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SUBMISSION

to the

Senate Environment and Communications References Committee

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Inquiring into

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

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(Scientific licence - No SL 100126)
Honorary Secretary
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Submission to the Senate Committee, inquiring into the effectiveness of threatened species and ecological communities' protection in Australia

Introduction.

The Clarence Environment Centre has maintained a shop-front in Grafton for over 23 years, and has a proud record of environmental advocacy, particularly relating to protection of threatened species.

Our focus has always been on the protection of biodiversity as a whole, not just those species that have been fortunate enough to receive a degree of supposed protection as a result of being listed as threatened.

Across the nation we have scores, possibly hundreds of species, that meet the criteria for listing as threatened, but miss out on consideration because nobody has the time or resources to present their case. As a result the true number of native species that are facing extinction is vastly greater than the already long list of threatened species suggests.

Overview

In late 2011, the Australian Government released its “**Draft Australian Government Biodiversity Policy**”, for public comment. The document opens with the following assertion, informing us that:

“The number of species becoming threatened continues to increase, and many common plants and animals have lost genetic diversity through reduced population sizes and localised extinctions. The decline of biodiversity is most obvious in the decreasing populations of vertebrate animals, loss of extent of habitat, and the fragmentation and degradation of forests, rivers and other ecosystems. The drivers of decline lead to the simplification and fragmentation of our natural ecosystems, which has progressively weakened their resilience and adaptability.”

In 2010, the Government released its consultation draft for “**Australia’s Biodiversity Conservation Strategy – 2010–2020**”. Again, the opening statement of the Summary identifies the fact that:

“Despite efforts to manage threats, put in place conservation programs and integrate biodiversity considerations into other natural resource management processes, biodiversity in Australia is still in decline”.

These statements were referring to the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) that had come into effect 11 years earlier. They were also made 15 years after the introduction of the *NSW Threatened Species Conservation Act 1995* (TSC Act), and are therefore, an appalling indictment of the complete failure of those pieces of legislation to protect threatened species and other matters of national environmental significance.

However, we believe this failure is not the fault of the legislation, the intent of which is clear, but shows a monumental failure of governments, state and federal, to properly apply those regulations.

The Regional Forests Agreements

One of the most dramatic failures of environmental legislation to protect biodiversity is the Regional Forest Agreements, under which the Federal Government abrogated its responsibilities under the EPBC Act. We need not analyse the full extent of that failure as Allan Hawke's “*Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act*” (October 2009), has already done that, but we understand that few, if any of Hawke's recommendations, were ever implemented.

However, the failure, or unwillingness, of the State's regulator (currently the EPA) to enforce compliance with the Integrated Forest Operations Approval (IFOA) and Threatened Species Licence, has seen breaches of these regulations carried out with impunity, and on a massive scale.

Audits carried out by environment groups across some eight state forest logging operations between 2009 and 2012, identified systemic breaching of almost all threatened species prescriptions. Only a fraction of those reported breaches resulted in regulatory action, and most offences only received official warnings or paltry penalty infringement notices. The largest fine handed out as a result of these audits was \$3,000 for illegally logging 5,000 square metres of endangered old-growth Lowland Rainforest community (critically endangered under the EPBC Act).

The EPA blames 'loopholes' in the wording of the IFOA for its failure to pursue these breaches in the courts, but the five yearly review of that regulation, due in 2005, has still not been completed. An official complaint over these failures was sent by the Clarence Environment Centre to the Federal Minister, Tony Burke, but failed to result in any action.

In the mean time, because the timber industry in NSW chose to log above sustainable levels under the RFAs until 2020, the timber will now run out in about 2016. As a result the NSW State Government is being lobbied to allow logging to occur in national parks. The failure of environmental laws to protect biodiversity has now escalated to a new level.

Terms of Reference

- * management of key threats to listed species and ecological communities;
- * development and implementation of recovery plans;
- * management of critical habitat across all land tenures;
- * regulatory and funding arrangements at all levels of Government;
- * timeliness and risk management within the listings processes; and
- * the historical record of State and Territory governments on these matters.

