



16 December 2012

Committee Secretary  
Senate Standing Committees on Environment  
and Communications

Dear Sir/Madam

Re ENQUIRY: The effectiveness of threatened species and ecological communities' protection in Australia

Please find herewith the Council's submissions relating to the enquiry into the effectiveness of threatened species and ecological communities' protection in Australia.

Yours faithfully

Don Barton  
President

## **NSW COUNCIL OF FRESHWATER ANGLERS INC.**

### **Submission relating to**

#### **Senate Standing Committees on Environment and Communications**

#### **Enquiry into the effectiveness of threatened species and ecological communities' protection in Australia**

#### **INTRODUCTION**

The NSW Council of Freshwater Anglers Inc. (NSWCFA) is now in the 54 year of representing the interest of NSW freshwater fishers. Affiliated with the Recreational Fishing Alliance of NSW and the Murray Darling Basin Recreational Fishing Council, the NSWCFA is focused on the improvement of the State's fisheries management, regulatory matters, conservation, angler access, angling ethics and animal welfare, together with generally looking after the welfare of the NSW's fishery, habitat and freshwater environments. Being one of the largest recreational freshwater fishing bodies in Australia, the NSWCFA is recognised by the NSW Department of Primary Industries (DPI) – Fisheries as the Peak representative freshwater recreational fishing body for its record on being an effective and reliable voluntary organisation. (For further background information and policy statements on the NSWCFA, the NSWCFA website may be accessed at [www.freshwateranglers.com.au](http://www.freshwateranglers.com.au).)

#### **Related submissions**

The NSWCFA has received a copy of the submissions made by the Monaro Acclimatisation Society to the Enquiry, and agrees with and supports those submissions.

There are particular problems with threatened species legislation, common to both State (NSW) and Commonwealth.

#### **A. The NSWCFA's submissions go mainly to common issues of regulatory and funding arrangements at all levels of government**

##### **1. Reliance on the precautionary principle**

The invocation of the so-called precautionary principle by the legislation is a major concern. It has to be recognised that in many, perhaps most, instances where the principle may be considered, that what is really being invited is the substitution of speculative reasoning for reliable data and knowledge.

Because no species or ecological community exists in splendid isolation from other species and ecological communities, flying blind on good intentions may do as much harm as good.

Two recent topical examples of the blunders that may arise from speculative reasoning are the relationship between domestic sheep and the plains wanderer (*Pedionomus torquatus*) and the influence of water buffalo on fire regimes in the Northern Territory; policies based on speculative reasoning proved counterproductive. In the former case, environmental moneys were spent on purchasing sheep grazing properties to eliminate a perceived threat, only for it to be discovered that properly managed sheep grazing created beneficial habitat for the Plains Wanderer. Culling buffalo allowed heavy growth of grasses and subsequently devastating wildfires that destroyed rare and endangered flora.

No clear examples of such failures have come to attention with respect to freshwater fish, save that there is a tendency to focus on potential conflict with introduced species at the expense of attention to habitat (siltation, water quantity and quality and flow profiles, and riparian vegetation), which in most cases is the key issue, save in respect of habitat modifying species such as carp, or species such as redfin (English Perch) which are hosts for the EHN virus.

Wider damage of a different sort may be caused by speculative reasoning; every time it becomes apparent that a false alarm has been raised, or worse, that inappropriate action has been taken pursuant to speculative reasoning, significant damage accrues to the credibility of institutional conservation.

This is all the more so given the economic consequences which may follow a decision to list a species, ecological community or key threatening process under threatened species legislation.

Some examples of legislative invitation to speculative reasoning:

PART 7A Fisheries Management Amendment Act 1997 (NSW) deals with threatened species conservation in NSW.

S.220B (Definitions) provides;

**threatening process** means a process that threatens, or that may threaten, the survival or evolutionary development of species, populations or ecological communities of fish or marine vegetation.

S.188 (3) Environment Protection and Biodiversity Conservation Act 1999 (Cth);

A process is a **threatening process** if it threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community.

