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WWF-Australia

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

September 2008

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Introduction

WWF-Australia welcomes the Senate's attention to the operation of Australia's national environment laws, and reminds the Senate of Australia's commitment under the Convention of Biological Diversity to significantly reduce loss of biodiversity by 2010. All indicators suggest that Australia's biodiversity and ecological integrity continue to decline, and that to date the *Environment Protection and Biodiversity Conservation Act 1999* has had only limited success in halting this decline.

There have, however, been good examples of where the Act has improved the understanding of ecologically sustainable development within government departments and regulated industry. The legislation has also allowed for a Cabinet-level decision-maker to focus purely on environmental outcomes in assessing projects, rather than leaving decision-making to members of Cabinet to whom environmental concerns are peripheral to core business.

It has succeeded in ensuring proponents for development consider listed matters, and in giving greater transparency to the listing, assessment and approvals processes, and it has been valuable in progressing some Commonwealth fisheries towards ecologically sustainable practices. However, the Act's reliance on values-based conservation as opposed to protected areas and place-based conservation required a strong regulatory regime which has not, to date, existed. The paltry number of actions rejected by the Commonwealth as a result of their potential to significantly impact on matters of national environmental significance has increased Australia's ecological debt, and further eroded the coherence of our ecosystem services.

We recommend the Committee consider the previous Commonwealth Government's record in implementing of the Act and the inadequate level of funding committed to its operation. The previous Commonwealth Government's lack of commitment and failure to fulfil its legal obligations under the Act, such as on recovery planning, threat abatement (for example on the key threat of anthropomorphic climate change) and critical habitat protection, have given WWF-Australia little confidence that science-based information and a true cross-portfolio commitment to sustainable industry formed an active and important part of the Commonwealth's national agenda.

As noted, WWF-Australia believes that environmental assessment of fisheries management plans as required under the Act, has improved the integrity of data relating to target and bycatch species, and has provided a useful mechanism to move Commonwealth fisheries towards greater awareness of environmental impacts, and towards investigating ways to move towards more ecologically sustainable development. We urge the Committee to consider extending the environmental assessment of plans as it currently relates to fisheries to include terrestrial regional catchment management plans and water sharing plans, in order to ensure they consider matters of national environmental significance, and in order to better direct and control outcomes from Commonwealth spending in regions.

In summary, WWF-Australia recommends:

RECOMMENDATION 1: That the purpose of the Act be changed from "provide for protection" to "protect" to ensure the Commonwealth's responsibility for environmental matters delivers onground outcomes for matters of national environmental significance.

RECOMMENDATION 2: That the Minister keeps lists of matters of national environmental significance up to date.

RECOMMENDATION 3: That use of Ministerial discretion under the Act is significantly reduced, for example on what constitutes significant impact and what constitutes a matter of national environmental significance.

RECOMMENDATION 4: That the government commits to annual public reporting of implementation of conditionals on approvals, and that provision be made for suspension of, or reversal of, approvals relating to acts, accreditations and export licences, and for significant penalties where conditions on approvals and licences are not met.

RECOMMENDATION 5: That all recovery plans identify habitats essential to the survival and recovery of threatened species and ecological communities at the time of their listing and into a changing climate, and that all habitats identified as critical to the survival of threatened species and ecological communities be listed on the Register of Critical Habitat or be otherwise protected from harm.

RECOMMENDATION 6: That the Commonwealth notes, and re-affirms its commitment to, Section 75(2) of the Act that prohibits the Minister from having regard to the potential beneficial impacts of an action when making a controlled action decision.

RECOMMENDATION 7: That the Commonwealth use Section 146 of the Act to extend environmental assessment of plans as it currently relates to fisheries to include terrestrial regional catchment management plans, state environment plans, water sharing plans and infrastructure development plans, in order to ensure they consider matters of national environmental significance, and in order to better direct and control outcomes from Commonwealth spending in regions.

RECOMMENDATION 8: That the interpretation of what constitutes an 'act' under the legislation should be re-visited, and should include both long-term spending and planning regimes so that they are assessed for their impacts on matters of national environmental significance

RECOMMENDATION 9: That the Committee revisit its own recommendation from its inquiry into the Environment and Heritage Legislation Amendment Bill (No. 1) 2006 [Provisions] November 2006:

Recommendation 3

6.14 The committee recommends that the Government review the level of resources made available for the Department's administration of the Act.

RECOMMENDATION 10: That the Commonwealth amend the Act to include a carbon emissions trigger.

RECOMMENDATION 11: That the Commonwealth amend the Act to allow comprehensive management of invasive species, most particularly to allow domestic control of trade in those species that impact on matters of national environmental significance.