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

There are numerous known threats to biodiversity, which we will not go into in detail. Instead we intend to focus on just two, control of introduced pests, and the major threat to all endangered and vulnerable species, "loss of habitat".

It is common knowledge amongst all natural resource managers, that they are fighting a losing battle against weeds and feral animals because of inadequate resourcing. Even when funding is provided for a specific weed control project, lack of follow-up funding invariably allows the weeds to recolonise, wiping out all the benefits of the original control program.

In recent times in NSW, the Government has introduced recreational hunting into national parks to assist in the control of feral animals, which will no doubt be used as an excuse to cut back on existing pest control programs. In fact, the NSW Game Council has placed 'bag limits' on a variety of introduced species, in order to maintain a healthy hunting resource for licenced shooters.

Recreational hunting will not address the control of many of the country's worst pest species, such as the Cane Toad, the control of which in NSW is largely left to volunteer community groups. In short, successive governments have abrogated their responsibility in relation to the control of feral species, and this has to change.

Habitat loss and fragmentation is universally recognised as being the major cause of ongoing declines of threatened species, therefore it stands to reason that any further loss of habitat, no matter how small, has to be an additional impact on those species.

Unfortunately, as it would be impossible to stop the destruction of native ecosystems altogether (homes need to be built for an expanding population and roads and other infrastructure need to be provided to service that growth), the regulators determined that consideration of threatened species need only be enforced if the impact of a development was considered to be “**significant**”.

Exactly what constitutes a “significant” impact has never been, and probably cannot be, defined. So this, coupled by developers being allowed to select their own “sympathetic” consultants, has led to a very high percentage of developments being declared as having no significant impact on any threatened species. The cumulative impact of the thousands of such “impact free” developments that are approved annually, is enormous, but nobody within government seems to care or are prepared to act to change that. In fact a bill put to the NSW Parliament by the Greens' Cate Faehrmann earlier this year, designed to break the nexus between developers and ecological consultants was defeated with the support of the Shooters and Christian Democrats.

Unfortunately, through a perceived political necessity to keep the Shooters Party on side, the current State Government is doing all it can to weaken environmental laws, including introducing cattle grazing into some national parks, one of the most ecologically damaging activities imaginable, and a Federal Government that is planning to hand over its environmental responsibilities to the States.

Over the years, the administration of both the EPBC and TSC Acts has turned the State and Federal Environment Departments into little more than licencing bodies to allow the destruction of threatened species. On the very rare occasion when a development is seen as having a “significant” impact, all the developer has to do is offer an offset, such as a conservation covenant on like habitat elsewhere, to allow the destruction to go ahead. As the conserved offset is invariably habitat that already exists, this always results in a net **loss** of habitat.

Another aspect, and one that is never stressed enough, is the fact that a voluntary Conservation Agreement gives no protection against a state significant development, or any mining development.

At the end of the day, all the environmental laws that are in place to protect threatened species and their habitat, have failed to halt the declines. Native vegetation continues to be cleared at extremely high rates, **therefore, there is no doubt that the management of key threats to listed species and ecological communities, has been an abject failure.**

2. Development and implementation of recovery plans

The development and implementation of recovery plans was a necessary, in fact crucial, element if both the EPBC and TSC Acts were to be successful in halting declines of threatened species. However, from the outset, lack of resourcing saw years of delay between listing of a species, and the publication of a recovery plan which, ultimately, were seldom fully implemented, again because of a lack of adequate funding.

Because of the eventual backlog of threatened species without recovery plans, the Environment Department introduced a generic solution, Priorities Action Statements, in a 3 year program where each Statement incorporated multiple species to replace the recovery plans that were not being produced.

Earlier this year the NSW Office of Environment and Heritage (OEH) undertook a program to redevelop the Threatened Species Priorities Action Statement (PAS), a program in which the Clarence Environment Centre (CEC) participated. However, after identifying where each threatened species occurs within the State, one single sub-population only (or possibly 2, depending on the spread of the population) was chosen as the most likely to survive to the end of the century, and plans are now being made to focus on protecting that population only.

