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Audit Report No.31 2006–07  
Performance Audit

# **The Conservation and Protection of National Threatened Species and Ecological Communities**

**Department of the Environment and Water Resources**

Australian National Audit Office

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of Australia 2007

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Canberra ACT  
29 March 2007

Dear Mr President  
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Department of the Environment and Water Resources in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *The Conservation and Protection of National Threatened Species and Ecological Communities*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the typed name.

Ian McPhee  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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# Abbreviations

EPBC Act	Environment Protection and Biodiversity Conservation Act 1999
ANAO	The Australian National Audit Office
ABC	The Actions for Biodiversity Conservation system
KTPs	Key Threatening Processes
TAPs	Threat Abatement Plans
ECs	Ecological Communities
NIS	National Investment Stream
NHT	Natural Heritage Trust
NAP	National Action Plan on Salinity and Water Quality
TSSC	Threatened Species Scientific Committee
SIPs	Species Information Partnerships
SPRAT	Species Profile and Threats Database
CCSBT	Commission for the Conservation of the Southern Bluefin Tuna
NRM Regions	Natural Resource Management Regions
Minister	The Minister for the Environment and Water Resources
The Department	The Department of the Environment and Water Resources (formerly the Department of the Environment and Heritage prior to 30 January 2007)
The Act	The Environment Protection and Biodiversity Conservation Act 1999
SoE Report	State of the Environment Report



# Glossary

Referrals	Where a proponent refers an action, that may impact on a matter of national environmental significance, the Minister for the Environment and Water Resources must decide whether the action needs to be assessed and approved before it can proceed.
Assessments	A process to determine if a referral action is likely to have a significant and/or unacceptable impact on a matter of national environmental significance and if so, whether the action should be permitted and whether conditions should be imposed.
Compliance and Enforcement	The process of monitoring and ensuring compliance with the EPBC act and where breaches occur enforce penalties proscribed by the Act.
Threatened Species	A native Australian species which is under threat of extinction.
Threatened Ecological Community	An assemblage of native flora and/or fauna species within Australia that inhabits a particular area in nature.
Key Threatening Processes	A process that threatens or may threaten the survival, abundance or evolutionary development of a native species or ecological community.
Recovery Plans	Plans that set out the research and management actions necessary to stop the decline of, and support the recovery of, listed threatened species or threatened ecological communities.
Commonwealth Area	Any part of land owned by the Commonwealth; an area of land held under lease by the Commonwealth, an external Territory and the coastal sea of Australia.

Controlled Action	An action that has been referred and a decision made that the action needs to be regulated by the provisions of the EPBC Act.
Particular Manner	A decision on a referral where the action is not a controlled action but needs to be undertaken in a particular manner so as to not trigger the EPBC Act.
Threat Abatement Plans	Plans that provide for the research, management, and any other actions necessary to reduce the impact of a listed Key Threatening Process on a affected species and ecological communities. Implementing the plan should assist the long term survival in the wild of the threatened species or ecological community.
Biodiversity	The variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part) and includes: (a) diversity within species and between species; and (b) diversity of ecosystems.
Endemic species	Species that are only found within Australia
Conservation Status	The level of threat to a species or ecological community's extinction. The six categories of conservation status are 'extinct', 'extinct in the wild', 'critically endangered', 'endangered', 'vulnerable' or 'conservation dependant'.
Audit team	ANAO officers conducting the audit

# Summary and Recommendations



# Executive Summary

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## Background

1. Australia is home to more than one million species of plants and animals, many of which are found nowhere else on Earth. About 85 per cent of Australia's flowering plants, 84 per cent of its mammals, 89 per cent of its reptiles, 93 per cent of its frogs, 45 per cent of its birds and 85 per cent of inshore freshwater fish are unique to Australia.<sup>1</sup> The State of the Environment Report (2006) noted that while Australia's biodiversity is of incalculable value, biodiversity continues to decline and faces ongoing pressures.<sup>2</sup>

2. The *Environment Protection and Biodiversity Conservation Act 1999* (the Act) is the Government's 'flagship' legislation to protect biodiversity.<sup>3</sup> The second reading speech for the Act noted that the loss of biodiversity represented 'the greatest challenge currently facing Australia'. The Act was designed to provide a legal framework for the conservation and sustainable use of Australia's biodiversity. The Act requires the Minister to complete a list of threatened species and ecological communities and then develop recovery plans or conservation actions for these species and ecological communities. It also outlines a range of requirements to regulate any interaction or possible threat to the survival of listed threatened species and ecological communities. As such, the Act is demanding in terms of the administrative support required to ensure the legislative provisions are met.

3. In December 2006, during the latter stages of the audit, the Act was amended. The amendments were designed to 'cut red tape and enable quicker and more strategic action to be taken on emerging environmental issues...provide greater certainty for industry while at the same time, strengthening compliance with, and enforcement of, the Act'.<sup>4</sup> A number of specific changes were made to the listing process for threatened species and ecological communities and to the development of recovery plans.

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<sup>1</sup> State of the Environment Advisory Council, Australia: State of the Environment Report (1996) p. 4-4.

<sup>2</sup> State of the Environment Report (2006) Biodiversity Theme; Executive Summary p. 2.

<sup>3</sup> Article 2 of the United Nations Convention on Biological Diversity defines biodiversity as 'the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems'.

<sup>4</sup> Environment and Heritage Legislation Amendment Bill (No 1) 2006; Second Reading Speech, p. 6.

4. The ANAO examined compliance with the requirements of the Act prior to the introduction of amendments to the Act. Where the amendments have impacted on the audit findings the implications are discussed in the relevant chapters of the report. The recommendations of the report have been designed to take into account the amendments to the Act.

5. The objectives of the Act are complemented by financial assistance (\$1.3 billion from 2002–2008) provided through the Natural Heritage Trust (NHT) established by the *Natural Heritage Trust of Australia Act 1997*. The NHT aims to help restore and conserve Australia's environment and natural resources. The financial assistance is available to eligible bodies that include regional or local catchment management organisations as well as government and community organisations. The Government also provided more specific financial support for threatened species (\$36 million over four years) from 2004 through the Biodiversity Hotspots program. This program aims to protect biodiversity values in areas that are rich in biodiversity and under immediate threat. The program provides incentives to landholders and assistance to conservation groups to purchase land to be managed for conservation.

6. Under the administrative arrangements order (AAO) of 30 January 2007, the Minister for the Environment and Water Resources is now responsible for administering the Act and the Department of the Environment and Water Resources (the department) is responsible for dealing with matters arising under the legislation. Prior to the AAO of 30 January, and for the period largely covered by this audit, the legislation was administered by the Minister for the Environment and Heritage and supported by the Department of the Environment and Heritage.

7. The objective of the audit was to assess and report on the administration of the Act by the department in terms of protecting and conserving threatened species and threatened ecological communities in Australia.<sup>5</sup>

8. The audit was designed to provide a comprehensive report that covered the range of measures to protect and conserve threatened species and ecological communities in Australia. These include:

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<sup>5</sup> The Act defines a threatened species as one that has been classified in one of six categories. For example a critically endangered species is one that is facing an extremely high risk of extinction in the wild in the immediate future. The Act defines an ecological community as an assemblage of native species that inhabits a particular area in nature and meets the additional criteria specified in the regulations (if any) made for the purposes of this definition.

- the listing of threatened species and ecological communities;
  - the development of recovery plans for these species and ecological communities as well as the processes to mitigate threats to them;
  - implementation of recovery actions and conservation through programs such as the NHT and the Biodiversity Hotspots Program;
  - assessments and approvals of actions that are likely to impact on these threatened species or ecological communities; and
  - the design and implementation of compliance and enforcement actions to maintain the integrity of the Act.
9. The audit also followed up relevant findings and recommendations from Audit report No.38 2002–03 *Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999*.

## Key findings

### Listing threatened species (Chapter 2)

10. Listing of threatened species is the first crucial step for the Commonwealth in protecting native flora and fauna under the Act. The Act requires the Minister to develop and maintain a list of threatened species. The Minister must also list key threatening processes.<sup>6</sup> Prior to December 2006, specific timeframes were required for listing (12 months from the date of nomination for an expert scientific committee to consider and give advice; and 90 days for the Minister to make a decision taking the advice into consideration.)

11. As at 30 June 2006, there were 1 684 species listed in six different categories:

- extinct;
- extinct in the wild;
- critically endangered;
- endangered;
- vulnerable; and
- conservation dependent.

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<sup>6</sup> S188 (3) of the Act defines a process as a key threatening process if it threatens or may threaten the survival, abundance or evolutionary development of native species or ecological communities. For example land clearing is an identified key threatening process.

12. Criteria for listing threatened species and ecological communities are outlined in the regulations to the Act. Since 2000, there have been 183 changes to the list of threatened species. All changes were documented and made in line with the criteria. Statutory timeframes apply to all nominations of species received from the public. Most of these timeframes have been met.

13. However, for marine fish<sup>7</sup> species there were excessive delays in expert advice being forwarded from the Threatened Species Scientific Committee (TSSC) to the Minister. For the nine fish species under consideration by the TSSC the average elapsed time to list a marine fish species has been over four years. The department did not formally convey the TSSC recommendations for between six and twenty-eight months. Nevertheless, the department commented that the Minister was advised of the situation and approved extensions to the statutory timeframes.

14. The department has indicated that the reason for these delays was that the department 'was seeking to resolve the scientific and legal uncertainties and complexities in commercial fish nominations'. To assist in developing an approach to listing marine species, the department chose to concentrate on the Orange Roughy as a test case. The Orange Roughy was listed as 'conservation dependant' in December 2006.

15. The department has now advised that nominations for the outstanding marine species will be reconsidered by the TSSC under the new listing processes. A decision on whether they will be priorities for assessment is expected by September 2007. For those deemed to be priorities a final decision on listing is expected by late 2008.

16. The State of the Environment Report 2006 identified that there is a 'lack of long-term, systematic biodiversity information that would allow firm conclusions to be drawn about the details and mechanisms of the decline [of species in Australia]'.<sup>8</sup> There are uncertainties and significant scientific gaps in knowledge of species. This makes the department's task difficult in terms of keeping the list current.

17. However, given the current knowledge of threatened species in Australia, the ANAO found that the list of threatened species is not sufficiently up to date. Almost 85 per cent (1 430) of the 1 684 species currently listed have

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<sup>7</sup> This included four commercial fish species as well as five other fish species sometimes caught as by-catch.

<sup>8</sup> op. cit.



been carried over from the previous Act. These were listed using different criteria and different categories. Even for the top twenty species most frequently generating regulatory actions under the Act, only two had complete and up-to-date information on the reasons for listing. The department has introduced processes to address the shortcomings in the completeness of the list.

18. However, much work remains to be completed – particularly in terms of aligning, where appropriate, the national and State lists. At the time of the audit, only the Northern Territory and Western Australian lists had been aligned. This means that there is likely to be substantial inconsistencies and gaps in the national list of species when compared to the lists in the remaining States. The importance of aligning these lists is highlighted by the example in Western Australia where eight species that were previously classified by the Commonwealth as extinct are now classified from ‘critically endangered’ to ‘vulnerable’. While this process is in an early stage (it commenced in 2004), the ANAO considers that it is a worthy departmental initiative which should assist in bringing the list up-to-date over the longer term.

19. There is a considerable risk remaining that incorrect decisions will be made in relation to other parts of the Act because only partial or incorrect information is available. This is because a decision to list a species or ecological community establishes a legal requirement to protect the species and creates a priority for investment through programs such as the NHT. Ideally, adjusting the existing list of species and updating information on listed species should be given priority and undertaken as soon as possible. However, this is unlikely to be achieved without additional resources being allocated to the task. Resource limitations and competing priorities have constrained progress to date.

