HUMANE SOCIETY INTERNATIONAL™

Submission to the Senate Inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act 1999*

22 September 2008

This submission is on behalf of:

Humane Society International (HSI)
PO Box 439
Avalon NSW 2107
Australia
www.hsi.org.au

For further information please contact:
Nicola Beynon
Senior Programs Manager
02 9973 1728
nicola@hsi.org.au

Submitted to:

The Secretary
Senate Standing Committee on Environment
Communications and the Arts
PO Box 6100
Parliament House
CANBERRA ACT 2600
Phone: +61 2 6277 3526
Fax: +61 2 6277 5818
Email: eca.sen@aph.gov.au

Introduction

Humane Society International (HSI) supported the passage of the *Environment Protection and Biodiversity Conservation (EPBC) Act* through Parliament in 1999 recognising it as an improvement on the legislative regimes it replaced. Among other provisions, we were attracted to the broad infrastructure of the Act where the Environment Minister has the central role as decision maker instead of the various 'action' ministers, and that the triggers for Commonwealth intervention in environmental approval processes are Matters of National Environmental Significance (MNES), including threatened species, migratory species, Commonwealth Marine Areas, Ramsar wetlands and world heritage places. We also saw significant potential for the Commonwealth to engage pro-actively in biodiversity conservation through Parts 13, 14 and 15 of the Act. Unfortunately, much of the potential seen in the EPBC Act has not been realised due to insufficient political will and an ongoing failure to direct sufficient resources to the implementation of the Act. The potential in the EPBC Act remains and can be realised with effective political support and financial resourcing.

While supporting the legislation as a general improvement, HSI has always maintained opposition to aspects of the law. Amendments are required to remove some the broad discretion and exemptions that can undermine protection available to matters of National Environmental Significance (for example the RFA exemption (s38), the very subjective exemption for matters in the national interest (s158)) and the potential for 'approval' bilaterals to inadequate state regimes. The Matters of National Environmental Significance need to be expanded to meet the national conservation challenges of today, most obviously climate change. Beyond a greenhouse trigger, the Act will need to be better used and further amended to create new provisions to contribute to the national mitigation effort against climate change.

In addition, amendments to the Act delivered in 2006 weakened the Act in terms of the listing processes for threatened species, ecological communities and heritage places and the ability for third party enforcement. Amendments are required to reinstate and improve on the previous listing process and reinstate and improve the third party enforcement provisions.

Based on our experience with the legislation and our expertise, HSI will focus our comments on the following terms of reference: b) critical habitats, threatened species, ecological communities and recovery; c) cumulative impacts; d) responses to key threats; e) RFAs; and f) impacts.

In addition, we commend for your consideration a letter HSI sent jointly with other conservation organisations to the Minister for the Environment in May of this year expressing our broad aspirations for reform of the EPBC Act (Attachment 1).

b) Lessons learnt from the first 10 years of operation of the EPBC Act in relation to the protection of critical habitats of threatened species and ecological communities, and potential for measures to improve their recovery;

Threatened Species and Ecological Communities

For fifteen years a core activity of our organisation has been to nominate critical habitats, threatened species and ecological communities for protection under state and federal legislation. HSI has been responsible for the listing of over 100 threatened species under state and federal threatened species laws, and 5 of the 17 key threatening processes on the EPBC Act. We have been responsible for almost a quarter of the threatened ecological communities listed on the EPBC Act

and the NSW *Threatened Species Conservation Act 1995*. As such, HSI is the organisation with the greatest experience of these processes.

HSI invests considerable resources in this effort because unless a species or ecological community is listed it does not trigger any of the protective measures of the Act (it is not a Matter of National Environmental Significance) nor is it eligible for the development of a recovery plan and other conservation measures in Chapter 5 of the Act. Therefore, we have strived to ensure that every species and ecological community that qualifies for EPBC Act protection receives it. Unfortunately, over the past 10 years our effort to achieve this comprehensively has been thwarted by a lack of political will and a lack of resources dedicated to the listing process on the part of the Government – and in several cases overt political interference.

HSI holds particularly serious concerns in relation to the slow rate of listing and protection for threatened ecological communities on private land, threatened marine species subject to commercial harvest and the failure to list and protect critical habitats.