One species the CEC was involved with was the shrub, *Olax angulata*. This species is only known to occur at two general locations, in Yuraygir National Park around Minnie Water – Diggers Camp, and at the Pinnacles – Fortis Creek National Park, some 50km inland from the coast.

There are 3 small inland sub-populations, about 10 plants growing on a roadside at Banyabba, 3 plants in Fortis Creek NP, and, the healthiest, some 50 plus stems growing on private property at the Pinnacles. The decision was to concentrate conservation efforts on the Fortis Creek population (3 plants) and ignore the private property, despite the owner being keen to be involved, presumably because the Fortis Creek effort would be undertaken by utilising existing OEH resources which would not incur any additional costs.

Therefore, we have to conclude that the development of recovery plans has been slow, and the implementation hampered by a failure of successive Governments to provide adequate funding. To the best of our knowledge, individual species' recovery plans are no longer produced in NSW.

3. Management of critical habitat across all land tenures.

The CEC cannot comment on this to any extent, because we are unaware of the existence of any identified critical habitat. However, we can confidently predict that, in the event of critical habitat lying in the way of any state significant development such as a dam, a coal mine, a coal seam gas development, or a motorway, it **would not be protected under the current laws, and it should be.**

4. Regulatory and funding arrangements at all levels of Government;

We have already written at some length on the issue of funding, or lack of. So we will concentrate on the 'regulatory' aspect of the question.

With a clause inserted into the TSC Act, stating that it is an offence to “**knowingly**” destroy or damage threatened species, communities, populations etc, it is virtually impossible to achieve a conviction. This must be the only law of the land where ignorance of the law can be used as an effective defence.

However, the greatest problem we see, is the complete non-existence of any compliance monitoring at any level of Government. Conditional consent is granted for a development, and then it is left to the developer to ensure they comply with those conditions. However, it would be a rare event indeed if a Council, or State or Federal environment officer, would visit the site to undertake on-ground compliance monitoring of environmental conditions of consent.

5. Timeliness and risk management within the listings processes; and

The Clarence Environment Centre believes more work should be undertaken by OEH to identify species in need of protection. We have had work undertaken, we believe as part of the NRAC surveys in the mid 1990s, which did identify a list of species in decline, known as Rare or Threatened Australian Species (RoTAP). However the nomination process of gathering evidence to support listing those species as threatened is time consuming and can be expensive. Therefore we believe zoologists and botanists, under the control OEH, should be employed to gather the necessary evidence to present to the Scientific Committees for listing those species as threatened.

We also believe that, once listed at a State level, the evidence used in the nomination, should be automatically forwarded to the Federal Minister for consideration for listing under the EPBC Act. Currently it has to be a separate nomination using specific formats. Taking that a step further, we believe that when species endemic to individual States are listed as threatened, they should be automatically listed federally under the EPBC Act.

In terms of timeliness, the CEC's experience, having been involved in numerous nominations over the years, has been mixed. Where there is no objection to the nomination the subsequent listing has been accomplished with little delay.

However, our experience has been that, where vested interests such as Forests NSW oppose the listing, a successful nomination is very difficult to achieve. The reason being that when an objection to a nomination is made, usually accompanied by claims of other previously unidentified occurrences, the onus is then placed on the nominator to investigate the claims, something that adds significant personal effort and cost.

6. The historical record of State and Territory governments on these matters.

Historically, it has been our experience that threatened species listing has been undertaken in an efficient and professional manner. Unfortunately, lack of resourcing resulted in extensive delays in developing recovery plans, to the point where the NSW Department for the Environment ceased the preparation of individual Plans in preference for generic Priorities Action Plans as described above.

The biggest problem with both the TSC and EPBC Acts has been the failure of the relative agencies to effectively enforce the legislation, and allowing developments to proceed without considering cumulative impacts over time. Coupled with a failure to monitor compliance, this has led to the agencies doing little more than issue permits to destroy threatened species.