### **The Listing of Ecological communities and other listing processes (Chapter 3)**

20. The Act requires the Minister to establish a list of threatened ecological communities divided into ‘critically endangered’, ‘endangered’ and ‘vulnerable’ which reflect the different levels of risk of extinction. The timeframes required for listing are the same as for threatened species. Prior to December 2006, the Act also required the Minister to decide whether to include an ecological community from a list kept by a State or Territory and to develop inventories of species on Commonwealth land and waters.

21. Progress under the previous requirements of the Act in listing ecological communities was slow, with a substantial backlog in the processing

of public nominations. Of the 72 public nominations received since the Act came in to force, 39 of these have been processed by the TSSC and this has resulted in 15 listings (covering 31 of the processed nominations). A substantial backlog of 33 public nominations is still to be considered by the Minister.

22. The ANAO identified that the reasons for the backlog in listing ecological communities were:

- the technical challenges in defining ecological communities and their boundaries within their national context;
- an expanded consultation process with stakeholders;<sup>9</sup>
- changes in priority from a focus on public nominations, to a strategic assessment of national priorities for listing ecological communities and then back to a focus on public nominations over the last six years; and
- limited resources allocated to the task.

23. The ANAO estimates that clearing the backlog, under the previous processes of the Act, would have taken between six and seven years to address at current resource levels. The recent amendments to the Act regarding the nominations process provide that assessments must be completed within twelve months. However, the Minister may approve a longer period if proposed by the TSSC. Nevertheless, while the scale and complexity of the task is substantial, it would be expected that assessments will be done within a reasonable timeframe to ensure nationally significant ecological communities are protected.

24. The new arrangements will effectively remove the backlog in publicly nominated ecological communities. In the transition between the previous Act and the amendments, nominations where the TSSC advice has been provided to the Minister prior to the amendments taking effect can be determined by the Minister without going through the new process. The department anticipates that, for any nominations where the Minister does not make such a determination, these will be considered and prioritised under the new listing process within annual assessment periods. The ANAO considers that with the current level of resources and staff dedicated to administering ecological communities, there is a high risk that nationally significant ecological communities eligible for listing will not be listed within a reasonable timeframe. The department will need to carefully consider its business strategy

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<sup>9</sup> This has the potential to produce more acceptable outcomes amongst stakeholders.

(including the allocation of sufficient resources) to increase its capacity to process ecological community nominations in a timely manner in the future.

25. In addition to processing public nominations, there was a substantial backlog of approximately 700 State and Territory ecological communities to be considered. However, amendments to the Act repealed this requirement.<sup>10</sup> The removal of the requirement to review State and Territory threatened ecological communities creates a risk that many eligible communities not identified through public nominations will not be considered for listing. The ANAO considers that the State and Territory listed ecological communities should be at least considered by the department and the TSSC within the context of the new listing process. The department has indicated that while not all of the State/Territory ecological communities will be high priority, it is important to assess the state listings for their relevance at a national level. The department is currently looking at options to address this concern.

26. The documentation to support decisions on key threatening processes was sufficient to explain the reasons for their listing or rejection. Inventories of species on Commonwealth land and marine areas were developed but were not complete or comprehensive. This constrained the capacity of the Commonwealth to meet the prescribed requirements of the Act, pertaining to Commonwealth areas. The amendments to the Act have removed the requirement for inventories of species in all Commonwealth areas. However, because the amendments allow the option for inventories and surveys to be conducted, the department will need to advise the Minister as to the circumstances where an inventory should be conducted.

#### **Recovery and threat abatement plans (Chapter 4)**

27. Recovery plans for listed threatened species and ecological communities, and Threat Abatement Plans (TAPs) for key threatening processes are important tools in protecting biodiversity. They set out the management actions necessary to maximise the long-term survival of affected species and ecological communities. They also provide a basis on which funds available for biodiversity protection and conservation can be prioritised and directed.

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<sup>10</sup> Not all of the 700 State and Territory ecological communities will be high priority as some will already be in national parks while others extend across state borders which will reduce the number to be considered. However, the backlog highlights the gap between expected and actual performance in meeting the requirements of the Act.

28. Prior to December 2006, the Act required the Minister to ensure that there is always in force a recovery plan for each listed threatened species and ecological community (except for those species and ecological communities categorised as 'extinct' or 'conservation dependent').<sup>11</sup> TAPs may also be made to reduce the effect of a threatening process such as feral pests.<sup>12</sup>

29. In addition to the requirements of the Act, Commonwealth, State and Territory Ministers also committed in 2000 to have recovery plans in place for all critically endangered and endangered species by 2004.<sup>13</sup> The commitment was not met. Only 126 species (22 per cent) of the 583 species committed had recovery plans completed by 2004. Fifteen (68 per cent) of the 21 ecological communities committed had recovery plans in place by 2004.

30. Statutory timeframes for producing recovery plans in Commonwealth areas were generally not met. The reasons for the poor result were a lack of sufficient resources and insufficient capacity in agencies contracted to produce recovery plans.

31. The ANAO considers that monitoring implementation of recovery plans by the department has also been inadequate for reporting on their effectiveness in conserving species. The department has indicated that it does not have the resources to monitor what progress is being made against the targets and requirements in the recovery plans. Consequently, the requirement in the Act to review all recovery plans and threat abatement plans every five years was not met. Of the 56 recovery plans due for review, only one review had been completed. While recognising that the amendments to the Act have shifted the focus from recovery plans to recovery actions, recovery plans still have an important role to play in protecting endangered species and ecological communities. They have also been a key outcome indicator and performance measure for the department since the inception of the Act in 2000. Consequently, further progress could reasonably have been expected.

32. For twelve of the seventeen listed key threatening processes, the Minister has decided to produce TAPs. Ten of the twelve plans have been

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<sup>11</sup> Amendments to the Act now require the Minister to ensure that there is approved conservation advice for each listed threatened species (except for those that are extinct or a species that is conservation dependant) and each listed threatened ecological community. The Minister now has the discretion to decide which species also require a recovery plan.

<sup>12</sup> At the time of listing of a key threatening process, the Minister must decide whether a threat abatement plan is to be prepared.

<sup>13</sup> National Objectives and Targets for Biodiversity Conservation for 2001–05.

finalised. In most cases, the finalisation of a TAP met the statutory timeframes of the Act.<sup>14</sup>

33. Departmental reporting to Parliament on progress does not distinguish between recovery plans completed and those in preparation. This does not assist Parliament in understanding the backlog in the development of recovery plans and the reasons for this. In contrast, reporting on TAPs is more informative as it includes information on the status of plans and progress against outcomes.

### **Commonwealth investment in biodiversity conservation actions (Chapter 5)**

34. The NHT (\$1.3 billion over six years from 2002) and the Biodiversity Hotspots (\$36 million over four years from 2004) are the Australian Government's main financial assistance programs established to help restore and conserve Australia's biodiversity. The NHT has allocated funding through national, regional and local streams which target different levels of activity and different stakeholders. For example, the national stream provides funding for national activities or proposals that cut across State boundaries while the regional stream focuses on regional catchment bodies. Some \$78 million was spent directly on threatened species and ecological communities which accounts for approximately seven per cent of total NHT expenditure to date. More broadly, some \$251 million has been spent on biodiversity conservation (22 per cent of total NHT expenditure) from the NHT from 2002–2006.<sup>15</sup>

35. The NHT has supported projects that impact on threatened species and ecological communities. These have included:

- the Threatened Species Network which reported activities to benefit over 80 species and ecological communities listed under the Act in 2005–06;
- two pilot projects for regional recovery plans covering 100 nationally listed threatened species (including implementation of recovery actions for over 40 threatened species);

<sup>14</sup> Only one, *Injury and fatality to vertebrate marine life caused by ingestion of or entanglement in, harmful marine debris* is overdue. However, a draft for public comment is expected by the end of 2006.

<sup>15</sup> The \$251 million spend on biodiversity includes the \$78 million spent directly on threatened species and ecological communities. It is difficult to precisely identify expenditure on biodiversity conservation as numerous projects have multiple objectives (including conservation). A significant number of initiatives funded may have indirect benefits for threatened species and ecological communities.

- financial assistance to the department to support the work of the Threatened Species Scientific Committee and enable consideration of new nominations of threatened species and ecological communities as well as recovery planning; and
- regional funding for priority investments in key regions. For example, \$11.3 million to the South West region of Western Australia – a world biodiversity hotspot with significant endemic species and ecological communities under threat.

36. However, the department's evaluation of the program found there is a lack of standard, meaningful and quantified monitoring and evaluation systems for the national investment stream. The ANAO agrees with this conclusion and notes that this has limited the capacity of the department to report to Parliament on the extent to which NHT initiatives, funded at the national level, have contributed to program objectives.

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

38. The Biodiversity Hotspots program has experienced slow progress since its announcement in 2004. The Hotspots program was designed to improve the conservation of biodiversity hotspots on private and leasehold land by enhancing active conservation management and protection of existing terrestrial and freshwater ecosystems as habitat for native plants and animals. To assist in program implementation, the TSSC identified 15 biodiversity hotspots areas in Australia. As at 30 June 2006, spending was just over one third of the total financial commitment and well behind the original appropriations.

39. The reason for the delay related to the time taken to settle the method by which funds would be allocated under the program, whether through a grant program or a tender process. While a matter for Ministerial decision, the

delay in delivering program funds has meant that the biodiversity conservation priorities of the program have not been addressed.

40. Of the funds that have been spent to date under the Biodiversity Hotspots program, the ANAO found that two of the three investments already announced by the Government were not within the identified biodiversity hotspots. In addition, these two investments were made prior to finalisation of program guidelines. The guidelines were not finalised until 9 June 2006 – some two years after the program was announced.

### **Referrals and assessments (Chapter 6)**

41. The Act identifies listed threatened species and ecological communities as one of the seven matters of national environmental significance. The Act requires any person to refer an action to the Minister if they consider that the action may impact on a matter of national environmental significance. The Minister must determine whether or not the action will have an impact, if so what conditions should be imposed, or whether or not the action should be approved. Advice on these actions is provided by the department through assessments on each proposed action. Assessments involve analysis and documentation of the level of risk and the most appropriate controls required for the action that has been referred.

42. There are significant challenges in administering referrals for legislation that relies largely on self-regulation - that is, the onus of compliance rests with individuals and organisations to decide whether or not their activities have, or are likely to have, a significant impact on a matter of national environmental significance. While the department has taken steps to improve guidelines for the promotion of required referrals under the Act, there has been no substantial increase in the overall number of referrals made under the Act. Discussions with regional bodies in North Queensland and Western Australia as well as national industry and environment groups in particular suggest that significant efforts are required to improve awareness and ensure that all referrals that should be made are actually made.

43. The department has begun an important pilot initiative to align local council planning schemes with the referrals and assessments under the Act. This process could assist in increasing the number of referrals and achieving a more efficient assessment process – particularly where listed threatened species or ecological communities are identified and mapped within local

council boundaries. The department has also been working with industry groups to improve knowledge of their requirements under the Act.

44. Nevertheless, there is considerable scope for expanding this type of initiative in priority local government areas. More broadly, there is considerable scope to improve awareness of the importance of compliance with the Act – particularly in regions with significant threats to listed species and ecological communities. A program of promotion and awareness raising would lift the profile of compliance with the Act. If administrative steps are not taken to improve performance in this area, it is unlikely that all the projects that are required to be referred to the Minister under the Act will be referred. The ANAO recognises that such an approach overall, would involve some additional resources.

45. In terms of assessments of proposed actions referred to the department (that is, consideration of whether or not a proposed action such as a new commercial development in an environmentally sensitive area should be subject to the requirements of the Act),<sup>16</sup> compliance with statutory timeframes has deteriorated since 2002–03.<sup>17</sup> Since this time, the average number of business days in excess of the statutory timeframe for a decision increased from 1.9 to 2.4 days. Amendments to the Act in this area may assist in reducing workload pressures to some extent. However, the ANAO considers that there would be benefit in the department reviewing its processes to ensure that statutory timelines are met. This would be contingent on sufficient resources being allocated to the task.