Australian National Audit Office (ANAO) Audit 31 ***The Conservation and Protection of National Threatened Species and Ecological Communities 2006/2007*** recognised the:

> *…slow progress in listing species and ecological communities, particularly for the listing of marine species and publicly nominated ecological communities.*

The ANAO attributed the delays in listing ecological communities to limited resources to the task, technological challenges and expanded consultation

processes with stakeholders.[1] HSI agrees that a lack of resources for assessing threatened species and ecological communities for protection has been a substantial problem and this is in itself symptomatic of insufficient political will. However, our experience is that there has also been a deliberate and successful strategy to stall the listing processes for species and land of commercial value for political reasons.

We also note in regard to both the technological challenges and the resourcing issues, that other jurisdictions have been able to process HSI's nominations within their statutory deadlines. While HSI doesn't always agree with their decisions, processes to list threatened ecological communities and threatened species under the NSW *Threatened Species Conservation Act 1995* and the Victorian *Flora and Fauna Guarantee Act 1998,* run comparatively smoothly and efficiently.

It is HSI's firm view that political forces also led to deliberate slow progress in listing ecological communities on private land and threatened marine species subject to commercial fishing over the past 8 years. Lobby groups for the agriculture sector protested loudly after HSI nominated brigalow woodlands and blue grasslands in Queensland were listed on the EPBC Act in April 2001 at a time when vegetation clearance was an acutely sensitive political issue. From then on, listing potentially controversial ecological communities and marine fish on the EPBC Act has become an exercise in bureaucratic farce.

Between 2002 and 2006, it is HSI's view that the Environment Ministers of the day deliberately abused the EPBC Act nomination processes to frustrate and delay the listing of ecological communities on private land and marine fish of commercial value. For example, between November 2001 and July 2002, 12 HSI nominations for threatened ecological communities were rejected on invalid

[1] Australian National Audit Office Audit 31 Conservation and Protection of National Threatened Species and Ecological Communities through the EPBC Act.

grounds.[2] When HSI lawyers pointed out the grounds to reject them were invalid, the Minister agreed to reconsider them, but decreed they were no longer public nominations under the Act but 'nominations under reconsideration' and therefore no longer subject to statutory deadlines. Only 3 of these ecological communities have since been listed,[3] and the other 9 remain un-assessed. In the case of marine fish, successive Ministers abused the discretion they have to extend the Threatened Species Scientific Committee's 12 month assessment deadline. Extensions to the statutory deadlines for a decision were granted 3 times over 3 years for orange roughy (nominated in June 2003), 4 times over 4 years for school shark (nominated in October 2003) and 5 times over 5 years for eastern gemfish (nominated in August 2002). Only orange roughly has subsequently been listed (albeit in an inappropriate category) and decisions remain pending for eastern gemfish and school shark (due 30 September 2008).

Since 2006, amendments to the nomination process have come into force which subject public nominations to a prioritisation process. This has effectively legitimised the delays some nominations will experience if they are not considered priorities and also has the potential to legitimise political interference with the listing process.

Prior to the 2006 amendments, unless the Minister granted an extension, the Threatened Species Scientific Committee (TSSC) was required to provide the Minister with advice on whether a species or ecological community should be protected within 12 months of receiving the public nomination, and the Minister

[2] The Minister rejected 12 ecological communities on the grounds that they would be dealt with through an internal 'Strategic Assessment' of the nation's ecological communities that DEWHA has never completed. Lawyers for HSI argued that the promise of an internal 'strategic assessment' was not a valid reason to reject public nominations under the EPBC Act.

[3] Upland Wetlands of the New England Tablelands (New England Tableland Bioregion) and the Monaro Plateau (South Eastern Highlands Bioregion) (nominated as Basalt Plateau Lagoons) Listed 17 November 2005; Temperate Highland Peat Swamps on Sandstone (nominated as NSW Southern Highlands Montane Peat Swamps) Listed 29 April 2005; Natural Temperate Grasslands of the Victorian Volcanic Plains (nominated as Western Basalt Plain Grassland) Listed May 2008.

then had 3 months to consider their advice before reaching a final decision on whether to list. This remains the process for most state and territory threatened species laws. With political will and sufficient resources, DEWHA and the TSSC would have been capable of assessing all public nominations within those statutory deadlines, as do most states and territories with similar laws.

The 2006 amendments introduced a process whereby only the public nominations considered priorities by the Minister and the TSSC are assessed in any given year. The Minister determines a Finalised Priority Assessment List annually, after taking advice from the TSSC, and any nomination that does not make the priority list for two consecutive years is completely removed from the process, forcing the nominee to resubmit. Therefore, nominations that are not considered to be priorities are effectively rejected before they have been properly assessed. There are no statutory guidelines as to what constitutes a priority and the 'strategic approach' used to filter nominations set out on the DEWHA website is highly subjective http://www.environment.gov.au/biodiversity/threatened/ppal-developing.html.

