repealed Part 3A of the *Environmental Planning and Assessment Act 1979* (*EPA Act*). Part 3A allowed the NSW Planning Minister to declare developments as having "State or regional environmental planning significance". It allowed a great deal of ministerial discretion, overrode environmental approvals processes and reduced the capacity for the community to comment on and appeal decisions. Unfortunately, Part 3A has been replaced by two assessment pathways under Part 4 of the *EPA Act*, State Significant Development (SSD) and State Significant Infrastructure (SSI), which retain many of the flaws of Part 3A. This includes granting the minister significant discretionary powers to declare SSDs and SSIs for developments such as mining, intensive livestock agriculture and timber milling, continuing to override environmental and heritage approvals, and severely restricting the merits appeal rights for third parties such as environment or community groups.

6.3 Forestry

There is currently a timber supply crisis in northeastern NSW, which is also the result of poor decisions made by the NSW government. In 2004, the NSW government of the time issued Wood Supply Agreements for timber from state forests to timber companies, despite evidence

[3] Maules Creek Community Council (2012) *Biodiversity Value and Environmental Impacts* Accessed online 18.12.12 at http://maulescreek.org/biodiversity-value-and-environmental-impacts/

that the resource estimates supplied by Forests NSW were inflated and unreliable. As a result, Forests NSW has been unable to meet the contracted timber volumes, which has led to severe breaches such as logging trees and areas required to be retained for threatened species, as well as over-logging plantations, cutting trees before they mature, increasing logging intensities and logging stream buffers.[4,5]

6.4 Protected area management

The protected area network forms an important cornerstone of biodiversity and threatened species protection. Recent decisions by the current NSW government have severely threatened the biodiversity conservation values of the protected area system in NSW, and have indicated the government's disregard for threatened species protection and biodiversity conservation. In May 2012, the NSW government struck a deal with the minority Shooters and Fishers party in the NSW Upper House to allow recreational hunting in NSW National parks, in exchange for support for the government's bill to privatise electricity infrastructure. Recreational hunting poses a range of safety and animal welfare concerns, and has been shown to be ineffective as a means of feral animal control.[6] This is a clear example of biodiversity protection and protected area management being compromised by the state government for political and financial reasons. Similarly, the NSW government is dramatically expanding horse riding in national parks and introducing it to wilderness areas. In doing so, it is revising its previous interpretation of the *Wilderness Act 1987*, which states that wilderness is appropriate for *"...providing opportunities for solitude and appropriate self-reliant recreation."* Previously, the NSW government had interpreted self-reliant recreation as excluding horse riding, but this has now changed to allow this high-impact recreational activity in wilderness areas, demonstrating a flagrant disregard for biodiversity protection concerns.

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[4] North East Forest Alliance (2011) *Timber Supply Crisis to cost taxpayers millions for non-existent timber* Accessed online 18.12.12 at http://nefa.org.au/category/resources/

[5] Hammond-Deakin, N. and Higginson, S. (2011) *If a tree falls: Compliance failures in the public forests of New South Wales*, prepared by the Environmental Defender's Office (NSW) Ltd for the Nature Conservation Council of NSW, Sydney, Australia.

[6] Carol Booth (2009) *Is recreational hunting effective for feral animal control?* Invasive Species Council, Victoria. Available online from http://www.invasives.org.au/documents/file/reports/EssayProject_RecHunting_FeralControl.pdf

Similarly, the introduction of 'scientific trials' of grazing and logging in national parks, which appear to be at least partially a response to industry pressures, raises serious concerns about the NSW government's commitment to biodiversity. In addition, the government has put on hold its statutory requirement to appoint environmental representatives to the National Parks Advisory Council. These moves have raised serious concern amongst environmentalists and scientists. NPA believes that the Federal government should include national parks as a matter of national environmental significance, which would give them greater protection and allow federal intervention when damaging activities are implemented by state governments, even when threatened species or other current matters on national significance aren't present.

In order to improve protection of threatened species and communities, and biodiversity more generally, Australia's environmental protection legislation, systems and processes should incorporate a strong Federal presence, sensible cooperation between all jurisdictions, clearly defined responsibilities, compatible data collection, analysis and reporting across jurisdictions, and nationally agreed auditing and reporting of compliance.

Yours sincerely

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