Part 16 Cl. 271 of the Fisheries Management (General) Regulation 2010 goes further in its provision of criteria as to *reduction in abundance, geographic distribution or genetic diversity*;

(1) *It is observed, estimated, inferred or reasonably suspected that the species has undergone, or is likely to undergo, within a time frame appropriate to the life cycle and habitat characteristics of the taxon:*

(a) *for critically endangered species—an extremely large reduction in one or more of the following:*

(i) *an index of abundance appropriate to the taxon,*

(ii) *geographic distribution,*

(iii) *genetic diversity, or*

(b) *for endangered species—a very large reduction in one or more of the following:*

(i) *(etc) ...*

(c) *for vulnerable species—a large reduction in one or more of the following:*

(i) *(etc) ...*

(2) *The Fisheries Scientific Committee must have regard to the following in determining the extent of the reduction referred to in subclause (1):*

(m) *the precautionary principle, namely, that if there are threats of serious or irreversible damage to the species, lack of full scientific certainty should not be used as a reason for postponing measures to prevent that damage, ...*

(emphasis added)

This more than invites speculation, it mandates it. While it is restricted to issues of abundance etc, it nevertheless remains unsatisfactory.

**It is recommended that where lack of scientific certainty exists in respect of serious concerns as whether a species is likely to undergo decline or as to key threatening process or similar issues, that Scientific Committees should have power to recommend key research programmes, and have a budget to commission urgent critical research.**

For example, in respect of the MAS concern as to the freshwater blackfish in a tributary of the Snowy River, it should be possible for a Scientific Committee to have control of funds permitting some relevant DNA sampling to settle a critical issue properly, instead of being free to choose to be influenced by unsatisfactory anecdotal evidence.

Providing a research budget for Scientific Committees may seem to some to be extravagant, but given the potential economic consequences of poor decision making, it would be poor economics not to provide moneys to be invested in getting it right.

## **2. There is little no scope for Scientific Committees to point to priorities and resolve or at least identify competing interests of different species**

The highly prescriptive nature of threatened species legislation does not permit prioritising conservation efforts, save as to workload under s.220J FMA (NSW). The Snowy is a good example of this as indicated in the MAS submissions – less well-known but less modified and regulated rivers could provide more bang for the conservation buck and more realistic likelihood of saving a number of ecological communities.

There is also no scope in State and Commonwealth threatened species legislation for contemplation of competing interests between different species. For example, flow regimes that suit silver perch reproduction may not be right for Murray Cod or Yellowbelly.

The same may be said with respect to flora; one frequently sees “inappropriate fire regimes” as a key threatening process in respect of the listing of one plant or another, yet it can be readily observed that fire regimes that suit the growth rate and seed characteristics of one plant may not be right for another.

**It is recommended that threatened species legislation should allow Scientific Committees to:**

- **Consider alternative action rather than being prisoners of the highly prescriptive nominating process (especially in respect of ecological communities)**
- **Give recognition to competing (or conflicting) requirements between different threatened species, and not be locked into exclusive consideration of a particular species the subject of a nomination.**

## **3. Adaptive management**

The highly prescriptive nature of threatened species legislation makes it difficult to use adaptive management to achieve optimal outcomes.

**It is recommended that threat abatement and recovery plans should be required to contain provisions for adaptive management where appropriate.**

## **4. Recovery plans**

This issue is dealt with by MAS.

Although there has been a welcome breakthrough in captive breeding, the lack of progress in recovery of Macquarie Perch is a major concern.

**The NSWCFR recommends that threatened species legislation should require budgetary teeth for recovery plans. There is no point having recovery plans that will never be realistically implemented.**

#### **5. Information**

Having regard to the scandalous delay in releasing the scientific review of the literature relating to the interaction of trout (an introduced species) and native aquatic fauna referred to in the MAS submission;

**it is recommended that where a species is the subject of any comment by Scientific Committees, all relevant information possessed by government agencies, including cabinet, should be made readily available to anyone requesting access to the information.**

#### **B. The historical record of state and territory governments on these matters**

Comparing comparable parts of relevant NSW legislation to the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999, we are of the view that the state legislation (Threatened Species Conservation Act and Part 7A Fisheries Management Act), is more rigorous than the Commonwealth provisions.