RECOMMENDATION 12: That the Commonwealth amend the Act to include a trigger that captures developments which affect hydrological regimes in surface and groundwater systems.

RECOMMENDATION 13: That the Commonwealth amend the Act to include a trigger that captures all removal of native vegetation, through forestry or other activities.

RECOMMENDATION 14: That provisions for reporting, review and challenge of decision-making through EPBC are amended to provide a feasible, transparent and affordable avenue for members of the community to challenge both the process and merit of Ministerial decisions and administrative approvals.

1. Improving Implementation

1.1 Commitment to Protect

Political and community commitment, coupled with a well-regulated legislative environment, and funding appropriate to the scale of management needs, are the foundation of all successful natural resource management and biodiversity conservation efforts. Governments must play a crucial role in engaging communities to conserve and manage environmental elements essential to the public good.

At the time of its enactment in 1999, WWF-Australia was strongly supportive of the new legislative regime established by the *Environment Protection and Biodiversity Conservation Act* (the Act), as we believed that its development was an appropriate part of a national response to heightening political and community awareness of the need to protect and conserve our environment and the ecological services its ongoing coherence provides. We remain of the opinion that the Act represented significant progress in recognition of nationally-significant environmental assets and threats, and an improved environmental assessment processes. We also believe it provided a much improved regulatory framework for species and ecosystem protection and recovery.

However, since 1999, the Commonwealth Government has invested too few intellectual and financial resources, and too little political capital, in implementing the Act, and incorporating its aims across all decision-making.

RECOMMENDATION 1: That the purpose of the Act be changed from "provide for protection" to "protect" to ensure the Commonwealth's responsibility for environmental matters delivers onground outcomes for matters of national environmental significance.

1.2 Listings, Assessments and Approvals

Perhaps the most easily accessible example of the Commonwealth's under-investment in the Act and its operation is the current parlous state of the species, ecological community and critical habitat lists that form the basis of the recognition of matters of national environmental significance and habitat recognition.

We include as Appendix I of this submission, the submission prepared by our Threatened Species Network last year for the Australian National Audit Office which summarises problems inherent in the listing and recovery processes, and the difficulties associated with grappling with key threats as recognised by the legislation.

RECOMMENDATION 2: That the Minister keeps lists of matters of national environmental significance up to date.

1.3 Ministerial Discretion

The Commonwealth has approved too many projects that WWF believes will significantly impact on matters of national environmental significance into the future, and spent too little money on implementation of recovery planning, habitat management (such as in World Heritage places). At times, such as in the infamous decision-making by the then Minister for Environment and Heritage Senator The Hon Ian Campbell on orange-bellied parrots, the Commonwealth Government has used the potentially extensive powers provided to the Minister through the Act with scant disregard for objectives set out in the legislation, instead appearing to exercise the Act for purely political purposes and undermining the trust placed by the community in the Minister's integrity and the office's capacity to responsibly exercise Ministerial discretion.

Difficulties in setting benchmarks for interpretation of 'significant impact' have at times left a wide door for political interference in decision-making, and WWF-Australia does not believe that this approach has provided an avenue for transparent science-based decision-making. Rather, it seems at times to have been used as a convenient source of confusion whereby doubt is introduced into what might otherwise be unacceptable cases of clear-cut environmental damage.

WWF-Australia believes many opportunities to protect and manage the species and ecosystems that make Australia globally outstanding have been lost as a result of a government mindset that appeared to often seek to bend the requirements of the Act in order to facilitate a continuation of a business-as-usual-approach, particularly in areas such as Commonwealth fisheries, clearing of nationally-significant ecological communities, and dealing with potential significant impacts of changed water regimes on Ramsar wetlands.

At the time of its enactment and subsequently, as became evident through our engagement with the EPBC Unit designed to engage and empower individuals and communities to be aware of and use the Act to protect matters of the environment important to them, those members of the community who came into contact with the legislation often became disillusioned.

Politicised decision-making which appeared to favour development over protection, approval over rejection and supported the status quo, even against the Commonwealth's own scientific advice (such as in the rejection of the listing of Southern Bluefin Tuna as a threatened species against the advice of the Threatened Species Scientific Committee) undermined WWF's confidence in the Commonwealth Government's commitment to implementing its own legislation.

Below is an excerpt from the *Advice to the Minister for the Environment and Heritage from the Threatened Species Scientific Committee (TSSC) on Amendments to the list of*

5. Conclusion

SBT continues to be overfished despite the international management arrangements which have been formally in place since 1994.

The parental biomass is currently in the order of 3 to 14% of that in 1960 (its unfished size). In addition, BRS has classified SBT as being 'overfished' every year since the first BRS fishery status reports were first produced in 1992.