And that about sums it up. Until the regulations guarantee the protection of threatened species and their habitat in its entirety, and backs that up with effective recovery plans, compliance monitoring and affective regulatory action, threatened species will continue to decline into extinction.

Other issues and looming threats (Key Threatening Processes)

Grazing in national parks

Regardless of the number or status of threatened species that are present on a grazing property, there is nothing under the current legislation to protect them from the grazing activity.

Where cattle are grazing bush country, not only do they browse and trample native herbs and shrubs, they also destroy or inhibit growth of tree saplings. The destruction of understorey vegetation also removes habitat for a wide range of native birds and animals that depend on it for refuge, nesting (breeding), and food.

Cattle grazing, contrary to claims of graziers, increases the flammability of bushland by destroying naturally fire resistant areas such as riparian zones and rainforest gullies. These are the areas where cattle congregate for more palatable fodder, water, and shade in hot weather. They turn pristine water holes into mud wallows, and kill understorey vegetation which then burns easily, allowing fire to spread across these natural fire breaks into more fire prone country beyond.

The subsequent erosion of the trampled creek and gully lines causes serious pollution and adds turbidity to downstream rivers, threatening aquatic and marine ecosystems.

If governments are serious about reversing the declines of threatened species, and biodiversity generally, Cattle must be excluded from all conservation areas, and this includes State forests where there are identified high conservation value forests. As well we believe, all landowners should be strongly encouraged, even to the point of providing monetary incentives, to fence off river and creek banks.

Fire

'Burning off', a practice widely associated with certain grazing activities, specifically that carried on forested low fertility coastal hinterlands, must be regulated. The majority of this type of grazing involves the running of what are described as "scrubbers", and provides little economic or social benefit.

High frequency burning is land-clearing by stealth that coasts the environment dearly. A recent fire that ultimately raged through the Ramornie National Park west of Grafton, took almost 2 weeks to contain, at a cost to taxpayers running into millions of dollars. Fire is tipped to become an even greater threat with the worsening of climate change, so the practice of 'burning-off', simply to provide 'green pick' for cattle must stop.

Logging on private land.

Private Native Forestry, regulated by a Code of Practice, is another industry that is having an enormous impact on threatened species, particularly the Koala which frequently utilises low conservation value forest and woodland that contains timber species which are also favoured by Koalas for food.

Incredibly, there is no requirement to undertake any pre-logging flora and fauna survey under the code of practice, and threatened species protection will only be applied in the unlikely event of there being a record of the species on the NSW Wildlife Atlas. Very few rural properties have ever had a flora or fauna survey, and even less have records of threatened species on the Atlas.

Mining

Mining, particularly the looming threat of coal seam and other unconventional gas resources across the State is, without doubt, one of the greatest threats to biodiversity currently being faced. Not only from destruction and fragmentation of habitats across the landscape, but also its ultimate contribution to global warming which, we are being warned, is currently on track to have the planet 6 degrees warmer by the end of this century.

That is a catastrophic level of climate change that will lead to a major extinction event that no amount of threatened species legislation will prevent.

BioBanking and other off-setting

Any offset that involves placing a conservation covenant on already existing habitat to allow other habitat to be destroyed, results in a net loss of habitat. **This has to stop**, and any offset for unavoidable habitat destruction, must involve the regeneration of degraded property, on a ratio of a minimum 2 to 1, to ensure that the downward habitat loss spiral does not continue.

In conclusion

The Clarence Environment Centre believes there needs to be a much greater focus on the fact that threatened species have been so listed because they are facing extinction. Also, it needs to be clearly understood that they will become extinct if the threats that are driving their decline are not eliminated.

Where loss of habitat is identified as a threat, the only way to reverse the continued decline is to regenerate and rehabilitate habitat. We cannot condone ongoing habitat destruction and delude ourselves that it is having "no significant impact".

We thank the Committee for the opportunity to comment

John Edwards (Honorary Secretary)