

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

8 February 2012

Dear Secretary,

Supplementary submission from IFAW – Senate Standing Committees on Environment and Communications inquiry into the Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011

Please find below a supplementary submission from IFAW regarding the Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011. This supplementary submission includes answers to questions taken on notice during the public hearing in Melbourne on 3 February 2012 at which IFAW gave evidence, as well as additional points following up issues raised during the public hearing.

IFAW wishes to thank the Committee for asking us to give evidence to this inquiry and welcomes the opportunity to make this supplementary submission.

Yours faithfully,

Matthew Collis
Campaigns Officer
IFAW Oceania

Supplementary submission from IFAW – Senate Standing Committees on Environment and Communications inquiry into the Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011

Questions taken on notice at the public hearing

IFAW submission to the Hawke Review

IFAW was asked whether we made a submission to the Hawke review and the arguments within that regarding emergency listings. IFAW did make a submission to the Hawke review. This is listed as submission 179 on the list of submissions received by the review (see <http://www.environment.gov.au/epbc/review/submissions/pubs/179-international-fund-for-animal-welfare.pdf>)

That submission called for the inclusion of an emergency listings provision within the EPBC Act for threatened species and ecological communities, on the grounds that that this approach is consistent with the precautionary principle, and given the primary consideration of the Act – the conservation of biodiversity – the advantages would outweigh secondary considerations such as financial or administrative burdens.

The submission did not make specific mention of the issues around S158A of the Act and when a listing can or cannot be taken into account. As the author of the IFAW response is no longer with the organisation, it is not possible to ascertain whether this issue was considered. It may not have been mentioned in the submission due to the way in which the question regarding emergency listings was asked, where the focus was on the timescales of listings and administrative and financial burdens, or it may have been because no examples had come to light at that time of the restrictive nature S158A would pose for consideration of a species listed in an emergency. Nonetheless, IFAW stands by the comments made in its submission to this inquiry, that S158A significantly inhibits the ability of an emergency listings provision to protect species if they are discovered as part of an assessment process under the EPBC Act.

Discovery of new species

Witnesses were asked by the Chair if we could give the committee an idea of how many species we are aware of that have been discovered through an EPBC Act assessment and how many threatened species are discovered through other means of research.

IFAW cannot give an unequivocal answer to the question. A cursory internet search on new species discoveries in Australia in recent years of animals alone reveals the vast majority are discovered in scientific and research expeditions by universities and other scientific institutions. For example, field work by Australian Museum researchers has resulted in 140 new species discoveries in 2010 and 150 in 2011, and scientists from the University of Adelaide, the South Australian Museum and the Western Australian Museum have found more than 1,000 new species of invertebrates in underground caves.¹

However, without investigating the reason why these studies were commissioned and the source of funding behind each survey it is impossible to say whether these surveys may have been commissioned because of a need identified by an assessment process or whether they were otherwise construed (i.e. as part of a university or other scientific institution program). One would expect the latter but it is impossible to say definitively.

¹ See <http://australianmuseum.net.au/New-species-in-2011>; <http://australianmuseum.net.au/New-Species-Discovered-by-the-Australian-Museum>; and <http://www.ouramazingplanet.com/2143-1000-hidden-species-australian-outback.html>.

There are also examples of new species being discovered by members of the public² and by collaborative work that has involved Government agencies³.

The only example IFAW is directly aware where a species has been discovered as a result of an EPBC Act assessment process is the discovery of the new shrimp and crab species at the Rio Tinto mine site in Cape York, Queensland, which has been referenced extensively in the inquiry already. However, given that large scale projects (which are more likely to need in-depth assessments) appear to be increasingly venturing into wilder, less surveyed places, both onshore and offshore, it is not unreasonable to assume that the likelihood of this happening will increase. This is particularly so, given that scientists estimate worldwide we have yet to discover 86% of existing species on land and 91% of species in the ocean despite having already catalogued over 1.2 million species.⁴ Nonetheless, discovering new species through assessment process would be unlikely to be a regular occurrence, therefore, the overall regulatory burden of having to list species in an emergency, in very limited and compelling circumstances, would likely be very low.

It is also worth emphasising a point that was put to the committee during the public hearing by the Ms Rivers from the Australian Network of Environmental Defenders Offices (ANEDO) – very few referrals or assessments result in a project being rejected outright. In fact, very few are even deemed to be a “controlled action” and therefore requiring the more vigorous assessment processes under the EPBC Act.

As an example, in the last five years, there have been 143 referrals for offshore oil and gas related activities or infrastructure in the North-west marine bioregion made to the Department of Sustainability, Environment, Water, Population and Communities under the EPBC Act. Of these:

- 4 referrals were withdrawn;
- 8 referrals were determined to be ‘not a controlled action’;
- 122 referrals were determined to be ‘not a controlled action if undertaken in a particular manner’;
- 4 referrals were approved following a full environmental assessment;
- 5 referrals determined to be a ‘controlled action’ are still being assessed; and
- 0 referrals were refused.

As this example demonstrates, a proposal being prevented from going ahead is extremely unlikely. If anything, the example demonstrates that vigorous assessment and restrictions are not being applied sufficiently to large-scale projects with the ability to significantly impact matters of national environmental significance. Nonetheless, what the assessment process does allow is for conditions to be attached to approvals. These should be able to be applied equally to newly discovered species as they are to species already listed, which is the aim of the Bill.