Stock assessment models have shown a significant historic decline in the biomass of SBT. The mature population of SBT has declined significantly over its last three generations (since the 1980s) and is currently at a very low level.

*Therefore, the species is **eligible** for listing as **endangered** under Criterion 1.*

6. Recommendation

TSSC recommends that the list referred to in section 178 of the EPBC Act be amended by including in the endangered category:

- *Thunnus maccoyii (Southern bluefin tuna)*

The Committee notes the importance of Australia's leadership within CCSBT to achieve long-term conservation outcomes for the SBT. In particular, the Committee recognises the need for international co-operation to address fishing impacts on the species' spawning ground. The Committee is concerned that the listing of SBT under the EPBC Act at this time may be detrimental to the survival of the species, as it may weaken Australia's ability to influence the global conservation of the species, and by implication, its conservation in Australian waters.

***The Minister for the Environment and Heritage, Senator the Hon Ian Campbell** has considered the advice of the Threatened Species Scientific Committee on the Southern Bluefin Tuna and decided not to list the species under the EPBC Act at this time.*

The Minister has concluded that the listing of the Southern Bluefin Tuna as a threatened species under the EPBC Act would be detrimental to the survival of the species, as it may weaken Australia's ability to influence both the management of the global fishing effort and the global conservation of the species. As a result, conservation of the Southern Bluefin Tuna in Australian waters could not be achieved.

¹ <http://www.environment.gov.au/biodiversity/threatened/species/southern-bluefin-tuna.html#recommendation>

It is difficult to quantify, with relation to species recovery, just how successfully Australia is influencing global efforts towards SBT conservation however WWF-Australia remains concerned that the status of species has not improved, and that it still meets the criteria for listing as an endangered species in Australian waters.

RECOMMENDATION 3: That use of Ministerial discretion under the Act is significantly reduced, for example on what constitutes significant impact and what constitutes a matter of national environmental significance.

While there are areas of the legislation that we believe will benefit from amendment and reform, as detailed further below, we also believe that the primary failure of the Act over the ten years of its operation stems from a lack of commitment by the Commonwealth to recognise and protect the environment in the face of development pressures, and to adequately fund the Department of Environment (in its various and continuously fluxing form) to list, manage and recover all relevant matters.

1.4 Breaches of Conditions on Approvals

WWF-Australia believes the Commonwealth has an obligation to act if breaches on conditions relating to approvals are not met. Across a range of approvals and assessment processes, evidence suggests that the Commonwealth has been slow to act to ensure that conditions intended to protect matters of national environmental significance are followed through. The Commonwealth's audit process, that has investigated 13 actions approved with conditions over the past three years, is a step in the right direction, however WWF-Australia urges the Commonwealth to expand its auditing and compliance activities, as well as ensuring that the findings of audits are publicly available and are tabled in Parliament on an annual basis.

WWF-Australia's comments on the Southern and Eastern Scalefish and Shark Fishery Wildlife Trade Operation Reassessment in 2006 (Appendix II) summarise well the concerns that have slowly emerged through the second round of assessment processes for Commonwealth fisheries.

WWF agreed with DEH's approach to the first round of fisheries assessments under the EPBC Act. WWF supported the approach of encouraging continuous improvement by alerting fisheries to deficiencies in meeting the Guidelines and effectively providing an opportunity, through the declaration of a WTO for a maximum of three years, to address these issues.

WWF believes that the SESSF has had a three year opportunity to ensure that it meets the requirements of the Guidelines. In WWF's view the SESSF still fails to meet the Guidelines and, specifically, that the fishery has failed to implement a number of DEH recommendations. Further it is not entirely clear, from the information provided if, for example, AFMA is managing the fishery in accordance with some of the requirements of the Management Plan that DEH explicitly sought to have included in the Management Plan. WWF notes that AFMA (page 5) seeks a renewal of the three year WTO and acknowledges that further progress is required in order to meet the Guidelines.

The issues WWF have identified fall into three broad categories:

1. *those associated with the lack of clarity around the process for re-assessment , including the approach DEH intends to take in response to failure to implement or partial implementation of the recommendations of the initial assessment;*
2. *the failure of AFMA to ensure that the recommendations have been fully implemented and hence the continued operation of the SESSF at a standard below those established by the Guidelines; and*
3. *the difficulty in making informed judgments as to whether management changes in the SESSF are consistent with sustainable fisheries management on the basis of the scant detail provided in the AFMA report.*

Taken together these issues make it very difficult to form a view as to whether the WTO for the SESSF should be extended and, if so, for how long.