## **Compliance and enforcement (Chapter 7)**

46. An effective compliance and enforcement strategy is required to ensure the integrity of the Act and that any conditions placed on approved actions by the Minister are actually carried out. Between 2000 and 2006, 419 decisions, with multiple conditions, were made by the Minister or his delegate.<sup>18</sup> These conditions were imposed on actions to mitigate any adverse impacts on a

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<sup>16</sup> Audit Report No 38 2002–03, *Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999*.

<sup>17</sup> Under the Act, the Minister must decide whether an action is subject to the requirements of the Act within 20 days of receiving the referred action.

<sup>18</sup> This includes 138 approvals with conditions for actions that have been subject to the control of the provisions of the Act and 281 decisions that allowed actions to proceed without applying the provisions of the Act if they were carried out in a particular manner.



matter of national environmental significance such as a listed threatened species.

47. The department has a well designed compliance and enforcement strategy and since the last ANAO audit in 2002–03, has increased its capacity to undertake compliance and enforcement activities. For example, the department has introduced a new Environment Investigations Unit, staffed by specialist investigators and out-posted officers from the Australian Federal Police and the Australian Customs Service. In 2003 the Department pursued legal action in the Federal Court which resulted in a successful civil prosecution against a farmer for illegal clearing of land in the Gwydir Wetlands.

48. However, implementation of the compliance and enforcement strategy has been generally slow - particularly in regard to the managing compliance with conditions on approval. The department did not have sufficient information to know whether conditions on the decisions are generally met or not. There has been insufficient follow up on compliance by the department for those individuals or organisations subject to the Act and little effective management of the information that has been provided.

49. Consequently, the department has not been well positioned to know whether or not the conditions that are being placed on actions are efficient or effective. This is not consistent with good practice and does not encourage adherence to conditions set by the Minister. While voluntary auditing has been carried out for a small number of decisions, auditing and reporting on compliance with the statutory decisions is not yet well developed. From a small sample of eight decisions, departmental audits found that only 58 per cent of total conditions were fully complied with. This suggests that the audit program may need to be expanded to incorporate a review of a higher number of decisions in the future.

### **Overall audit conclusion**

50. Since the introduction of the Act, 152 additional species have been listed and protected under the Act and over 200 new recovery plans have been written to assist in the protection and conservation of species. The department has recently introduced a number of processes to improve the efficiency and effectiveness of the administration of the Act. However, protecting and conserving threatened species and ecological communities still remains a

challenge for the department. Three key factors constraining progress and limiting the achievement of the objectives of the Act are the:

- scale of the prescribed tasks required by the legislation;
- technical requirements for assessing, protecting and conserving over a thousand individual species and hundreds of ecological communities; and
- limited resources allocated to the task.

51. The audit identified a number of key areas of non-compliance with the Act (prior to December 2006). These were:

- keeping the list of threatened species and ecological communities in an up to date condition;
- surveying species on Commonwealth land;
- completing recovery plans in the required timeframes; and
- reviewing State and Territory listed ecological communities.

52. The amendments to the Act in December 2006 mean that the matters identified in paragraph 51 are no longer legal requirements. These amendments are likely to reduce the workload of the department in the above areas. However, the department will still need to consider these matters within an administrative context where they relate to the achievement of the objectives of the Act. In other areas such as referrals and assessments, the amendments may increase work load pressures.

53. In addition, there has been a range of administrative shortcomings in the department's administration of the legislation. These were:

- slow progress in listing species and ecological communities, particularly for the listing of marine species and publicly nominated ecological communities;
- inadequate implementation of the compliance and enforcement of conditions of approval under the Act. (There has been no significant follow-up on compliance with the conditions set for approved actions);
- gaps in the data and documentation to support listing of species transferred from the earlier Act; and

- insufficient monitoring and enforcement of conditions of approval in respect of actions that may have an impact on a matter of national environmental significance.

54. The department has sought supplementary funding four times since the introduction of the Act but these were not agreed to by government. Some minor reallocations of other departmental resources were made during this time to accommodate other resourcing requirements. In 2005 the department sought to develop a cost recovery regime but this was also not agreed to by government and the department was directed to reallocate resources from other areas within the department. Financial supplementation (\$18 million from 2003–04 to 2005–06) from the Natural Heritage Trust has assisted the department in administering priority areas of the Act. However, these measures have not been sufficient to address the performance shortfall in the areas identified above.

55. In circumstances where resources are constrained, departmental strategies for resource allocation to achieve legislative compliance should be well targeted and directed to the priority areas that will achieve the objectives of the legislation. The ANAO considers that the department was slow in the early years of the Act to adjust its strategies to ensure it met its statutory responsibilities.

56. The department has indicated to the ANAO that it has been very aware of its lack of capacity to properly administer the requirements of the Act. Evidence obtained during the course of the audit indicated that Environment Ministers were informed of the difficulties in meeting the statutory obligations under the Act and Ministers had noted the approaches and initiatives that have been taken to better meet the objectives of the Act.

57. The department has commented that since the commencement of the Act, it has worked with the TSSC to meet its statutory obligations and where this was not possible, to develop alternative approaches to meeting the general objectives of the Act. The department has introduced a number of initiatives to improve the administration of the Act. In particular, initiatives include steps to better align the national list with those of the States/Territories, better information systems to support the referrals and assessments process, and the development of pilot regional and multi-species recovery plans.

58. The ANAO also notes that without Commonwealth funds, delivered through the NHT, many more species and ecological communities would have no actions undertaken to protect and recover them. Nevertheless, the threats to

biodiversity in Australia remain and further attention to the administration of the Act is required if its objectives are to be realised.

## **Future Directions (Chapter 8)**

59. The ANAO has made eight recommendations designed to improve performance by the department and to focus attention on key directions for the future. In addition, the ANAO has highlighted those recommendations which it considers are important for early implementation:

60. The key directions for early attention are:

- improving the accuracy and completeness of the list of threatened species and ecological communities based on the best available information to ensure that priority threatened species and ecological communities that need protection are listed and those that do not are de-listed;
- establishing a priority order for all recovery plans currently being prepared and then developing a strategy to expedite the completion of recovery plans and actions for all priority species and ecological communities with clear timetables for completion and subsequent implementation;
- improving the promotion of the requirements of the Act in priority regions of Australia; and
- strengthening the implementation of the compliance and enforcement strategy including the audits of compliance with conditions and reporting to Parliament on the results of significant actions.

61. The key directions for longer term attention are:

- ensuring to the extent practicable that the national list of threatened species and ecological communities is regularly updated and aligned with changes in State/Territory lists;
- building strong compliance partnerships with relevant bodies in priority regions of Australia to ensure that where practicable, that matters of national environmental significance are considered earlier in the planning process;
- considering the scope for providing assistance to local governments in priority areas of Australia to enable mapping and documentation of listed threatened species, ecological communities and critical habitat;

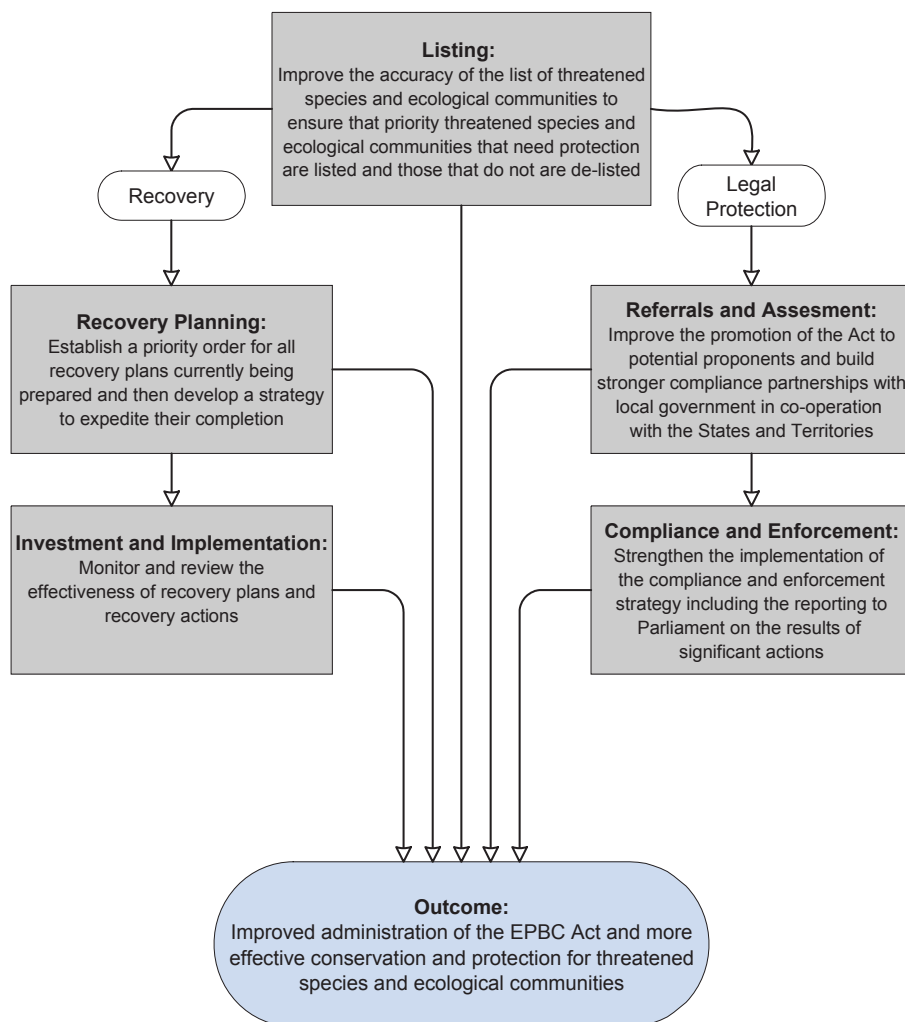
and consolidating, disseminating and reporting on the lessons learned from the audit program each year; and

- giving sufficient priority to monitoring and reporting to Parliament on the timeliness and effectiveness of Commonwealth recovery actions for priority threatened species and ecological communities nationally.

**62.** Figure 1 outlines the key issues and findings for the audit and the outcomes that the ANAO's recommendations aim to achieve. In particular, the recommendations have been designed to assist in focussing efforts on better achieving the objectives of the Act and improving accountability to the Parliament.

Figure 1

## Future Directions



## Agency Response

63. The Department of the Environment and Water Resources thanks the Australian National Audit Office for the work done on this audit. The Department considers the report a useful document that raises a number of important issues for this Department’s administration of the *Environment Protection and Biodiversity Conservation Act 1999*, the Natural Heritage Trust and other relevant programs.

64. The audit is a balanced report which recognises the complexities involved in administering the *Environment Protection and Conservation Act 1999* and the magnitude of some of its statutory requirements prior to the amendments passed by the Parliament in December 2006. The Department recognises that the timing of the audit created difficulties for the Australian National Audit Office with the amendments to the Act being considered during the course of the audit.

65. The Department believes the efforts of the Audit Office to take account of the requirements of the amended Act have made the report a more useful document that provides guidance on the way forward with administration of the Act, rather than merely looking backwards at a situation that no longer applies.

66. The Department agrees with the recommendations and considers they provide useful guidance on pursuing the highest priority actions to assist in meeting the objectives of the Act. The Department notes that, even under the provisions of the amended Act, however, its ability to fully implement all the recommendations will depend in part on the willingness of State and Territory agencies to collaborate on actions.

# Recommendations

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Set out below are the ANAO's recommendations with abbreviated responses from the Department of The Environment and Water Resources. The full text of the agency response is at Appendix 2. Priority should be given to the implementation of recommendations 2 (a) & (b), 4, 5 (a) & (b), 7 (a) and 8 (a) & (b) which are designed to focus administrative efforts on meeting major statutory requirements.

**Recommendation No.1** The ANAO *recommends* that the Department of the Environment and Water Resources:

**Para 2.40**

- (a) provide as soon as practicable, all advices from the Threatened Species Scientific Committee on marine species to the Minister to bring a conclusion to the process for these species; and
- (b) ensure that sufficient priority is given to monitoring and reporting to Parliament on the effectiveness of management plans (including the achievement of targets) for conservation dependent listed marine fish species.