(A similar triage process has been put in place for nominations for Commonwealth and National Heritage places which HSI also objects to).

Further, the Minister has extremely broad discretion to determine the Finalised Priority Assessment List. Section 194K(3) states that *in exercising the power to make changes [to the Final Priority Assessment List], the Minister may have regards to any matters that the Minister considers appropriate.*

When the amendments were debated in Parliament, Mr Albanese described section 194K(3) as an *"extraordinary provision – placing even more power in the hands of a minister who already treats the act as his political plaything"*. He also remarked to

Parliament that these amendments *"will increase the Howard Government's politicisation of environment and heritage protection"*.

So, whereas, previously Ministers rejected ecological community nominations on dubious legal grounds or repeatedly gave the TSSC extensions to consider nominations that were politically controversial, now a Minister is able to decree a nomination is not a priority, for whatever reason he considers appropriate for two years in a row and to remove it from the system altogether, with little explanation or accountability.

Several of our nominations have been rejected in this way having not been included in the 2007 and 2008 Finalised Priority Assessment lists – including several of the ecological communities that were invalidly rejected in 2001 and 2002. These nominations were submitted in good faith that they would be assessed and after considerable effort (a staff member was employed specifically to undertake the nominations over a period of 12 months with a grant from the NSW Government).

While HSI does acknowledges that controversial species and ecological communities have been included in the Finalised Priority Assessment Lists in 2007 and 2008, it remains the case that, in the hands of a minister that is so inclined, the new process, and the broad discretion built into it, seriously risks facilitating and formalising the politicisation of the listing process that has been experienced over the past 8 years. This falls far short of national and international best practice decision making in threatened species laws. It is certainly formalising the excessive delays whether for political reasons or not.

For even if a nomination makes it on to the Minister's Finalised Priority Assessment List, the TSSC can now be granted excessively long assessment times at the outset. For example, New England Peppermint Woodlands which HSI originally nominated in December 2000, have been included in the Minister's

Finalised Priority Assessment List but they still have to wait until 20 September 2010 for a decision on whether he will protect them or not! HSI's nomination for the Coorong Wetlands – a matter of intense current public interest - has been included in the 2008 FPAL but the deadline for assessment is not until 30 September 2011 – a federal election will likely be held before then.

Further, sanctioning the delays was the repeal of section 185 in the 2006 amendments. Section 185 (1) required the Minister to keep the lists of threatened species and ecological communities in an up to date condition. There was no excuse for repealing such an important requirement. Also repealed was section 185 (2), which required the Minister to assess the ecological communities on state and territory lists for EPBC Act protection. Had this clause been implemented properly it would have seen the comprehensive listing of most of the continent's known threatened ecological communities by now.

In this regards, The ANAO Audit 31 remarked:

> *In addition to processing public nominations, there was a substantial backlog of approximately 700 State and Territory ecological communities to be considered. However, amendments to the Act repealed this requirement.[10] The removal of the requirement to review State and Territory threatened ecological communities creates a risk that many eligible communities not identified through public nominations will not be considered for listing. The ANAO considers that the State and Territory listed ecological communities should be at least considered by the department and the TSSC within the context of the new listing process.*

Lastly, the 2006 amendments introduced new provisions especially for the listing of commercial marine fish and the political difficulties involved. Prior to the 2006 amendment a species could only be listed in the 'conservation dependent' category if it did not qualify for listing in a higher category. This remains the case for all species other than marine fish. In 2006 a clause was introduced to enable

marine fish to be listed as conservation dependent even though they qualify for listing in a higher category – see s179(6)(b). This followed the highly controversial listing of orange roughy as conservation dependent in 2005. Orange roughy qualified for listing as endangered and the Minister at that time said in a public radio interview that he was preparing to list it as such. An endangered species listing would have prevented commercial fishing for the species in Commonwealth waters and strenuous lobbying from the fishing industry ensued. The Minister finally listed it as conservation dependent which enabled commercial fishing to continue even though it did not qualify for that category before the 2006 amendment.

Critical Habitats

Section 270(d) of the EPBC Act requires the identification of 'habitats that are critical to the survival of the species or community concerned and the actions needed to protect those habitats'. Section 207A established a Register of Critical Habitats. Whereas hundreds of 'habitats that are critical to the survival' of many many species and ecological communities have been identified in recovery plans, very few critical habitats have been listed on the Register. This is because there is no explicit requirement in the EPBC Act to transfer those critical habitats identified in recovery plans across to the Register and the Department has not seen fit to do so as a matter of good policy. Indeed, the Department has strongly resisted listing critical habitats on the Register.