It is WWF's view that the perceived non-compliance with the recommendations must elicit a stronger response from DEH if the application of fisheries assessment under the EPBC Act is to be meaningful. WWF seeks a response from DEH in regards to how much latitude DEH is now prepared to provide to fisheries such as the SESSF in their implementation of the precautionary management arrangements required by the DEH recommendations and the Guidelines.

Given that DEH has not clearly articulated a rigorous process for re-assessment against the Guidelines and that AFMA's has not presented sufficient information to support a reassessment, WWF does not support a renewal of the WTO at this time. If however, DEH were to decide to renew the WTO, WWF believes that it should be issued for a maximum period of 12 months together with a set of conditions and strict requirements for reporting and monitoring progress against those conditions. AFMA should be left in no doubt that failure to address the outstanding issues within the 12 month period will result in the WTO being withdrawn.

We hold similar concerns on conditions relating to large scale terrestrial developments, including Paradise Dam in Queensland. We are aware that Commonwealth's own Audit of the dam's compliance suggests that the conditions underpinning the approval of the project have not yet been met (see Appendix III). It is difficult to ascertain what action the Commonwealth has taken to ensure that all conditions are met. It is equally difficult to determine what penalties the Commonwealth has instigated due to the failure of this proponent to meet the conditions of the approval.

We remind the Committee of the case brought against wheat farmer Ron Greentree and his associates for clearing and ploughing 100ha of a Ramsar Wetland that resulted in an injunction, rehabilitation order and \$450,000 pecuniary penalty. Despite inquiries, WWF has yet to be convinced that the cleared area of the Ramsar wetland that was illegally clearing has been successfully rehabilitated. Given the international significance of the site, and its importance as a drought refuge for migratory and other wetland birds and the length of time that has passed since the illegal clearing, we remain concerned that the intent of the rehabilitation order to recover the site has not been effective. The Committee should consider what action the Commonwealth should now take, and what the Act should require if remediation actions are unsuccessful.

With regard to provisions in the Act relating to protection of the environment from 'nuclear actions', we are aware of the investigation of the Office of the Supervising Scientist into the potable water contamination incident at the Ranger uranium mine, and the recognition of breaches relating to a nuclear incident as described in Supervising Scientist's Annual Report 03-04.² The report notes:

Energy Resources of Australia (ERA) is required to comply with the Commonwealth Environmental Requirements (the ERs) for the Ranger mine as attached to the Authority issued under Section 41 of the Commonwealth Atomic Energy Act 1953 and to the export permit for uranium granted under the Customs (Prohibited Exports) Regulations 1958.

The Supervising Scientist has reviewed the extent to which ERA may have been in breach of the Ranger Environmental Requirements. He has concluded that ERA was in breach of ER 3.4 as a result of its failure to ensure that process water is contained within a closed system. He has also concluded that ERA has been in breach of ER 5.1 as a result of its failure to ensure that radiation doses to company employees and contractors must be kept as low as reasonably achievable. The Supervising Scientist will recommend that the Commonwealth Minister for Industry, Tourism and Resources should assess whether or not action should be taken by the Commonwealth in response to the established breach of Environmental Requirements 3.4 and 5.1

The Act, particularly provisions under Part 3 Subdivision E, might have played a stronger role in protecting the environment and in this instance, and should play a stronger role in the future to ensure that conditions relating to export licencing for potentially environmentally damaging industries be met.

This approach might be extended to regulation of carbon-intensive industries, whereby industries exceeding their carbon-emissions limit would be denied an export permits until emissions had been reduced to agreed levels.

RECOMMENDATION 4: That the government commits to annual public reporting of implementation of conditionals on approvals, and that provision for suspension of, or reversal of, approvals relating to acts, accreditations and export licences, and for significant penalties where conditions on approvals and licences are not met.

² <http://www.environment.gov.au/about/publications/annual-report/ss03-04/section2-2-4.html#ranger> Supervising Scientist Annual Report 2003 - 200 Supervising Scientist, Darwin, 2004 ISBN 0 642 24391 3
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1.5 Habitat Protection

The Committee should consider the following critical points in its assessment of the effectiveness of protection of habitat that relates to matters of national environmental significance:

- A) Existing recognition and protection of critical habitats
- B) The importance of protecting habitat relied on by threatened species, even if the habitat type itself is not endangered
- C) The cumulative impacts, either on listed habitat, or habitat that is critical to a threatened species, of approvals for habitat destruction
- D) The dangers of approving actions in which the Minister takes consideration of the potential environmental 'benefits' associated with damage to matters of national environmental significance.