**Agency Response:** Agreed, noting the complexity of these issues and the consequent need to consult all stakeholders.



**Recommendation  
No.2**

**Para 2.69**

The *ANAO recommends* that the Department of the Environment and Water Resources improve the accuracy and completeness of the list of threatened species by:

- (a) reviewing the list of threatened species with a view to having a comprehensive and accurate list in place as soon as practicable;
- (b) accelerating completion of the Species Information Partnerships program and ensuring that conservation management information relating to listed species is regularly reviewed and updated; and
- (c) introducing an ongoing intergovernmental process to ensure that changes to State/Territory lists relevant to the Commonwealth list are regularly forwarded to the Threatened Species Scientific Committee and to the Minister for their consideration.

*Agency Response:* Agreed noting that the full implementation will require the cooperation of the States and Territories.

**Recommendation  
No.3**

**Para 3.29**

The *ANAO recommends* that the Department of the Environment and Water Resources, in order to ensure that the highest priority ecological communities are listed nationally, undertake a review of the State and Territory lists of ecological communities to determine which communities are eligible for listing under the Act and include these in the new nominations process.

*Agency Response:* Agreed.

**Recommendation  
No.4  
Para 4.30**

The ANAO *recommends* that the Department of the Environment and Water Resources, in consultation with the Threatened Species Scientific Committee:

- (a) review all recovery plans in preparation and identify a priority order and a timetable for their completion;
- (b) complete recovery plans for all priority species and ecological communities, in accordance with the timetables set for their preparation; and
- (c) consider contracting a range of expert providers to assist in expediting the completion of recovery plans.

*Agency Response:* Agreed.

**Recommendation  
No.5  
Para 4.49**

The ANAO *recommends* that the Department of the Environment and Water Resources improve the management of recovery plans by:

- (a) conducting a review of all recovery plans that have exceeded their statutory timeframes;
- (b) developing a timetable and allocating resources to ensure that future reviews of recovery plans are completed within their statutory timeframes; and
- (c) considering the development of a dedicated system to manage recovery actions, monitor their implementation and measure the progress of species against their short, medium and long term recovery goals.

*Agency Response:* Agreed noting the changes to statutory timeframes and the role of the conservation advice under the amended EPBC Act.

**Recommendation No.6**  
**Para 4.57**

The ANAO *recommends* that the Department of the Environment and Water Resources ensure that its reporting to Parliament reflects the status of recovery plans by separating ‘completed’ and ‘in progress’ recovery plans.

*Agency Response:* Agreed.

**Recommendation No.7**  
**Para 6.28**

The ANAO *recommends* that the Department of the Environment and Water Resources encourage all required referrals under the *Environment Protection and Biodiversity Conservation Act 1999* by:

- (a) focusing renewed efforts and resources on promoting compliance with the Act in priority regions of Australia;
- (b) building strong compliance partnerships with key local governments (in cooperation with State agencies) in high priority regions of Australia to ensure where practicable, that matters of national environmental significance are considered earlier in the planning process; and
- (c) considering the scope for providing assistance, through programs such as the Natural Heritage Trust, to additional key local governments in high priority regions of Australia to enable mapping and documentation of listed threatened species, ecological communities and critical habitat.

*Agency Response:* Agreed.

**Recommendation  
No.8**

**Para 7.22**

The ANAO *recommends* that the Department of the Environment and Water Resources further strengthen compliance with the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* by:

- (a) auditing a representative sample of decisions with conditions (including both particular manner and controlled actions) each year;
- (b) advising proponents of the minimum requirements for documenting actions undertaken in relation to conditions; and
- (c) consolidating the results of the audits and disseminating them to all relevant officers in the department and including them in the department's annual report to Parliament on the operation of the *Environmental Protection and Biodiversity Conservation Act 1999*.

**Agency Response:** Agreed.

# **Audit Findings and Conclusions**



# 1. Background

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*This Chapter explains the definition of threatened species and ecological communities, the legal and policy framework, the purpose of the audit and how the report has been approached and presented.*

## What are threatened species and ecological communities?

**1.1** Australia is home to more than one million species of plants and animals, many of which are found nowhere else on Earth. About 85 per cent of Australia's flowering plants, 84 per cent of its mammals, 89 per cent of its reptiles, 93 per cent of its frogs, 45 per cent of its birds and 85 per cent of inshore freshwater fish are unique to Australia.<sup>19</sup> The State of the Environment Report (SoE 2001) found that the protection of biodiversity values in Australia had progressed significantly with the enactment of the *Environment Protection and Biodiversity Conservation Act 1999* (the Act) and from the wide range of people and organisations involved in protecting Australia's biodiversity through programs such as the Natural Heritage Trust.

**1.2** The State of the Environment Report (2006) noted that while Australia's biodiversity is of incalculable value, biodiversity continues to decline and faces ongoing pressures.<sup>20</sup> The report commented that;

the major pressures on biodiversity that have been operating for decades are still strong and will continue to drive decline in biodiversity across large areas of the continent, together with new and emerging pressures. Some responses to biodiversity decline are beginning to have effect and promise to provide substantial future benefits. Involvement of people from across Australian society in actions to conserve biodiversity is providing important human and financial resources.<sup>21</sup>

**1.3** The report noted that some of the major pressures that threaten biodiversity on a national scale were total grazing pressure, weeds, invasive organisms, changed fire regimes, and habitat fragmentation. It is estimated that Australia gains around 20 new pests or diseases each year; and major

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<sup>19</sup> State of the Environment Advisory Council, Australia: State of the Environment Report (1996) p. 4-4. Also cited by G Early in Australia's National Environmental Legislation and Human/Wildlife Interactions; Paper submitted to the Journal of International Wildlife Law and Policy (undated).

<sup>20</sup> State of the Environment Report (2006) Biodiversity Theme; Executive Summary p. 2.

<sup>21</sup> *ibid.*

habitat changes have occurred in both northern and southern Australia due to changed fire regimes, especially with widespread drought conditions in recent years.<sup>22</sup>

**1.4** Listed threatened species are native species prescribed under section 178 of the Act while listed threatened ecological communities are prescribed under section 181 of the Act. In general terms they are those species or ‘communities’ of species that have experienced serious population decline because of factors such as habitat loss or threats from invasive or introduced other species (such as foxes, rabbits etc). Species can be classified as extinct, extinct in the wild, critically endangered, endangered, vulnerable or conservation dependent. The category decided upon depends on the conservation status of the species or the ecological community.

## **The legal and policy framework for conservation and protection**

**1.5** Under the administrative arrangements order (AAO) of 30 January 2007 the Minister for the Environment and Water Resources is now responsible for administering the Act and the Department of the Environment and Water Resources (the department) is responsible for dealing with matters arising under the legislation. Prior to the AAO of 30 January, and for the period largely covered by this audit, the legislation was administered by the Minister for the Environment and Heritage and supported by the Department of the Environment and Heritage.

**1.6** The loss of biodiversity was recognised as representing ‘the greatest challenge currently facing Australia’. The Act was designed to provide a substantially improved legal framework for the conservation and sustainable use of Australia’s biodiversity. Some of the features of the Act that give the Commonwealth the capacity to protect biodiversity include:

- the introduction of an assessment and approval process that applies specifically to actions which are likely to have a significant impact on matters of national environmental significance;<sup>23</sup>

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<sup>22</sup> *ibid.*

<sup>23</sup> These matters originally included six matters that were: World Heritage areas; wetlands of international importance; listed threatened species or ecological communities; listed migratory species; nuclear actions and Commonwealth marine areas. A seventh matter, national heritage places, was subsequently added to the list in January 2004.



- enhancing the protection for threatened species through improvements to the listing process;
- providing for the recognition of vulnerable ecological communities and conservation dependent species; and
- the application of specialised criteria to assess the conservation status of marine biota.

**1.7** Amendments to the Act were passed by Parliament in December 2006. In summary, the amendments were designed to ‘cut red tape and enable quicker and more strategic action to be taken on emerging environmental issues...provide greater certainty for industry while at the same time, strengthening compliance with, and enforcement of, the Act’.<sup>24</sup> The audit took these amendments into account in the report and in particular in framing the recommendations. A summary of the changes to the Act relevant to the audit are included at Appendix 1.

**1.8** The objectives of the Act are complemented by financial assistance (\$1.3 billion from 2002–2008) provided through the Natural Heritage Trust (NHT) established by the *Natural Heritage Trust of Australia Act 1997* which is also administered by the department. The NHT aims to help restore and conserve Australia's environment and natural resources. The financial assistance is available to eligible bodies that include catchment management authorities and regional organisations as well as government and community organisations.

**1.9** The NHT invests in activities that aim to ‘conserve, repair and replenish Australia’s natural capital infrastructure’. The preamble to the *Natural Heritage Trust of Australia Act 1997* notes that:

The Parliament of Australia recognises the need for urgent action to redress the current decline, and to prevent further decline, in the quality of Australia’s natural environment. There is a national crisis in land and water degradation and in the loss of biodiversity. There is a need to conserve Australia’s environmental infrastructure, to reverse the decline in Australia’s natural environment and to improve the management of Australia’s natural resources. There is a need for the Commonwealth to provide national leadership and work in partnership with all levels of government and the whole community, recognising among other things, that many environmental issues and problems are not limited by State and Territory borders.

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<sup>24</sup> Environment and Heritage Legislation Amendment Bill (No 1) 2006; Second Reading Speech, p. 6.

**1.10** The Government also provided more specific financial support for threatened species (\$36 million over four years) from August 2004. The Biodiversity Hotspots program aims to protect biodiversity values in areas that are rich in biodiversity and under immediate threat. The program provides incentives to landholders and assists conservation groups to purchase land to be managed for conservation.<sup>25</sup>

## Audit Objective and Scope

**1.11** The objective of the audit was to assess and report on the administration of the *Environment Protection and Biodiversity Conservation Act 1999* by the department in terms of protecting and conserving threatened species and threatened ecological communities in Australia.

**1.12** The scope of the audit encompassed Chapters four and five of the *Environment Protection and Biodiversity Conservation Act 1999*. The audit was designed to assess the administration of the measures to protect and conserve threatened species and ecological communities in Australia including:

- the listing of threatened species and ecological communities;
- the development of recovery plans for these species and ecological communities as well as the processes to mitigate threats to them;
- implementation of recovery actions and conservation through programs such as the Natural Heritage Trust and the Biodiversity Hotspots Programs;
- assessments and approvals of actions that are likely to impact on these threatened species or ecological communities; and
- the design and implementation of compliance and enforcement actions to maintain the integrity of the Act.

## Audit Methodology

**1.13** The methodology was based on a review of files and records together with interviews with relevant officers from the department. The ANAO also consulted with state agencies, a sample of regional bodies and relevant industry and conservation organisations.