HSI has sent two submissions to the Minister proposing he list on the Register critical habitats that have been identified in Recovery Plans the Minister has approved under the Act. In preparing the submissions we went through the Recovery Plans systematically to find the critical habitat that was readily identifiable and where geographic coordinates were given and preferably

mapped. There is no public nomination process for critical habitat and our recommendations have not been accepted. Officials from the Department have repeatedly argued with HSI that there is insufficient conservation benefit to listing critical habitat on the Register and therefore it is not a priority. HSI finds this attitude infuriating.

Firstly, the Register has an important administrative function. It should act as a central register where a stakeholder can go to see if, for example, a proposed development is likely to impact on a critical habitat and therefore they will need to submit a referral for their development to be approved. As the Register has not been maintained, stakeholders are required to wade through hundreds of recovery plans and other information sources to find the location of critical habitats.

Secondly, listing on the Critical Habitat Register should carry significant weight in the impact assessment and approval processes. It is one thing for a piece of land to be potential habitat for a threatened species, but another thing again for it to be known critical habitat for a species.

Thirdly, there are very strong protective provisions for listings on the Critical Habitat Register on Commonwealth land and water, including offences for significant damage and requirements to covenant on sale. Yet, HSI submissions for critical habitat remnants of Cumberland Plain Woodland to be listed on the Register have been ignored and remnants on Commonwealth land, such as the former ADI site at St Mary's, have been sold without covenants to the detriment of their conservation.

Lastly, the Act should be amended so that there are strict protective provisions for critical habitat listed on the Register both in Commonwealth and state and territory jurisdictions. There should be a mandatory level of environmental impact assessment should a referral involve impacts on critical habitat listed on

the Register or identified in Recovery Plans. The Act should provide that it is not possible to get approval to cause significant impact to a critical habitat for a listed threatened species or ecological community.

Recovery Plans

The Australian Terrestrial Biodiversity Assessment 2002 laid clear the problems in effectively protecting our threatened species and ecosystems, highlighting the need for a new and invigorated national program with integrated actions for biodiversity conservation:

"*Compared to the high numbers of threatened species, only 338 Commonwealth, State and Territory recovery plans exist (approximately 20% of Commonwealth listed species) and the implementation of many of these is not funded. Given the size of the task in redressing this situation, threatened species recovery across Australia requires a more strategic approach that goes beyond planning and addresses implementation…*

Overall, successful recovery outcomes for threatened species and ecosystems and identified community capacity to be involved in recovery planning is identified in only 20% of subregions. Comparatively modest conservation initiatives and investment levels will lead to significant biodiversity conservation gains in much of northern Australia such as the North Kimberley and Cape York Peninsula, and across central Australia (29% of all subregions)".

Even Cumberland Plain Woodland which was the first ecological community listed on the EPBC Act predecessor the *Endangered Species Protection Act* still does not have a recovery plan in place. This is despite the mandatory requirement to have a plan in place within 3 years of a listing that existed prior to the 2006 Amendments. DEWHA will argue that it has been relying on the state government to develop a plan but after more than a decade, during which time many remnants have been on Commonwealth owned properties and with the

Commonwealth taking many decisions that impact on Cumberland Plain Woodlands, either through the sale of land or approvals to clear taken under the EPBC Act, that excuse is not tenable and never has been.

HSI notes that the 2006 Amendments removed the mandatory requirement to develop Recovery Plans for critically endangered, endangered and vulnerable ecological communities and species. Instead, DEWHA publishes an Action Statement when a species or ecological community is listed. This is not good enough. Recovery Plans are statutory instruments and there are clauses which require Commonwealth agencies to comply with them (s268). There is no such clause that applies to Action Statements. This compliance is important particularly for the decisions the Environment Minister takes when approving referrals to cause communities and species significant impact. DEWHA should be adequately funded so that recovery planning can resume as a core and important biodiversity conservation strategy.

HSI notes that the ANAO 31 report states:

…….The ANAO considers that monitoring implementation of recovery plans by the department has also been inadequate for reporting on their effectiveness in conserving species.

c) the cumulative impacts of the EPBC Act approvals on threatened species and ecological communities, for example Cumberland Plain Woodland, Cassowary habitat, Grassy White Box Woodlands and the Paradise Dam

HSI is concerned by the limited ability of the Act to deal with cumulative impacts because each action must get over a 'significant impact' threshold before the assessment and approval processes are triggered. We suggest the Government introduce a clause into the legislation to deal more directly with

cumulative impacts such as that which is exists in Queensland law. Section 14 of the QLD *Environment Protection Act, 1994* defines environmental harm as that which *'may be caused by an activity a) whether the harm is a direct or indirect result of an activity; or b) whether the harm results from the activity alone of from the combined effects of the activity and other factors'*. The EPBC needs a similar definition for significant impact.