1.6 Critical Habitats and Protected Areas

The existing legislation is weak in its ability to link critical habitats recognised through recovery plans with efforts to increase the representativeness of Australia's protected areas estate. While the legislation provides for recognition of habitats critical to the survival of species and ecological communities, it has not to date been effectively utilised and no real protection of habitats critical to the survival of listed species exists.

We note that species without critical habitats were more likely to be declining and less likely to be recovering than species with critical habitats designated under the US *Endangered Species Act*.³

Critical habitats are required by the Act to be defined in recovery plans, along with actions required to protect those habitats. However, habitats defined in a recovery plan do not enjoy any statutory protection from harm unless they also appear on the official register, a decision subject to Ministerial discretion. Only five have been registered during the eight years of operation of the Act. In the absence of an effective critical habitat provision in the Act, protected areas remain the main conservation option for permanently securing identified critical habitats from harm.

We refer you to the findings of WWF's recent report *Protected Area Gaps for Threatened Australian Animals identified from Recovery Plans* (Appendix V):

- *Among the 87 species with available trend data, an alarming 94% showed on average declining population trend in the 2002 Terrestrial Biodiversity Assessment.*
- *Only 67% of recovery plans for habitat-constrained species prescribed new protected areas as a recovery action. Private land covenants were commonly*

³ Taylor MFJ, Suckling KF, Rachlinski JJ, 2005. The Effectiveness of the Endangered Species Act: A Quantitative Analysis. *BioScience* 55, 360-367.

prescribed, although it was unclear to what extent this can be taken to mean covenants of high permanency and security of purpose. The remaining recovery plans overwhelmingly recommend improvements in management without clear long term security of arrangements.

- *Only 54% of recovery plans had sufficient information to estimate the proportion of current habitat protected.*
- *Of the 35 species with recent plans and adequate information, 43% had less than 10% of existing habitat protected, and 60% had less than 50% included in protected areas at the time of adoption of the plan. Endangered species were more likely to have better protected habitats than vulnerable species, often because their remaining extent of habitat is very small.*
- *Protection of future critical habitats in plans was almost completely lacking, and this flaw must be addressed as a matter of urgency in light of climate change.*

RECOMMENDATION 5: That all recovery plans identify habitats essential to the survival and recovery of threatened species and ecological communities at the time of their listing and into a changing climate, and that all habitats identified as critical to the survival of threatened species and ecological communities be listed on the Register of Critical Habitat or be otherwise protected from harm.

Through our engagement with the Commonwealth on referrals relating to the clearing of endangered buloke woodlands in Victoria which provide critical foraging and breeding habitats for endangered Red-Tailed Black Cockatoos, it became apparent that the Commonwealth's interpretation of the Act meant that listed ecological communities may not be afforded consideration in referral assessments when they are in 'poor condition'. A precautionary approach to the conservation of ecological communities must require that nationally-significant rare remnant ecological communities be managed and improved, rather than destroyed. However, WWF-Australia does not believe the Commonwealth exercised caution in its approach to the clearing of endangered buloke woodland.

The fact that this ecological community provides habitat critical to the survival of a listed species was also disregarded in the decision-making on referrals, because the EPBC's Register of Critical Habitat⁴ so poorly represents species and ecological community habitat requirements (as detailed further in Appendix I).

WWF-Australia provided advice in relation to at least 6 EPBC Act referrals for clearance of critical habitat of the red-tailed black-cockatoo. In most cases, these referrals also involved the removal of the endangered buloke woodland community. However, in its decision-making process the Commonwealth disregarded the ecological values of the endangered Buloke Woodlands of the Riverina and Murray Darling Depression Bioregions (or "buloke woodland community"), based on an interpretation that this

⁴ <http://www.environment.gov.au/cgi-bin/sprat/public/publicregisterofcriticalhabitat.pl>

ecological community is highly degraded in the agricultural landscape. For example, in 3 specific cases that involved the removal of between 56 and 127 buloke trees (Referral numbers: 2002.849, 2003.1069 and 2003.975), a decision was made that approval would not be required in accordance with the “particular manner” of each proposal.

In all three cases, each decision made no consideration of the loss of the buloke woodland community. In each case, submissions provided by WWF-Australia and other stakeholders identified the presence of buloke woodland at the site. We provided evidence to the Commonwealth that only highly degraded remnants of this ecological community's former occurrence remain. Even stands within national parks are considered to be of very poor quality.

Additionally, a number of activities have been declared not to be controlled actions, through *manner specified* or *particular manner*, based on the remedial works to replace lost habitat for the red-tailed black-cockatoo proposed by each proponent, such as the three applications referred to above.