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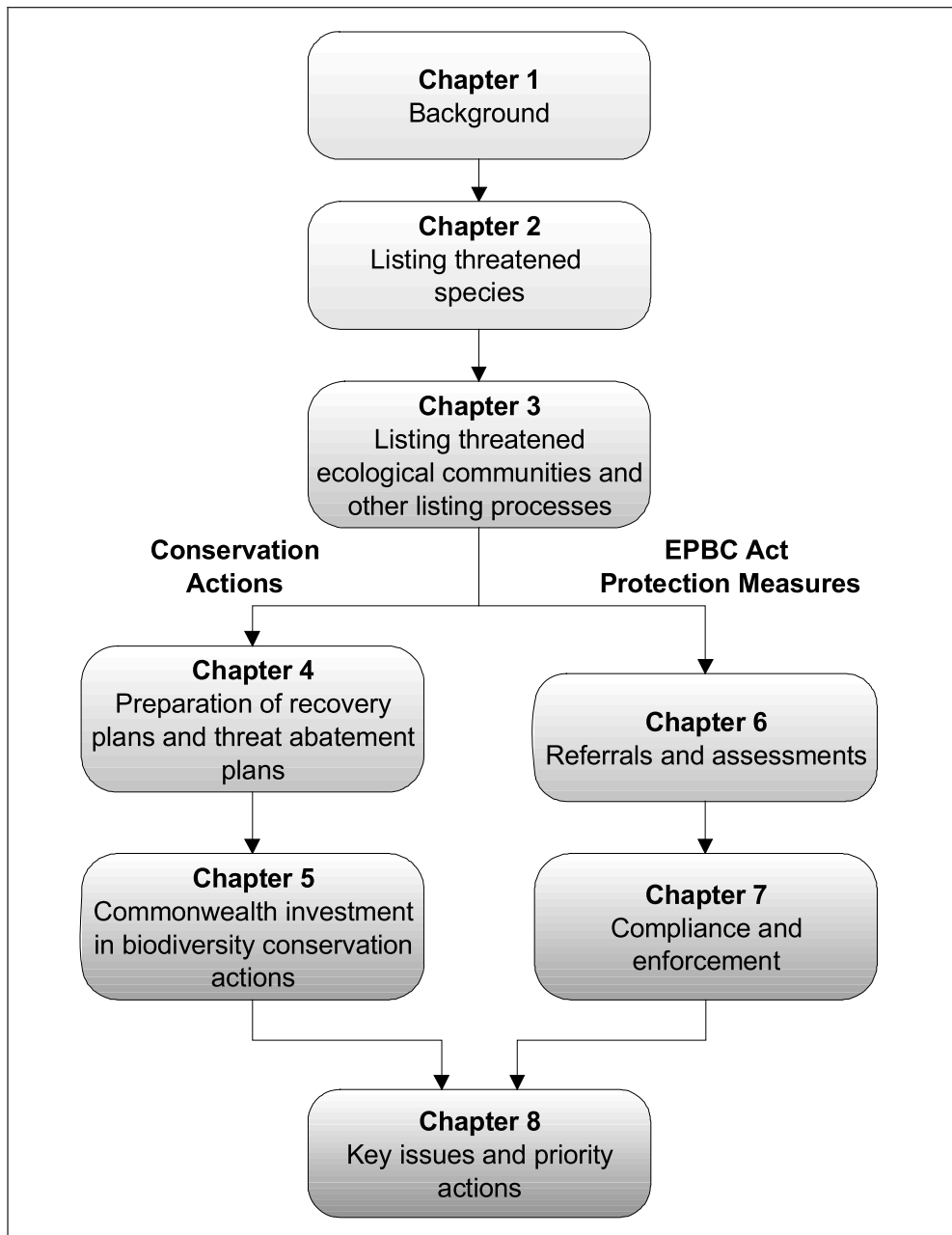
<sup>25</sup> Department of the Environment and Heritage Annual Report 2003–04 p. 40.

**1.14** The methodological approach was designed to test the level of compliance with the Act, illustrate good practice and identify administrative shortcomings. The audit did not test compliance with the recent amendments to the Act as they were introduced after the audit fieldwork had been completed. However, where appropriate, the ANAO has considered the implications of the changes to the Act in its findings and recommendations.

## **Audit Conduct**

**1.15** The audit was conducted in accordance with ANAO auditing standards. The audit commenced in February 2006 and the bulk of the fieldwork was conducted between February and July 2006. The total cost of the audit was \$395 000.

## Structure of the Report



## 2. Listing Threatened Species

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*This chapter examines compliance against requirements in Part 13 of the Environment Protection & Biodiversity Conservation Act 1999 for the Minister to list and protect threatened species of national environmental significance.*

### Introduction

**2.1** Listing threatened species is the first crucial step for the Commonwealth in protecting native flora and fauna under the *Environment Protection and Biodiversity Conservation Act 1999* (the Act). Listed threatened species are national priorities that can trigger the legal conservation provisions of the Act. The Act requires, amongst other things, the Minister to develop and maintain lists of threatened species.

**2.2** The ANAO examined compliance with the requirements of the Act prior to introduction of amendments to the Act in December 2006. A number of requirements have changed subsequent to the amendments. The implications are discussed in the relevant sections of the Chapter.

**2.3** The State of the Environment Report 2006 identified that there is a ‘lack of long-term, systematic biodiversity information that would allow firm conclusions to be drawn about the details and mechanisms of the decline [of species in Australia]’.<sup>26</sup> There are uncertainties and significant scientific gaps in knowledge of species. Consequently, the ANAO examined the list taking into consideration these gaps and uncertainties.

### Listing Threatened Species

**2.4** Section 178 of the Act requires the Minister to establish a list of threatened species divided into six categories. The category chosen reflects the ‘conservation status’ of a species. The six categories are:

- extinct<sup>27</sup>;
- extinct in the wild;
- critically endangered;

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<sup>26</sup> op. cit.

<sup>27</sup> A native species is eligible to be included in the extinct category at a particular time if, at that time, there is no reasonable doubt that the last member of the species has died. However, for practical purposes species have been identified as extinct if this occurred from the 18<sup>th</sup> century onwards.

- endangered;
- vulnerable; and
- conservation dependant.

2.5 Once an entity is listed, it is provided with protection under the Act. The Act provides protection through civil and criminal penalties that apply to actions that may have a significant impact on a matter of national environmental significance (such as a threatened species). The measures of protection vary according to the conservation status of the species. These measures protect the species from being taken, moved or threatened. As at 30 June 2006, there were 1,684 species listed in one of the above categories. The majority of listed species are flora (1,300) with the remainder fauna (384). Table 2.1 below outlines the number of species listed under the Act as at 30 June 2006 for each of the conservation status categories.

**Table 2.1**

**Listed Threatened Species (30 June 2006)**

Category	Fauna	Flora	Total
Extinct	54	61	115
Extinct in the wild	1	-	1
Critically Endangered	14	57	71
Endangered	122	507	629
Vulnerable	192	675	867
Conservation Dependant	1	-	1
<b>Totals</b>	<b>384</b>	<b>1300</b>	<b>1684</b>

Source: Department of the Environment and Water Resources

## The Listing Process

2.6 Under the Act the Minister has the authority to amend the threatened species list. The majority of the changes to the list have arisen from the public nominations process. Members of the public are able to nominate species which they consider need to be listed. Of the 183 changes to the list since the Act's inception, 88 per cent have been due to public nomination considerations. As at 30 June 2006, 27 public nominations were under consideration by the Minister.

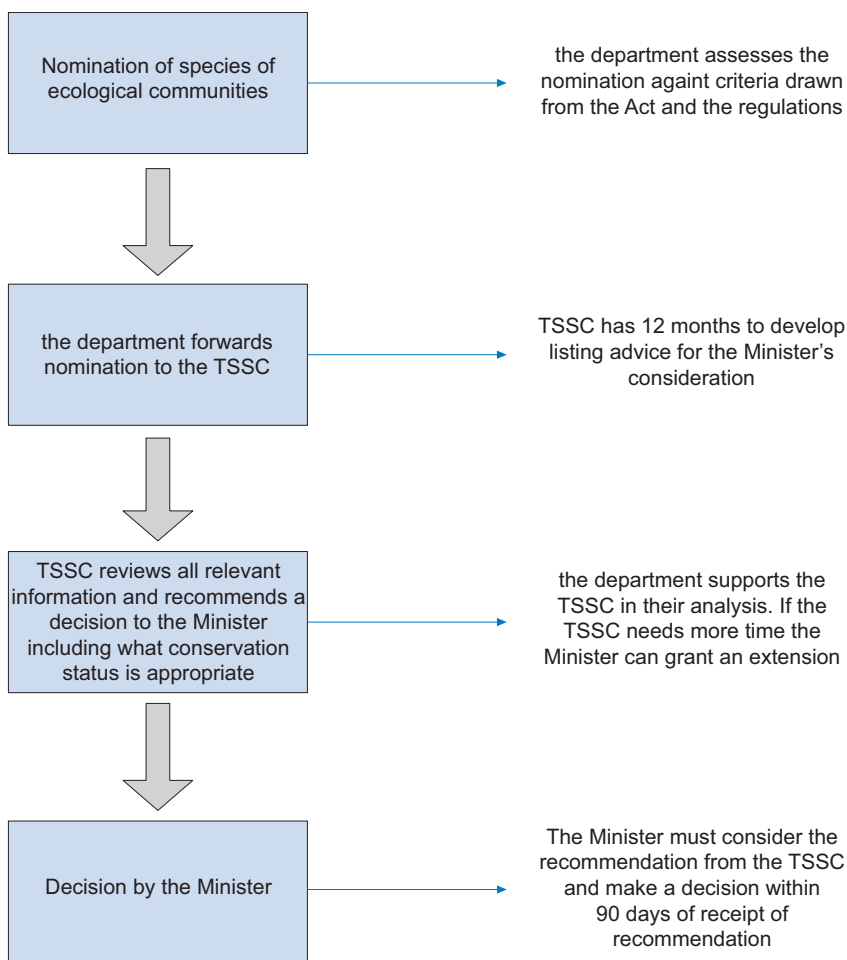
2.7 All nominations are forwarded to the Threatened Species Scientific Committee (TSSC) for consideration. The TSSC is an independent scientific committee appointed by the Minister. The committee advises on the listing of threatened species, making of the recovery plans and any other matters relating to the administration of the Act. Once a nomination has been considered, the TSSC then recommends a course of action to the Minister. The Minister then decides, after considering the TSSC recommendation, whether to list the nominated species. The process prior to the amendments in December 2006<sup>28</sup> is outlined in Figure 2.1 as follows.

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<sup>28</sup> Amendments to the Act in December 2006 changed these requirements. The listing process is now formalised into 12-month assessment periods. Each year the Minister may determine key themes to establish priorities for the forthcoming assessment period. The Minister then invites nominations from the public. There is no longer a 12 month period for the TSSC to develop listing advice for the Minister. Instead, the TSSC determines on a case by case basis the amount of time needed to complete an assessment of a nomination. The implications of this change are discussed further in paragraph 2.17 (compliance with statutory timeframes section). See Appendix 1 for a comparison of the old and new requirements under the Act.

**Figure 2.1**

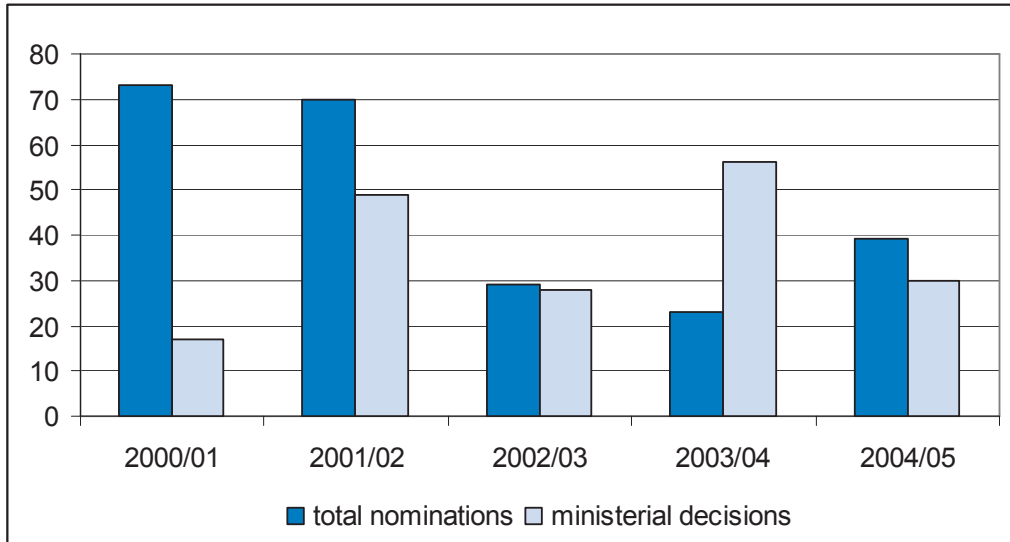
### Nomination of Changes to the List of Threatened Species and Ecological Communities



Source: Department of the Environment and Water Resources

**2.8** The department is responsible for the receipt and processing of nominations. The number of nominations compared to the number of decisions is outlined in Figure 2.2.