However, even until such time as the Act is amended, we suggest the Government could make better use of the Administrative Guidelines for Matters of National Environmental Significance to interpret what is considered significant impact and to explain that cumulative impacts will be taken into account in determining this.

Cumberland Plain Woodland

HSI's experience is with the Cumberland Plain Woodland as we were responsible for its listing. We have been dismayed to see repeated approvals given to clear remnants of Cumberland Plain Woodland to make way for housing development in western Sydney. This has not been helped by the Government's failure to ensure a Recovery Plan is in place. What was already an endangered woodland reduced to less than 6% of its former extent, is now suffering extinction 'by a thousand cuts' despite the protection it receives under the EPBC Act. It is unclear whether the Department maintains statistics to monitor the cumulative impact of its own decisions on Matters of National Environmental Significance. So concerned are we for the conservation status of Cumberland Plain Woodland that we have nominated it for an upgraded listing to 'critically endangered' and we are pleased the TSSC and Minister have placed this nomination on the Finalised Priority Assessment List for a decision in 2009. For Cumberland Plain Woodland, HSI recommends DEWHA instate a Recovery

Plan immediately, declare all remnants critical habitat on the Register, covenant any Cumberland Plain Woodland remnants that remain Commonwealth properties and develop Administrative Guidelines to make it clear that any further clearing of Cumberland Plain Woodland will be considered significant and will not be approved.

d) the effectiveness of responses to key threats identified within the EPBC Act, including landclearing, climate change and invasive species and potential for future measures to build environmental resilience and facilitate adaptation within a changing climate

Climate Change

The EPBC Act is currently ill-equipped to deal with Australia's national effort to mitigate against and adapt to climate change. This is despite the framework of the EPBC Act allowing for it in a number of ways.

Greenhouse trigger

The Labor Government should move immediately to introduce greenhouse gas emissions as a Matter of National Environmental Significance so that the Federal Environment Minister may regulate major new greenhouse gas emitting projects. This was a high profile commitment in the Government's election campaign that has not yet been fulfilled despite nearly a year in office. It would be unwise for the Government to rely solely on the proposed emission trading scheme and carbon price to reduce Australia's greenhouse gas emissions. A greenhouse trigger would enable the Government to intervene directly to place conditions on

new emitting projects and further stimulate the development of technologies for carbon capture and storage and other forms of mitigation.

Further, the Government's proposed Carbon Pollution Reduction Scheme (CPRS) as proposed in its Green Paper would enable plantation forestry to opt into the emission trading scheme as part of the mitigation effort. Plantations are not without environmental impacts. As the CPRS will be managed by the Commonwealth in order to meet its obligations under the Kyoto Protocol or a successor agreement from Copenhagen, the Commonwealth will also have the responsibility to ensure there are not negative impacts on the environment. Plantation forests grown to participate in the CPRS should become a Matter of National Environmental Significance. (As an aside this should also include plantation forests that replace native vegetation being grown for Federal Government tax rebates, should that misguided policy continue). The assessment should include the impact of clearing existing vegetation and planting a tree crop on greenhouse gas emissions, biodiversity and local hydrology, climate and soil conditions. (Note HSI is arguing against the discrimination towards plantation forests over the protection of standing intact natural terrestrial ecosystems in the proposed CPRS).

Regulation of timber imports

To further enhance Australia's contribution to international greenhouse gas emission strategies, HSI is proposing the Australian Government amend the EPBC Act to control the regulation of timber imports. The Department of Agriculture Fisheries and Forestry has found that 10% of timber imports to Australia are from illegal sources. Deforestation and forest degradation may be responsible for as much as 25% of global greenhouse gas emissions and the Australian Government is supporting the inclusion of a mechanism for Reduced Emissions from Deforestation and Forest Degradation (REDD) in the

international emission trading scheme being negotiated at the UN Framework Convention on Climate Change (UNFCCC). Improved governance in some of the developing countries likely to participate in REDD will be essential for the success of the scheme. As a major developed country market for tropical timbers from countries such as Indonesia and Papua New Guinea, Australia has a responsibility to assist with better Governance at our end of the supply chain. Better regulating the timber imported to Australia would greatly assist international efforts for REDD.