On this basis, a decision based on consideration of any perceived ‘beneficial’ offsets outlined by the proponent for proposed clearing of habitat appears to be in contravention of the EPBC Act. It is also important to note that buloke trees take approximately 100 years before they will provide a reliable food source for the cockatoo – this is equivalent to several generations worth of cockatoos, and hence is not sustainable for an endangered species, with around 800-1000 individuals remaining. This information has been provided to DEH consistently by the recovery team and is identified in the recovery plan.

WWF, HSI and TCT submitted comments on the Commonwealth's draft biodiversity offsets policy early in 2008, which we have included as Appendix IV for your information.

RECOMMENDATION 5: That the Commonwealth notes, and re-affirms its commitment to, Section 75(2) of the Act that prohibits the Minister from having regard to the potential beneficial impacts of an action when making a controlled action decision.

With regard to cumulative impacts of clearing decisions, it is also important to note that there have been a significant number of applications made to the West Wimmera Shire to clear habitat within the range of the red-tailed black-cockatoo in Victoria (around 80 between 2001 and April 2004). A very small proportion of these have been considered under the EPBC Act (we are aware of 6 referrals). Only 2 have been declared controlled actions; one approved with conditions and another pursued through mediation and later withdrawn. This is a clear example of ongoing loss of habitat where a listed threatened species may not have been considered adequately under the EPBC Act.

1.7 Protection of Ecosystem Integrity

Through the course of its implementation, it has become plain that the interpretation of impacts under the Act has been too narrow to provide a legislative basis for the protection of ecosystem integrity. Immediate impacts, such as those directly related to construction, have been included in environmental assessments. However, WWF-Australia continues to believe that the legislation must grapple with broader impacts, such as those considered in the Nathan Dam case brought against the Commonwealth by QCC and WWF-Australia⁵. In order to operationalise the consideration of these impacts without relying on a reactive case-by-case basis, it is necessary to ensure that terrestrial planning regimes consider matters of national environmental significance, in a way similar to the way Commonwealth fisheries plans consider and seek to avoid or minimise impacts on the environment, and the provision of ecosystem services. No other legislation or government entity has the capacity or potential to provide a national framework for protection of ecosystem services.

If the Act is to truly achieve sustainable use across landscapes, it requires a much broader focus than isolated species and habitats. It is necessary that the legislation enables the Commonwealth a role in overseeing implementation of regional targets and objectives on environmental matters, and in forward-planning that provides for the maintenance of important ecological function, for example freshwater flows across landscapes.

Under s.146 of the Commonwealth *Environmental Protection and Biodiversity Act 1999* (EPBC Act) strategic environmental assessment (SEA) may be undertaken where actions taken under a policy, plan or program may adversely affect matters protected under the Act. The plan, policy or program may be endorsed by the Minister. The Minister should exercise powers relating to strategic assessment regardless of the amount of Commonwealth land present in the area to be affected by planning, but rather with relation to what matters of national environmental significance might be affected.

A number of strategic environmental assessments of Commonwealth-managed fisheries have been conducted under the EPBC Act. However, it would be possible to use strategic assessments to address much wider cumulative impacts on species and ecosystems which have previously not been adequately addressed.

In considering the development of a position on the content and functionality of strategic assessments, WWF-Australia reminds the Committee the following principles apply to SEA of public policies, plans and programs in Canada, enforced through the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals:

- **Early integration** - The analysis of environmental considerations should be fully integrated into the development of a PPP. The consideration of environmental effects should begin early in the conceptual planning stages of the proposal before irreversible decisions are made.

⁵ <http://www.envlaw.com.au/nathan.html>

- ***Examine alternatives*** - SEA provides the opportunity to evaluate and compare the environmental effects of alternatives in the development of a new PPP. This comparison will help identify how modifications or changes to the PPP can reduce environmental risk.
- ***Flexibility*** – Proponents should have discretion in determining how they conduct strategic environmental assessments, and should be encouraged to adapt and refine analytical methodologies and tools appropriate to their circumstances.
- ***Self-assessment*** - Each proponent is responsible for applying SEA to its proposed PPPs by determining how an assessment should be conducted, performing the assessment and reporting on the findings of the assessment.
- ***Appropriate level of analysis*** - The scope of analysis of potential environmental effects should be commensurate with the level of anticipated effects.
- ***Accountability*** - SEA should be part of an open and accountable decision-making process. Accountability should be promoted through the involvement of affected individuals and organisations, when appropriate, and through documentation and reporting mechanisms.
- ***Use of existing mechanisms*** - In conducting a SEA, proponents should use existing mechanisms to conduct any analysis of environmental effects, involve the public if required, evaluate performance and report the results.