**Figure 2.2****Nominations for listing and decisions by the Minister**

Source: Department of The Environment and Water Resources<sup>29</sup>

**2.9** The above table highlights the significant number of nominations in the first two years of the Act and the decline in later years as the process of decision-making ‘caught up’ with the ongoing demand.

**2.10** Nominations that meet the regulations of the Act are referred by the department to the Threatened Species Scientific Committee (TSSC) for consideration. The Act states that the Minister must take advice from the TSSC on all proposed listings. The TSSC’s primary role, as outlined in the Act, is to advise the Minister on the amendments to and updating of the national lists of threatened species. The TSSC also advises on the making and adoption of recovery plans and threat abatement plans and other EPBC issues.

**2.11** The file records examined during the audit indicated that the TSSC has provided advice to the Minister on all nominated species listed since 2000. The TSSC has used explicit criteria for assessing nominations. Table 2.2 outlines the criteria used by the TSSC to determine if a species is threatened, and if so, the category that the species belongs to.

<sup>29</sup> Approximately 15 per cent of total nominations were from non-public sources such as action plans and consultancies. Dates for the original nomination of these non-public nominations were unavailable so the date that advice was passed to the Minister was used as a proxy. Included are nominations carried over from the previous Act.

**Table 2.2****Criteria for considering species for listing under the Act**

Criteria	Critically endangered	Endangered	Vulnerable
1. It has undergone, is suspected to have undergone or is likely to undergo in the immediate future:	a very severe reduction in numbers	a severe reduction in numbers	a substantial reduction in numbers
2. Its geographic distribution is precarious for the survival of the species and is:	very restricted	restricted	limited
3. The estimated total number of mature individuals is:	very low	low	limited
and:			
(a) evidence suggests that the number will continue to decline at:	a very high rate	a high rate	a substantial rate
or:			
(b) the number is likely to continue to decline and its geographic distribution is:	precarious for its survival	precarious for its survival	precarious for its survival
4. The estimated total number of mature individuals is:	extremely low	very low	low
5. The probability of its extinction in the wild is at least:	50% in the immediate future	20% in the near future	10% in the medium-term future

Source: Department of the Environment and Water Resources

**2.12** A species only needs to meet one of the five criteria to be eligible for protection under the Act. For example if the species had a ‘very restricted’ geographic distribution which is precarious for the survival of the species (criterion 2) but did not meet any of the other criteria, the species could still be listed under the appropriate category – that is ‘critically endangered’.

**2.13** The ANAO examined a sample of recommendations<sup>30</sup> by the TSSC and found that the advice given was consistent with the framework proscribed by the regulations of the Act, including the criteria outlined in Table 2.2 above.

**2.14** Since 2000, the Minister has decided not to list 20 public nominations. For 18 of these 20 cases, the TSSC considered that the nominated species did not satisfy any of the criteria. In the two other cases the Minister disagreed with a TSSC recommendation for the listing of the two species. The two species

<sup>30</sup> This represents 20 of the 183 changes to the list as at June 2006 and is approximately 11 per cent of the recommendations given by the TSSC.

not accepted for listing by the Minister were the Southern Bluefin Tuna and a River Snail. In one additional case, the Orange Roughy, the Minister disagreed with the TSSC recommendation concerning the category for listing. However the Minister decided to list the species within another category. In all three cases where the Minister disagreed with the TSSC, the reasons for the decision were documented and were relevant to the provisions of the Act.

**2.15** These three listing decisions are discussed further in Case study 1.

## Case study 1 – Decisions where the Minister disagreed with the TSSC

### Southern Bluefin tuna

In the case of the Southern Bluefin Tuna nomination, the TSSC advice stated that the species met the criteria for listing as a threatened species. In deciding not to list, the Minister took into account a comment by the TSSC that listing would not have a beneficial conservation value on the species.<sup>31</sup>

The Southern Bluefin Tuna is a long-lived, highly migratory species, forming a single, widely distributed population in the Southern and Indian oceans that extends well beyond Australian waters. The species is fished commercially by a number of countries in international waters as well as Australia. The Commission for the Conservation of Southern Bluefin Tuna (CCSBT)<sup>32</sup> sets fishing quotas for Southern Bluefin Tuna and has responsibility for conservation and stock management of the species. Scientific evidence suggests that there has been a substantial decline in the fish population (brought about by over-fishing). Within Australia's fisheries, Southern Bluefin Tuna was identified as a species under threat by the Bureau of Rural Sciences in 2000 with its status listed as 'over-fished'. In 2004, the CSIRO estimated the current spawning biomass to be in the order of 3-14 per cent of that which existed in 1960. Recently, the CCSBT has found evidence of substantial breaches of fishing quotas.<sup>33</sup>

### Murray-Darling River Snail

The TSSC recommended the listing of the Murray-Darling River Snail. The snail is a medium sized freshwater snail that grazes on organic matter and would once have been found on hard surfaces in free-flowing bodies of water in the Murray-Darling river system. The snail was considered extinct until being rediscovered in 1992 in irrigation supply pipes near Barmera, South Australia. The snail was known to occur in only three irrigation pipes and in three translocated populations. The then Minister documented his reasons for deciding not to list the snail. He indicated that he 'considered the advice of the TSSC very carefully and noted the uncertainties surrounding the taxonomy of the species, its distribution and its conservation status'. He also noted the importance of the Murray-Darling Basin river system for the species and doubts about how or whether a listing could contribute to its ultimate survival'.

### Orange Roughy

The Orange Roughy is a commercially caught fish species. The Roughy is a long-lived (up to 150 years) and slow maturing species characterised by low productivity. In listing the Orange Roughy, the Minister's decision varied from the recommendation from the TSSC which was to list the species as *endangered*.

Advice to the Minister on the Orange Roughy, subsequent to the TSSC recommendation, included new information pertinent to a conservation program introduced by the Australian Fisheries Management Authority. Under the new conservation program, the Total Allowable Catch (TAC) was reduced from 1 572 tonnes to 625 tonnes. The number of fishing zones was also reduced. This represented a 60% reduction in the tonnage of the species able to be taken in 2007. Based on this program the Minister decided to list the Orange Roughy within the *e Conservation Dependent* category. The department advised that, if at any time the Minister ceased to be satisfied that AFMA's conservation program is ensuring that Orange Roughy will not become *vulnerable*, *endangered* or *critically endangered* within 5 years, he could choose to list the species in a higher category (having regard to new information available at the time).

<sup>31</sup> Evidence provided to the Commonwealth in the consultation phase, indicated that while fishing is the main threat to the species, the main fishing impact within the spawning grounds is outside the Australian fishing zone and comes from other nations that are not a signatory to the Commission for the Conservation of Southern Bluefin Tuna (CCSBT). Therefore any listing of Southern Bluefin Tuna is unlikely to have a direct impact on fishing as a threatening process.

<sup>32</sup> The initial members were Australia, New Zealand and Japan but other fishing entities primarily Korea, Taiwan and Indonesia as well as South Africa and the Philippines are also involved. The CCSBT has been working to include all relevant fishing nations in the international forum.

<sup>33</sup> The CCSBT reported that \$2 billion dollars worth of Southern Bluefin Tuna have passed through Japanese fish markets over the past 20 years in excess of the Japanese quota. The illegal catch has been estimated at between 12 000 and 20 000 tonnes in excess of the quota. Subsequent to these findings Japan has announced that it will reduce its catch.

**2.16** Each of the decisions above illustrates the complexity involved in determining whether a species should be listed, and if so in what category. The Bluefin Tuna case highlights the challenges in listing species in international jurisdictions. The river snail highlights the challenges in building a convincing case for listing small, low profile non-vertebrate species that may live in obscure habitats. The Orange Roughy case highlights the challenges in listing commercially caught fish species.

## **Compliance with the Statutory Timeframes**

**2.17** Prior to December 2006, the process was that once the TSSC received a nomination, 'the Scientific Committee must give its advice to the Minister within 12 months, or such longer period as the Minister specifies'<sup>34</sup>. For approximately 45 per cent of public nominations the TSSC took more than 12 months to provide its advice. The average time for the TSSC to process a public nomination was 13 months. For decisions outside the 12 month period the TSSC requested an extension of time from the Minister to complete this advice. In some cases nominations exceeded the 12 month statutory timeframe without a formal extension being sought. The department has advised that the reasons for this were: administrative errors on tracking timeframes; the Minister's requests for more detailed advice; and the caretaker period during the Federal election.

**2.18** The department has commented that in 2003, when a number of nominations had exceeded their statutory timeframes without extension, the process for tracking statutory timeframes was reviewed and revised to ensure delays did not arise in future. Since this review, there has been one case where the 12 month timeframe was exceeded without an extension.

**2.19** The amendments to the Act in December 2006, regarding the nominations process, provide that assessments must be completed within twelve months. However, the Minister may approve a longer period if proposed by the TSSC. This should enable the TSSC to better manage its workload. However, this will require systems to ensure that timeframes are monitored and any extensions given by the Minister are obtained within statutory timeframes. Care is also needed to ensure that appropriate and reasonable timeframes are set and Parliament is kept informed of the reasons for any extensions or delays as required by the Act.

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<sup>34</sup> Section 189 EPBC Act 1999.

**2.20** As noted in Figure 2.1, the Minister is required to make and gazette a decision on listing within 90 days of receiving TSSC advice on a nomination. The average time for a decision and gazettal from the total number of amendments made from 2000 to 30 June 2006 was 39 days. Overall, the statutory timeframes required for decisions have been met.

**2.21** However, as Table 2.3 outlines, in seven cases (out of the 183 decisions made to 30 June 2006) the Minister’s decision exceeded this 90 day time frame. If the Minister exceeds his timeframe to make and gazette a decision ‘the Minister must prepare a statement setting out the reasons why each of those things was not done within the period required by this Act or the regulation’ and cause a copy of this report to be tabled in Parliament<sup>35</sup>.

**Table 2.3**

**Exceeded timeframes for decisions**

Name of Nomination	Gazettal date	Days between advice and listing
<i>Lepidium peregrinum</i> (no common name)	1/05/2003	92
<i>Eucalyptus gunnii</i> ssp. <i>divaricata</i> (Miena Cider Gum)	1/05/2003	92
<i>Epacris</i> sp. aff. <i>virgata</i> "graniticola" (Mt Cameron Heath)	1/05/2003	92
<i>Pimelea spinescens</i> subsp. <i>spinescens</i> (Plains Rice-flower, Spiny Rice-flower)	1/05/2003	92
<i>Adclarkia dawsonensis</i> (Boggomoss Snail)	2/06/2003	92
<i>Neoceratodus forsteri</i> (Australian Lungfish)	6/08/2003	244
<i>Hoplostethus atlanticus</i> (Orange Roughy)	10/11/06	332

Source: Department of the Environment and Water Resources

**2.22** With the exception of two cases, the Australian Lungfish and the Orange Roughy, the reasons given for late gazettals, were that ‘decisions were delayed pending the outcomes of discussions or inquiries relevant to their potential listings’<sup>36</sup>. Five listings (all gazetted in 92 days) were delayed primarily due to decisions being made very close to the 90 day deadline, consequently not allowing sufficient time to arrange gazettal within the

<sup>35</sup> Section 518 EPBC Act 1999. The Act also provides that any decision by the Minister is not invalid merely because it was not done within the specified timeframe.

<sup>36</sup> EPBC annual report 2003–04, (p. 194 the department annual report 2002–03).

timeframe. Since these decisions, the department has advised that ‘the Department now has administrative processes in place such that the Minister is requested to make his decision within a timeframe that allows for a reasonable amount of time for the gazettal to be made within the 90 days’.