The ALP committed to the banning of illegally logged timber imports in the lead up to the 2007 federal election. A new Part could be introduced to the EPBC Act to deal with international movement of tropical forest products to Australia from developing countries similar in form to Part 13A which relates to the movement of international wildlife specimens in accordance with CITES.

Threat Abatement Plan

HSI succeeded in having Loss of Terrestrial Habitat Due to Climate Change listed as a Key Threatening Process (KTP) in 2001. It has been a matter of great consternation that the Government has not agreed to develop a Threat Abatement Plan. Arguments against it have included Australia not being able to mitigate greenhouse gas emissions effectively in isolation of the rest of the world. HSI has considered this disingenuous when the Threat Abatement Plan we proposed when nominating the KTP was to focus on adaptation to climate change – to focus on conservation measures that would build resilience for Australian biodiversity as the climate changes and suitable habitats shift in altitude and latitude. We proposed a TAP that looked at improving connectivity of protected habitats in the National Reserve System and broader landscapes and to plan for new reserves and other conservation initiatives that take account of predicted climatic habitat shifts. Instead, the Government developed a National

Climate Change and Biodiversity Action Plan, which expired in 2007 and did not have legal underpinning.

Climate Refugia

The Government has allocated $250,000 for the identification of climate refugia – habitat where Australian species can find relative security as the climate changes. Once identified, the EPBC Act should be used to ensure these places are strictly protected through listings on the Register of Critical Habitat, conservation agreements, covenants and other planning instruments under the Act.

Landclearing

As noted in the 2006 Federal Government State of the Environment Report, land clearing and degradation continues to be one of the greatest threats to Australia's biodiversity. It is also the main cause of Australia's dryland salinity problem. Emissions from deforestation in 2006 at 11% of Australia's total emissions, are still the 4th largest source of carbon emissions after stationary sources, transport and agriculture.[4] Additional, and very substantial, emissions from degradation of forests (mainly logging) and woodlands (mainly unsustainable grazing) are not included in these estimates. Therefore, despite the introduction of land clearing legislation, land clearing and land degradation, and subsequent emissions and biodiversity loss, are still occurring on a significant scale.

HSI succeeded in having Land Clearance listed as a Key Threatening Process, again with disappointing results. The Government has elected not to develop a Threat Abatement Plan and has not included vegetation clearance as a Matter of National Environmental Significance. Land clearance is still occurring at unacceptable rates. With the current Government also proposing not to include

[4] Carbon Pollution Reduction Scheme Green Paper. July 2008.

vegetation clearance in the Carbon Pollution Reduction Scheme, the need for a MNES trigger and Threat Abatement Plan remains extremely pressing. HSI and other conservation groups have proposed 100 ha in any two years be set as the significance threshold (see attached WWF, ACNT, TCT, HSI May 2005 submission on Matters of National Environmental Significance).

HSI is concerned that exemptions and poor compliance with state clearing controls allow vegetation clearing to continue at unacceptably high rates. The World Wide Fund for Nature was quoted in newspaper reports on 6 September 2008[5] as saying that tree clearing in Queensland still accounts for 24% of the state's greenhouse gas emissions. The WWF spokesperson stated, *"There have been a lot of good intentions in recent years, but the fact remains total land clearing is unchanged from the 1990s."*

WWF has also advised that the latest NSW Vegetation Change Report shows land clearing is on the increase even where canopy cover is greater than 20%.[6] It is thus unwise to conclude that, merely because states have introduced regulations capable of being applied to reduce landclearing and land degradation, that such reductions have actually taken place to the degree anticipated.

A national Threat Abatement Plan is required to examine the effectiveness of state clearing controls and achieve stronger cooperation in reducing Australia's biodiversity loss and greenhouse gas emissions from this source.

Other threats

The EPBC Act could also be used more effectively to deal with other threats such as poor water management. HSI has previously suggested that dams and

[5] Qld tree-clearing is out of control. Canberra Times. 6 September 2008.
[6] WWF private correspondence. August 2008.

unsustainable water use be added as Matters of National Environmental Significance (see Attachment 2).

e) the effectiveness of Regional Forest Agreements, in protecting forest species and forest habitats where the EBPC Act does not directly apply

HSI strongly objects to the exemption for actions undertaken in accordance with a RFA being exempt from the assessment and approval provisions for Matters of National Environmental Significance. We recommend the removal of this exemption.