² See <http://news.nationalgeographic.com/news/2011/11/111108-new-spider-albino-australia-trapdoor-burrows-animals/>

³ See <http://onlinelibrary.wiley.com/doi/10.1111/j.1440-6055.2011.00809.x/abstract>;
<http://www.reuters.com/article/2008/09/19/us-australia-reef-idUSSYD28732220080919>

⁴ Mora C, Tittensor DP, Adl S, Simpson AGB, Worm B (2011) How Many Species Are There on Earth and in the Ocean? PLoS Biol 9(8): e1001127. doi:10.1371/journal.pbio.1001127

Additional questions on notice

Additional questions were asked regarding IFAW's attempts at listing species both under the EPBC Act listing process and state and territory listing processes:

EPBC Act listing process

- How many nominations has your organisation made to list a species or ecological community under the EPBC Act?
- How many of these nominations have not been listed under the EPBC Act?
- What is the average time taken for the assessment process to be completed, from nomination through to listing or rejection?
- Has your organisation used any other method to try and list a species or ecological community under the EPBC Act, e.g. making a direct representation to the minister or the environment department?

State and territory listing processes

- How many nominations has your organisation made to list a species or ecological community under state or territory legislation?
- How many of these nominations have not been listed under state or territory legislation?
- What is the average time taken for the assessment process to be completed, from nomination through to listing or rejection?
- Has your organisation used any other method to try and list a species or ecological community under the state or territory legislation, e.g. making a direct representation to a minister or a department?

In answer to the first of these questions for both EPBC Act and state and territory processes, IFAW has not made any nominations under federal or state and territory legislation to list a species or ecological community but has supported listings in the subsequent public comment periods. For example, the southern right whale was recently proposed to be listed as endangered under New South Wales legislation, which IFAW made a submission to the NSW Scientific Committee in support of.

As a result of not having directly attempted to make any listings we cannot subsequently comment on the success or not of those nominations or how long the process has taken.

In answer to the last of the questions, IFAW has never used any other method to try and list a species, either under the EPBC Act or state and territory legislation.

Additional points regarding issues raised during the public hearing

Assessing the taxonomy of species

The question was raised during the hearing as to whether the time it takes to determine the taxonomy of a species could cause inhibit the ability to make a quick determination about emergency listings. While this process can take some time, IFAW would support the view put forward by Ms Christensen during the hearing that often it is not the scientific uncertainty or the lack of techniques or technology that causes the delay but the lack of resources for scientists to undertake that work. If the resources issue can be resolved (see below) then determining taxonomic status needn't necessarily be a delaying factor.

It is also important to make the distinction here between newly discovered species (as in those never known to have existed before) versus newly described species (as in those species previously thought to have been part of another species). In the case of the latter, it will be as a result of taxonomy and morphological studies by scientists that something has been determined to in fact be a different species. The Burrunan dolphin mentioned in IFAW's original written evidence is such an example. It is only once this work has been done and something is determined to be a new species that it will be possible for someone to consider nominating it for an emergency listing. Therefore, the taxonomy debate has happened before a listing is considered rather than be required as part of the consideration process as to whether or not that species should be listed. So the potential for issues of taxonomy to delay a listing (and subsequently the project or development involved in the assessment process) is only likely to exist for species that are completely new discoveries, and even then this potential for delay is more likely to be as a result of limited resources to undertake scientific work than as a result of scientific uncertainty.

Funding taxonomy and other survey work

As a result of the potential for taxonomical and other scientific studies to delay listing, the question was raised during the hearing as to whether it is appropriate for such work to be funded by the proponent of a development or project. IFAW supports the views of Ms Christensen (Fitzroy Basin Association) and Ms Rivers (ANEDO) that it should be incumbent upon the proponent of the referred project to fund this work. As Ms Rivers and Mr Fraser from the Minerals Council of Australia pointed out, at the moment the proponent is responsible for doing species assessments and other surveys related to the project. IFAW shares Ms Rivers' view that it is appropriate that a proponent is responsible for those studies because they are the ones undertaking a development that may have an impact on the species (or other matter of national environmental significance), and they are the ones who will significantly benefit from that project.

As Mr Fraser alluded to there may be risks as to the perception of independence of such work when it is funded by the proponent. IFAW agrees that this is a risk. However, that issue exists with current surveys as required under assessments, and is addressed by regulators insisting on the independence of the studies and the proper qualifications of those tasked with carrying out such work, as well as its peer review if required. As long as such checks and balances are properly applied then it should be possible to guarantee the independence of the work. The proponent's role should simply be to pay for it.

Vexatious claims

The concern that vexatious or unsubstantiated claims could result from the passing of the Bill was raised by a number of submissions and by witnesses. However, it is important to note the response from Peter Burnett from the Department for Sustainability, Environment, Water, Population and Communities, when asked about the experience of the Department in relation to emergency heritage listings that are allowed under the EPBC Act. Mr Burnett firstly noted that there have been very few requests (fewer than five in a typical year) for emergency listings since the Act allowed this for heritage listings. Mr Burnett could not point to any that the Department would officially classify as vexatious.

Once again, IFAW thanks the Committee for giving us the opportunity to give evidence to this inquiry and to make this supplementary submission, and looks forward to the Committee's conclusions on this matter.