**2.23** In listing the Australian Lungfish, the timeframe was exceeded by a significant amount. The Minister made his decision in March 2003 but his decision was not gazetted until August 2003 - some five months after the decision and approximately eight months after receiving TSSC advice. The Minister’s reasons for this delay were not reported to Parliament. The department has since advised the ANAO that the Minister delayed gazettal:

... to allow time to develop an understanding of whether the approval for the Burnett River Dam project, which was given in January 2002, needed to be revisited. The outcome was varied conditions of approval that protected the lungfish from unacceptable threats, thus meeting two of the principal objectives of the EPBC Act – protection of matters of national environmental significance [and] ecologically sustainable development.

**2.24** For the Orange Roughy (a commercial fish species discussed further in the following section), the Minister decided to list the species as ‘conservation dependant’ some 332 days after receiving advice (that is, 242 days outside the 90 day statutory timeframe). The department has indicated that the reasons for the delay in this decision will be documented in the annual report for 2006–07 and that:

...the delay was due to the complexity of the issues involved in potentially listing a commercially targeted fish species. During this period the Minister sought a range of additional technical advice, and instigated extra public consultation on a number of issues and he had to consider new management arrangements put in place by the Australian Fisheries Management Authority.

**2.25** The amendments to the Act (December 2006) allow the Minister to extend his 90 day timeframe for making a decision.<sup>37</sup> Nevertheless, the department may wish to review its processes to ensure the more timely resolution of issues of this kind.

## Listing of Marine Species

**2.26** Progress in the listing of marine fish species, particularly species that are commercially caught, has been slow. Prior to the current Act, only three

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<sup>37</sup> The amendments to the Act do not prescribe an upper limit as to the time the Minister may take to make a decision. See Appendix 1 for a comparison of the old and new requirements under the Act.

marine fish species were listed. Since 2000 there have been four marine fish species added to the list and two changes to the status of species already on the list. As at 30 June 2006 there were nine marine species under consideration. The ANAO notes that these commercially fished species are recognised as over-fished by the Bureau of Rural Sciences. The average time elapsed for these species to be processed, so far, has been approximately four years. Of these outstanding nominations, three were public nominations, five nominations were derived from action plans and one nomination was put forward by the department.

**2.27** The historical background and reasons for the delay in making a decision to list are discussed as follows. In 2001, the TSSC considered a number of marine fish species nominations derived from the 'action plan for Australian threatened and potentially threatened marine and estuarine fishes'<sup>38</sup> and made recommendations for ten of these nominations to be listed. Of the ten recommendations made, the department passed four to the Minister. The Minister accepted these recommendations and the four species were listed. The department did not forward the remaining six recommendations to the Minister.

**2.28** In 2004, the department requested that the TSSC withdraw its advice on these six species and consider new information. The TSSC agreed to withdraw the advice noting 'that the data used to assess the conservation status of the species was collected in 1999.'<sup>39</sup>

**2.29** In explaining to the TSSC why these recommendations were not forwarded to the Minister, the department stated that:

The Department considers these species to be sensitive, as they are all subject to commercial fishing activities. This sensitivity, along with restructuring within the Department, has caused some delays in the progression of these nominations.

**2.30** Since 2004, the TSSC has developed listing recommendations for nine fish species which includes the six species that were requested for reconsideration.<sup>40</sup> However of these, only one advice, the Orange Roughy, has

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<sup>38</sup> This included one species derived from internal Departmental nomination and related to the action plan.

<sup>39</sup> TSSC minutes, meeting 18 item 14.2.

<sup>40</sup> Recommendations for two of the eleven fish species discussed at paragraph 2.25 were made prior to 2004.



so far been passed to the Minister<sup>41</sup> by the department. Table 2.4 shows the time delays in the advices being passed to the Minister.

**Table 2.4**

**Status of TSSC advice on Marine Fish Species to the Minister**

Species Common Name	Type of Nomination and Date <sup>42</sup>	Recommended Category	Date of TSSC revised advice available	Passed to Minister	Length of time (months) the department held advice (as at 30/09/2006)
Orange Roughy	Public (02/07/03)	Endangered	June 2005	December 2005	6
Endeavour Dogfish	Department (17/10/01)	Vulnerable	September 2005	-	13
Harrison's deep sea dogfish	Action Plan (18/06/01)	Endangered	September 2005	-	13
Southern Dogfish	Action Plan (17/10/01)	Vulnerable	September 2005	-	13
Eastern Gemfish	Public (26/08/02)	Endangered	June 2005	-	16
School Shark	Public (21/10/03)	Vulnerable	June 2005	-	16
Black Rockcod	Action Plan (17/10/01)	Vulnerable	December 2004	-	22
Humphead Maori Wrasse	Action Plan (17/10/01)	Vulnerable	June 2004	-	28
Green Sawfish	Action Plan (18/06/01)	Vulnerable	June 2004	-	28

Source: The Department of the Environment and Water Resources listing database

**2.31** In the case of the Eastern Gemfish, a public nomination identified in the above table, the Minister granted six extensions to the 12 month timeframe for the TSSC to consider the species and provide advice. However, three of these extensions were made after the TSSC had completed their advice to recommend listing. This advice was being held by the department. The briefs

<sup>41</sup> The Orange Roughy was listed on 10 November 2006.

<sup>42</sup> Dates for action plan fish and Departmental nomination are for the first date the TSSC considered these species.

from the department to the Minister, for the last two extensions, identified that the TSSC had made a decision and finalised its advice. This was also the case with the School Shark, (the other publicly nominated species yet to be passed to the Minister), where extensions were given after TSSC advice had already been prepared.

**2.32** Similar to the reasons given for the delays with the Orange Roughy (noted in paragraph 2.24), the department has indicated that the reason for not formally conveying the remaining marine fish advices to the Minister was that:

they were seeking to resolve the scientific and legal uncertainties and complexities involved in commercial fish nominations, including making sure that commercial fishermen and those stakeholders who may be adversely affected by a decision would be made aware of the decision as soon as a decision is made, including the implications for their livelihood.

**2.33** The department commented that it chose to concentrate on the Orange Roughy nomination as a test case. The extension of the fish nominations was to be dealt with appropriately in the light of any issues arising from the Minister's decision to list the Orange Roughy as 'conservation dependent' on 5 December 2006. The department also commented that the Minister was advised of the situation and approved extensions to the statutory timeframes.

**2.34** This process has significantly delayed the listing of marine species. While appreciating the complexities involved in the process, the ANAO considers there have been excessive delays in forwarding recommendations to the Minister. The delays for recommendations ranged between six and twenty-eight months. In some cases, species identified by the TSSC as being 'vulnerable' or 'endangered' were identified in 2001, yet a decision has not been made, some five years later. Delaying a decision is likely to increase the risk of extinction or result in higher recovery costs in the future.

**2.35** The department has a responsibility to ensure that policy changes and the results of statutory decisions are well managed. However, this needs to be balanced against the timeliness of decisions to meet the objectives of the Act. Given the consultative nature of the TSSC process, the department should generally be able to rely on the advice given by the TSSC for the purposes of briefing the Minister. In the absence of special considerations, any further consultation relevant to the implementation of the decision could be undertaken once a decision has been made.

**2.36** The department has advised that the nominations for outstanding marine species will be reconsidered by the TSSC under the new listing process.

A decision on whether they will be priorities for assessment will be decided by September 2007. For those deemed to be priorities, a final decision on listing is expected by late 2008.

**2.37** The ANAO notes that if decisions are made at this time for these species, the total elapsed time to process nominations will be between five to seven years for the nine marine species. In addition, for five of the species identified above, they will be considered by the TSSC for the third time.

**2.38** The amendments to the Act (December 2006) will impact on requirements for listing marine species<sup>43</sup>. A native species now becomes 'eligible to be included in the 'conservation dependent' category at a particular time if, at that time, the species is the focus of a specific conservation program'...As the Minister noted in Parliament;

The amendments provide a mechanism for commercially harvested fish species that have fallen below appropriate levels, [to] be managed sustainably through an appropriate management plan to maximise its long-term survival in nature....The EPBC Act will continue to provide the regulatory underpinning for the protection of such marine fish species. Should the recovery targets of a management plan not be achieved, the EPBC Act provisions will allow for the threatened species listing of that particular marine fish species to be upgraded to a higher level of threat with an accompanying higher level of protection.<sup>44</sup>

**2.39** The ANAO considers that the amendments are likely to place additional responsibility on the department to monitor the effectiveness of management plans and provide the Minister and the Parliament with an assurance that the management plans and the achievement of the targets in particular are working effectively over time. This will be particularly important for species where the TSSC has recommended a higher level of protection.

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<sup>43</sup> The amendments now allow the Minister to list fish species (specifically) as 'conservation dependant' 'if they are the focus of a management plan in force under a law of the Commonwealth, a State or Territory. See Appendix 1 for a comparison of the old and new requirements under the Act.

<sup>44</sup> Paper by the Minister for the Environment tabled in the Senate 1 December 2006.

## Recommendation No.1

2.40 The ANAO *recommends* that the Department of the Environment and Water Resources:

- (a) provide as soon as practicable, all advices from the Threatened Species Scientific Committee on marine species to the Minister to bring a conclusion to the process for these species; and
- (b) ensure that sufficient priority is given to monitoring and reporting to Parliament on the effectiveness of management plans (including the achievement of targets) for conservation dependent listed marine fish species.

### *Department of the Environment and Water Resources response*

2.41 Agreed, noting the complexity of these issues and the consequent need to consult all stakeholders.

### **Keeping the threatened species list up-to-date**

2.42 Prior to the amendments in December 2006, the Act required the Minister to ‘take all reasonably practical steps to amend, as necessary, the threatened species list’<sup>45</sup>. While this requirement was repealed in December 2006, keeping the lists in an up-to-date condition is nevertheless critical to the operation of the Act and Commonwealth activities more generally. For example, whether or not an action or activity is likely to trigger the Act may depend on whether a species is listed or not. Permits for actions on Commonwealth land and investment in species recovery all rely on the list being accurate and up-to-date. Keeping the list up-to-date is also vital to ensure that species that need protection are included.

2.43 The ANAO recognises that the requirements of the Act have been complex to administer. Therefore, in order to assess the accuracy of the highest priorities in the current list, the ANAO examined the top 20 species that have generated referrals under the Act. These are the species that would require the most current information to be readily available. Of these species, only two had listing advice from the TSSC outlining how these species met the criteria for their conservation status. For the other 18 frequently referred species, insufficient information was available to identify why each species qualified for its conservation status under the Act. Having a list that is not up-to-date

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<sup>45</sup> See Appendix 1 for a comparison of the old and new requirements under the Act.

(especially for frequently referred species), means that some species may be given priority where it is not warranted and other species may not be allocated funding when it is needed.

**2.44** A key constraint in keeping the list current is the minimal formal documentation supporting the majority of threatened species listings. The current Commonwealth list is largely based on the list from the earlier *Endangered Species Act 1992* which in turn was based on relevant species listed by the States and Territories. While the department has information on species through a departmental data base, there are gaps in the reasons why many species have been listed.

**2.45** Since the introduction of the Act the department has endeavoured to progressively improve documentation on the lists of species and ecological communities. Up to 30 June 2006, adjustments and amendments to the list have resulted in 183 changes to the list with 125 species added to the list, 17 species removed from the list and 41 changes to the conservation status of a species already on the list.<sup>46</sup> Apart from public nominations, some of the key processes generating change include departmental nominations, Commonwealth action plans and the species information partnerships program as well as the nomination process.<sup>47</sup> Table 2.5 outlines the changes to the threatened species list that have come from processes other than public nominations.

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<sup>46</sup> The Minister on 17 August 2006 approved 76 species changes including twelve de-listings, 27 new listings and 37 changes in category to the EPBC list. This first group of species changes came from the Northern Territory and Western Australia.

<sup>47</sup> These non-public nominations do not have statutory timeframes applying.