Failing removal of the exemption altogether, HSI recommends introducing constraints on the exemption. For example, there should be a requirement for an RFA to provide explicit protection for Matters of National Environmental Significance such as threatened species. A RFA should be required not to have a significant impact on a threatened species nor contribute to a detriment in its conservation status or that of its populations. An RFA should be required to preserve all critical habitats identified in recovery plans or listed on the Register. In addition, a RFA should be required to operate in a manner that enhances the recovery of threatened species that inhabit the forest areas over which the RFA operates.

f) the impacts of other environmental programs, eg EnviroFund, GreenCorps, Caring for our Country, Environmental Stewardship Programme and Landcare in dealing with the decline and extinction of certain flora and fauna

HSI is concerned that planning under other Government programs has not been well integrated with the EPBC Act. There is considerable scope to improve on

this and we hope the Government will be learning from mistakes under NHT when implementing its Caring for our Country Program. HSI has suggested greater uses of bioregional biodiversity strategies to better integrate national biodiversity priorities into the Commonwealth's environmental expenditure at the regional level. We have proposed the strategies be prepared by biodiversity experts to provide regional committees with professional technical advice on the most cost effective and strategic measures to protect national biodiversity priorities within their regions. The experts should include those from state and territory agencies to minimise duplication and poor coordination between the jurisdictions.

g) the impact of programme changes and cuts in funding on the decline or extinction of flora and fauna

HSI notes that the ANAO 31 remarked as follows:

> *Biodiversity conservation has not been a high priority for all NHT funded regions and where it has been a priority, the level of investment from the NHT is expected to achieve some 10-20 per cent of high priority targets Australia-wide. The relatively few regions that are monitoring trends continue to detect a decline (that is, an ongoing net loss in native vegetation extent, and continued decline in native vegetation condition). The department's program evaluation (January, 2006) found that it will take a long time and sustained high levels of investment at the regional level to achieve national biodiversity conservation objectives. In some cases, funding levels are insufficient to reverse the decline in biodiversity.*

Biodiversity conservation has never been adequately funded commensurate with the enormity and importance of the issue and unsurprisingly the 2006 State of the Environment Report concluded that "*…biodiversity continues to be in serious*

decline in many parts of Australia".

The 2008 budget again failed to deliver anywhere near the funds required. $180 million for the National Reserve System, $200 million for the Great Barrier Reef Rescue Plan and funds for the Tasmanian devil and cane toads were all very welcome but funding to protect Australia's threatened species and habitat systematically across Australia is still lacking. The same quantum of funds as has been available to protect the Tasmanian devil and eradicate the cane toad needs to be committed for each of Australia's threatened species and key threatening processes.

Recent studies give an indication of the resources required to secure Australia's terrestrial biodiversity. The PMSEIC report highlighted that between $300m-$400m is required to consolidate the National Reserve System,[7] while the National Land and Water Resources Audit's (NLWRA) Terrestrial Biodiversity Assessment estimated that an average commitment of $5m per subregion is needed, representing a commitment of $2 billion for land-based programs.[8] A previous study calculated that the investment required to protect biodiversity nationally was $5.2 billion over 10 years.[9] In all likelihood, and taking into account marine biodiversity, a much greater investment is required.

While overall expenditure on the environment is still nowhere near enough to address the enormity of the challenges ahead, HSI is pleased that the Government is signaling a more strategic approach for how it is spent. The National Heritage Trust was widely criticised for being piecemeal in its implementation. As yet there are insufficient details on the Caring for our

[7] Unpublished data from Draft Strategic Plan for the National Reserve System cited in Possingham, H., Ryan, S. Baxter, J. and Morton, S. 2002. Setting Biodiversity Priorities. A paper prepared as part of the activities of the working group producing the report Sustaining our Natural Systems and Biodiversity for the Prime Minister's Science, Engineering and Innovation Council. DEST: Canberra.

[8] Sattler, P. and Creighton, C. 2002. *Australian Terrestrial Biodiversity Assessment 2002*. NLWRA: Canberra.

[9] Australian Conservation Foundation and National Farmers Federation. 2000. National Investment in Rural Landscape. Paper prepared for ACF/NFF by Virtual Consulting Group & Griffin nrm.

Country program to be able to judge whether it will succeed in a more strategic approach and lead to more enduring results.

Conclusion

HSI is looking forward to the reform of the EPBC Act the Government has committed to. We support the basic architecture of the Act but believe it should be widely amended to constrain discretion, remove exemptions, support the Government's climate mitigation and adaptation strategies and better advance biodiversity protection. Funding to implement the EPBC Act must be increased considerably. Please find following summary recommendations.