WWF-Australia hopes to be closely involved in the development of regional strategies through the Act, and encourages the Commonwealth to consider and seek to manage impacts of all kinds of different pressures on the environment that might result from further development, and play a strong role in developing pre-emptive responses to potentially cumulative impacts.

We urge the Committee to note that the European Economic Union has issued Directive 2001/42/EC requiring member States to assess the environmental effects of plans and programs. The Directive indicated that: *“The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision-making. The inclusion of a wider set of factors in decision-making should contribute to more sustainable and effective solutions.”*

The advantages of strategic assessments include not only the achievement of better environmental outcomes through the addressing environmental considerations early in planning processes but should also enables the streamlined consideration of project proposals that are in accordance with the “endorsed” policies, plans or programs (PPPs).

RECOMMENDATION 7: That the Commonwealth use Section 146 of the Act to extend environmental assessment of plans as it currently relates to fisheries to include terrestrial regional catchment management plans, state environment plans,

water sharing plans and infrastructure development plans, in order to ensure they consider matters of national environmental significance, and in order to better direct and control outcomes from Commonwealth spending in regions.

1.8 What constitutes an act?

WWF-Australia has long been an advocate of the need to link Commonwealth environmental spending to outcomes relating to matters of national environmental significance. Delivering funding to regional natural resources managers who may often be operating in the absence of well-defined regional biodiversity conservation strategy, while recovery plans for threatened species sit unfunded gathering dust on shelves, and while critical habitats are poorly recognised and even more poorly protected, seems like a missed opportunity.

WWF-Australia encourages the Commonwealth to ensure all commonwealth actions, including major spending initiatives and the issuing of permits, must be assessed if they are likely to produce negative impacts on matters of national environmental significance. Commonwealth spending should be assessed as to its environmental impact regardless of recipient or jurisdiction receiving funds.

RECOMMENDATION 8: That the interpretation of what constitutes an 'act' under the legislation should be re-visited, and should include both long-term spending and planning regimes so that they are assessed for their impacts on matters of national environmental significance

WWF-Australia considers the current interpretation of what constitutes an action must be broadened. For example, the definition of what constitutes an action should be extended to include not only spending initiatives, but also the gazettal of water-sharing plans, the finalisation of regional terrestrial and marine natural resource management plans, and other regional plans whose operation will affect matters of national environmental significance.

1.9 Funding

We refer the Committee to its own recommendation from November 2006 from its inquiry into the Environment and Heritage Legislation Amendment Bill (No. 1) 2006 [Provisions] November 2006, and note that the Auditor-General's findings in his report on threatened species also flagged fiscal investment in capacity in the Department of Environment, Water, Heritage and the Arts as an area for review.

RECOMMENDATION 9: That the Committee revisit its own recommendation from its inquiry into the Environment and Heritage Legislation Amendment Bill (No. 1) 2006 [Provisions] November 2006:

Recommendation 3

6.14 The committee recommends that the Government review the level of resources made available for the Department's administration of the Act.

2. Legislative Reforms to address Key Threats to the Environment

2.1 Greenhouse Trigger

Currently, the Act fails to grapple with the recognised key threatening process of anthropogenic climate change. This is a major gap in the legislation, and key to ensuring that consideration of approvals for the ongoing operation or intensification of greenhouse intensive industries be subject to their impact on climate-related ecosystem services.

WWF-Australia strongly believes that the Act should include a trigger that would require proponents seek approval to undertake any act likely to result in greenhouse gas emissions of over 100,000 tonnes of carbon dioxide equivalent in any 12 month period or is likely to produce 5 Mt of carbon dioxide equivalent over the lifetime of the action.

WWF-Australia notes and welcomes the ALP's commitment to a greenhouse trigger. and provide below Senator Kim Carr's contribution to debate on the last round of EPBC amendments for the Committee's consideration and have included the relevant section of the Hansard transcript as Appendix VI.

RECOMMENDATION 10: That the Commonwealth amend the Act to include a carbon emissions trigger.

2.2 Invasive Species

Invasive species continue to negatively impact Australia's biodiversity. However, Australia still lacks a strong regulatory approach to the internal trade of potentially devastating species. While biosecurity legislation certainly plays a role in quarantining Australia's environment and industry, it is at present ineffective in limiting the spread of environmentally damaging weeds, pest animals and diseases, and places too low a priority on reacting to not-yet-naturalised species which form the next wave of destructive pests.

See Appendix VII for proposed drafting instructions for the management and trade of invasive species, especially relating to their impact on matters of national environmental significance and penalties for trade in environmentally damaging species.

WWF-Australia endorses the submission of the **Invasive Species Council** on this issue.

RECOMMENDATION 11: That the Commonwealth amend the Act to allow comprehensive management of invasive species, most particularly to allow domestic control of trade in those that impact on matters of national environmental significance.