Attachments:

1. Joint conservation organisation letter to Minister Peter Garrett May 2008 in relation to reform of the EPBC Act.

2. Joint submission on potential additional Matters of National Environmental Significance for the *Environment Protection and Biodiversity Conservation Act* May 2005 WWF, ACNT, TCT, HSI.

HSI recommendations

Threatened Species and ecological communities:

- All public nominations submitted to the EPBC Act (including those omitted from the 2007 and 2008 Finalised Priority Assessment Lists) should be assessed within two years.

- HSI would like to see the nomination process for threatened species, ecological communities and Commonwealth and National heritage places that existed prior to 2006 amendments reinstated, with some improvements, and the TSSC and DEWHA given the necessary resources to process all public nomination according to reinstated statutory deadlines.

- Section 179(6)(b) should be amended so that a marine fish that qualifies for listing as conservation dependent, vulnerable, endangered or critically endangered should be listed in the category it qualifies for. When fishing continues for a conservation dependent marine species, DEWHA should be required to approve the management plan to ensure the species can recover according to specified guidelines.

- We recommend the precautionary principle should be taken into account in decisions on whether or not to list a threatened species, ecological community and threatening process. Currently, section 392 omits these decisions from the application of the precautionary principle.

- Repealed section 185 (1) which required the Minister to keep the lists of species and ecological communities up to date should be reinstated. So too should be the repealed section 185 (2) which required the Minister to

assess state and territory lists of ecological communities for listing on the EPBC Act.

- Vulnerable ecological communities should be added as a Matter of National Environmental Significance.

Critical Habitat

- There should be a mandatory level of environmental impact assessment should a referral involve impacts on critical habitat listed on the Register or identified in Recovery Plans.

- The Act should provide that it is not possible to get approval to cause significant impact to a critical habitat for a listed threatened species or ecological community.

- The Act should be amended to require the transfer of 'habitats critical to the survival of threatened species' identified in Recovery Plans across to the Register of Critical Habitat.

Cumberland Plain Woodland

- HSI recommends DEWHA instate a Recovery Plan immediately, declare all remnants critical habitat on the Register, covenant any Cumberland Plain Woodland remnants that remain on Commonwealth properties so that they must be protected on sale, and develop Administrative Guidelines to make it clear that any further clearing of Cumberland Plain Woodland will be considered significant and will not be approved. An upgrade to critically endangered should happen with some urgency.

Climate Change

- Greenhouse gas emitting projects should be included as a Matter of National Environmental Significance without further delay.
- The growth of new plantation forests participating in the CPRS should become a Matter of National Environmental Significance for federal Environment Minister approval.
- The Government should implement a Threat Abatement Plan for Climate Change that focuses on biodiversity adaptation to predicted changes in climate.
- The EPBC Act should be used to strictly protect the climate refugia for Australian species the Government has committed to identifying through listings on the Register of Critical Habitat, conservation agreements, covenants and other planning instruments under the Act.
- To assist with international efforts to reduce emissions from deforestation and forest degradation, and recognising that 10% of timber imported to Australia is estimated to be illegally sourced, the Australian Government should amend the EPBC Act to regulate timber imports.

Landclearing

- The clearing of vegetation over 100ha in any two year period should be added as a Matter of National Environmental Significance.
- A national Threat Abatement Plan should be developed for vegetation clearing to achieve greater cooperation from the states and territories in

reducing vegetation clearing rates and degradation and addressing exemptions in their clearing laws.

Other Matters of National Environmental Significance

- Matters of National Environmental Significance for unsustainable water use, dams, migratory species listed under the UN Convention for the Law of the Sea, and vulnerable ecological communities should be added as per the submission from WWF, Australian Council of National Trusts, Tasmanian Conservation Trust and Humane Society International in May 2005 (attached).

Regional Forest Agreements

- HSI recommends the removal of the exemption for activities covered by a Regional Forest Agreement from the assessment and approval provisions of the EPBC Act.

- Failing removal of the exemption altogether, HSI recommends introducing constraints on the exemption. For example, there should be a requirement for an RFA to provide explicit protection for Matters of National Environmental Significance such as threatened species. A RFA should be required not to have a significant impact on a threatened species nor contribute to a detriment in its conservation status or that of its populations. A RFA should be required to preserve all critical habitats identified in recovery plans or listed on the Register. In addition, a RFA should be required to operate in a manner that enhances the recovery of

threatened species that inhabit the forest areas over which the RFA operates.