2.3 Hydrological Regimes

Freshwater is essential to the survival of all terrestrial matters of national environmental significance. Yet the Act fails to ensure projects with the potential to alter freshwater regimes are assessed. The recognition of Ramsar wetlands has provided some momentum for the involvement of the Commonwealth through the new National Water Act and will have some bearing on the delivery of environmental flows through the soon-to-be-developed Basin Plan for the Murray Darling. However, more broadly, for example in the case of new dam developments in Queensland and use of artificial watering points in Australia's unique arid environments, the legislation provides little framework for the management of new freshwater-related developments.

WWF-Australia proposes that the Commonwealth include provision in the Act for the environmental assessment by the Commonwealth of any action which involves:

- a) The abstraction of surface and ground water resources over 10,000 megalitres.
- b) The construction and operation of any large dam, defined as having a crest height of 15 m or more or a capacity of over 1 M cubic metres

RECOMMENDATION 12: That the Commonwealth amend the Act to include a trigger that captures developments which affect hydrological regimes in surface and groundwater systems.

2.4 Native Vegetation

WWF-Australia proposes that the Commonwealth include provision in the Act for the environmental assessment by the Commonwealth of any action which involves:

- a) The clearing of native vegetation over 100 ha in any two year period, or the clearing of any area of native vegetation that provides significant habitat for a species or ecological community recognised under national or state legislation, or that is on register of critical habitat.

The core of the WWF's proposal for more effective native vegetation management through the Act is removal the exemption from the Act for RFA forestry operations.

WWF believes that clearing of native vegetation should not occur unless it results in a net environmental benefit or it is for an essential public purpose. A net environmental benefit (NEB) test assumes critical importance in the management of native vegetation under an amended Act, and it is imperative that the NEB test is as scientifically robust as possible and that it is applied in a transparent, repeatable and equitable manner.

Assessment of proposals for removal of native vegetation should include consideration of the need to:

- a) protect water quality and prevent clearing of water courses, intermittent and perennial wetlands, lakes, ponds, estuaries or their riparian zones
- b) protect topsoil/nutrients in soil and prevent clearing on steep slopes and easily eroded soils
- c) protect against dryland salinity and prevent clearing of recharge zones or discharge zones
- d) ensure conservation of forest and non-forest biodiversity including preventing clearing of threatened species and ecological communities, and significant habitat of threatened species and communities; land planted under biodiversity conservation programs; landscape level wildlife corridors; biodiversity hotspots such as centres of endemism, drought refugia and migratory species habitat; of substantially intact strata of native vegetation (ie native vegetation that has not been seriously degraded in the last 20 years or, if it has, the degradation was caused by fire); and of communities below 30% of their pre-European bioregional extent (or such more stringent limits as may be prescribed by scientific advice).

Where state governments are failing to adequately implement bans on broadscale land-clearing, the Commonwealth should ensure Bilateral agreements stipulate that delivery of Commonwealth funding to state or regional agencies for the protection, conservation and recovery of native of vegetation is suspended until such a time as states recover lost vegetation and effectively implement clearing controls. Financial incentives are also useful in encouraging private individuals to retain native vegetation, although whether the Act has a role in implementing and promoting these needs further consideration.

RECOMMENDATION 13: That the Commonwealth amend the Act to include a trigger that captures all removal of native vegetation, through forestry or other activities.

3. Community Involvement in National Environmental Protection

3.1 Community Participation

As a partner in the operation of the EPBC Unit, charged with providing advice and education to the community about the Act, WWF has a long history of engagement with stakeholders since the passage of the legislation. We refer you to Appendix VIII, the Windup Report for the EPBC Project prepared by Lyndall Kennedy for insights into the difficulties and frustrations felt by community stakeholders through their involvement with EPBC-related legislative processes.

Annual reports prepared in accordance with section 516 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), covering the operation of the Act against its key priorities should include a reporting framework that enables reporting the

condition of matters of National Environmental Significance affected by the Environment Assessment Process.

An annual audit of decisions by the minister against NES assets would improve public access to information and confidence in the transparency of decision-making with respect to significant impact decisions, particularly where cumulative impact of multiple actions could be accounted.

Currently no sufficient mechanism exists for the community to evaluate the environmental performance of the operation of the EPBC Act in protecting listed species and ecological communities.

RECOMMENDATION 14: That provisions for reporting, review and challenge of decision-making through EPBC are amended to provide a feasible, transparent and affordable avenue for members of the community to challenge both the process and merit of Ministerial decisions and administrative approvals.

Should you require more information on the content of this submission, please contact:

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