**Table 2.5****Changes to the list since 2000 to 30 June 2006 (Non public nominations)**

Source	Changes	Changes Under Consideration
Departmental <sup>48</sup>	4	6
Minister requests	2	0
Action Plans	20	10
Species Information Partnerships	0	74
Recovery Plans	1	0

Source: Department of the Environment and Water Resources

**2.46** The three most significant initiatives operating within the department that assist in the process of updating and reviewing the list are the:

- Species Profile and Threats Database (SPRAT database);
- Species Information Partnerships program; and
- National Action Plans.

These three programs are discussed below.

***Species Profile and Threats Database (SPRAT database)***

**2.47** The Species Profile and Threats Database (SPRAT) is the department's database designed to provide information about species and ecological communities listed under the *Environment Protection and Biodiversity Conservation Act 1999*. It contains information on what the species looks like, its population and distribution, habitat, movements, feeding, reproduction and taxonomic comments. The information has been compiled by summarising information from a range of sources and contributors, including the listing advices from the TSSC and Recovery Plans.<sup>49</sup> While the department has developed profiles for all but 73 of the threatened species listed under the Act, the information available on each species is variable.

<sup>48</sup> This includes species nominated through consultancy research conducted through the Department of the Environment & Heritage.

<sup>49</sup> 53 of the 73 species are extinct species and one is 'conservation dependant' and does not trigger the Act. The department has commented that the remaining 19 species will have profiles developed in 2006–07.

**2.48** The department has initiated a process to regularly update the species profiles in the database. Between 2003 and 2006, 803 profiles<sup>50</sup> had been updated. Profiles are updated through a range of sources such as external consultancies and projects such as the Species Information Partnerships program (See paragraph 2.51) and internal department sources such as information captured from recovery plans, referrals and assessments.

**2.49** The majority of the information held on SPRAT is not publicly available. Of the 1 684 threatened species listed under the Act, 413 now have publicly available information on the species beyond the name, endangered category and general location in Australia. The department has indicated that 'the Department is making more profiles available however current priorities are to ensure that in the first instance the profiles are up to date'.

**2.50** In 2005, additional functionality was developed for the database to allow the department officers to flag species which may require a review of their conservation status, effectively generating internal nominations for changes to the threatened species list. No departmental nominations have been generated through this process yet but the department has identified that in future, the SPRAT process may hold enough information to be a useful tool in tracking updates to the conservation status of species on the list.

### *Species Information Partnerships*

**2.51** Because threatened species can be protected through State/Territory as well as Commonwealth legislation, the department has been working to align the lists, where appropriate.<sup>51</sup> In December 2002 a joint meeting of the TSSC and State and Territory representatives agreed that:

The Commonwealth list all species (and ecological communities) endemic to a State or Territory and listed by that State or Territory as threatened.

**2.52** The aim of the *Species Information Partnerships* (SIPs) with the State and Territory governments is to move towards a national list of threatened species that is supported by the most up to date information available. Such a list aims to reduce duplication of assessment activities and allow for more targeted expenditure of limited conservation resources. Strong working relationships between the State and Territories and the Australian Government can also facilitate good conservation outcomes for threatened species as information is

<sup>50</sup> This number includes other listed species including marine and migratory species.

<sup>51</sup> The Commonwealth and state lists may not always coincide because a species may be threatened within a state but not across its national range. In these cases the two lists do not need to align.

shared and recovery and threat abatement activities are undertaken in partnership.<sup>52</sup>

**2.53** The department has provided financial assistance to State environment agencies to update the SPRAT profiles and align the threatened species lists between the States and the Commonwealth for nationally significant State endemic species.<sup>53</sup>

**2.54** The process to align the State and Territory lists with the Commonwealth list through SIPs is an important strategic initiative that is in its early stages. However, progress has been relatively slow. The first set of species were considered and approved by the Minister on 17 August 2006. From this first group there were 76 species changes including twelve de-listings, 27 new listings and 37 changes in category to the EPBC list. This first set of changes to the national list came from the Northern Territory and Western Australia. This included eight species that were previously classified as extinct and are now classified from 'critically endangered' to 'vulnerable'.

**2.55** The SIPs process has the potential to be very significant in improving the accuracy of the list. However, there is still a significant way to go before the list is fully up to date. For example, in South Australia, (where progress on alignment is being made) 87 fauna species and 274 flora species listed as endangered or vulnerable are not listed at all under the EPBC Act.

**2.56** Two States, Queensland and NSW as well as the ACT are not yet involved in the program and progress in Victoria, South Australia and Tasmania has not yet reached a point where the lists can be fully aligned. Based on current progress, this process could take at least another six years to complete (based on current levels of resources and intergovernmental co-operation in the program). It should be noted that this process only deals with State endemic species and does not deal with species located across States. The department has recognised this problem and has commented that State species alignment should not be at the expense of the conservation of species whose habitat crosses more than one State or Territory.

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<sup>52</sup> The initiative is important as the Productivity Commission noted that 'the listing of threatened species ...under both the EPBC Act and State and Territory legislation contribute to confusion and uncertainty for landholders because listings, or the requirements that arise from them, differ in some cases' (Productivity Commission Finding 4.2 LI (2004) Impacts of Native Vegetation and Biodiversity Regulations).

<sup>53</sup> These are for unique, threatened species that are a priority both nationally and for each State or Territory.



2.57 The changes to the list so far, particularly the de-listings and changes in category indicate that the national list has some way to go before it accurately and comprehensively represents the status of all threatened species in Australia listed under the Act. Resource constraints and differences in priority between some governments have constrained the SIPs progress to date. The financial allocations to the States and Territories under the program are outlined in Table 2.6.

**Table 2.6**

**Species Information Partnership – financial allocations 2004–05**

State	Species Information Partnership (\$)
Western Australia	140 800
Tasmania	63 200
Northern Territory	16 600
South Australia	44 500
Victoria	55 000
<b>Total</b>	<b>320 100</b>

Source: Department of the Environment & Water Resources

2.58 Funding for SIPs has been sourced from the national component of the Natural Heritage Trust and has been modest given the importance of the task for both the Australian Government and the States/Territories. Discussion with the department suggests that the differences in amounts reflect the degree of pre-existing alignment between the Commonwealth and State/Territory lists and the respective legal and administrative requirements, the quality of State data sets and information, the scale of the task in each State as well as the priority given to the task by each State agency.

2.59 While the SIPs process is an important initiative with significant longer term benefits for the list of threatened species it is not necessarily an ongoing program. If it were to conclude the gains from the alignment of the list may be eroded over time. A formal arrangement between the Commonwealth and States and Territories should be considered to ensure that the national list is up to date.

*National Action Plans*

2.60 National Action Plans are documents that have been produced by the department since the commencement of the Endangered Species Program in

1989.<sup>54</sup> Action plans are strategic documents undertaken to review the status of a defined group of related organisms. They review the conservation status of major Australian taxonomic groups against internationally recognised categories, identify threats and recommend actions to minimise those threats.<sup>55</sup> Action plans have assisted government and non-government organisations to establish national priorities for threatened species conservation.

**2.61** There are eleven action plans in place for species such as bats, birds, frogs, seals, marsupials and monotremes. An important function of the action plans is to identify to which threatened category, if any, each species should be assigned. As noted in Table 2.5, action plans have contributed the majority of non public nominations changes to the threatened species list.

## Challenges in keeping the threatened species list up-to-date

**2.62** An examination of the documentation on listing during this audit indicates a high level of rigour and completeness for those 183 species that have been added to the list since the introduction of the Act. However, for those species that have been carried over from the previous Act, the level of documentation and reasons for their inclusion varies in terms of completeness.

**2.63** The majority of the species currently on the threatened species list have been on the list since the previous Act was introduced in 1992. The TSSC conducted an initial review of the list in 2002 which subsequently resulted in a small number of changes. However, of the 1,684 species on the current list, 905 have remained on the list with the same conservation status since 1992. While it is likely that many of these species may still need conservation protection, there has been no comprehensive review process for species that have been on the list since the Act's inception. The TSSC itself has commented in its strategic vision document that there was a need to:

...[establish] a requirement for the TSSC to review the contents of the lists, so that protection is provided at the appropriate level, for the appropriate species with current conservation advice for all listed entities and threats. This initiative does have some significant, short to medium term cost implications because the current lists have not been reviewed. However, the TSSC and the department believe that the task, while substantial, would be worthwhile. Its

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<sup>54</sup> The Endangered Species Program was incorporated into the first phase of the Natural Heritage Trust from 1996–97 but was discontinued in 2003.

<sup>55</sup> Generally, the categories used in action plans are based on the International Union for the Conservation of Nature rather than being directly aligned with the EPBC Act categories.

effect would be to protect the integrity of Australian Government listings and allow more informed conservation investments.<sup>56</sup>

**2.64** The ANAO considers that a review process such as the one suggested by the TSSC would have been desirable early in the life of the current legislation and is still relevant at the present time. As at 30 June 2006, 85 per cent (1 430) of species listed<sup>57</sup> have been carried over from the previous Act using different criteria. Before the current Act there was little formal consideration of national priorities and the emphasis was on adopting changes made to State and Territory lists through the Ministerial council process. As the department has commented in the briefing to their Minister, there is a risk that ‘the absence of a comprehensive list of threatened species...can lead to development decisions being based on partial or incorrect information’.

## Conclusion

**2.65** Prior to December 2006, the Minister was required to take all reasonably practical steps to amend as necessary the lists of threatened species<sup>58</sup> to ensure the list was up-to-date. Amendments to the Act have now removed this requirement. Although no longer a legislative requirement, the ANAO considers that it is critically important for administrative purposes that the list is up-to-date as possible.

**2.66** The process of updating the SPRAT database and the progress being made through the Species Information Partnerships will go some way to maintaining and updating the list in the future. However, the ANAO estimates, based on the current approach that the SIPs process is at least six years away from completion.

**2.67** There are impacts and risks from a list that is not complete and up-to-date. Threatened species account for a significant number of referrals under the Act.<sup>59</sup> Some referrals that have a significant impact may be decided on as

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<sup>56</sup> TSSC Strategic Vision final paper 2004.

<sup>57</sup> This includes the 905 that have remained on the list since 1992 and 525 listed between 1992 and 1999 under the ESP Act.

<sup>58</sup> Section 185 of the *Environment Protection and Biodiversity Conservation Act 1999 now repealed*, See Appendix 1 for a comparison of the old and new requirements under the Act.

<sup>59</sup> A referral is an action that has been referred to the Minister that may impact on a matter of national environmental significance. If the Minister decides that the action will have an impact the Minister initiates an environmental assessment process. After the assessment the Minister decides if the action can proceed and if so, what the conditions attached to the action are. See Chapter 6 for further details.

being non-controlled actions<sup>60</sup> when in fact there may be a significant impact occurring on a threatened species. There may also be legal implications for species that are incorrectly classified. For example, the Minister may put conditions on a referred action that are not appropriate or insufficient to conserve the species. Overall, the gaps and limitations relating to the current list are an impediment to the achievement of the objectives of the Act and are likely to constrain the capacity of the department to achieve its corporate goals.

**2.68** However, resource constraints and technical challenges (especially where data does not yet exist on threatened species) are major considerations and need to be taken into account. The department has estimated that it should be possible to bring the list substantially up to date (in terms of the backlog of species transferred from the earlier Act) for approximately \$3.5 million per annum over three years; subsequent maintenance of the list is estimated to cost approximately \$1 million per annum. Additional resources of this magnitude would need to be considered in the budget context or allocated from other programs.<sup>61</sup>

## Recommendation No.2

**2.69** The ANAO *recommends* that the Department of the Environment and Water Resources improve the accuracy and completeness of the list of threatened species by:

- (a) reviewing the list of threatened species with a view to having a comprehensive and accurate list in place as soon as practicable;
- (b) accelerating completion of the Species Information Partnerships program and ensuring that conservation management information relating to listed species is regularly reviewed and updated; and
- (c) introducing an ongoing intergovernmental process to ensure that changes to State/Territory lists relevant to the Commonwealth list are regularly forwarded to the Threatened Species Scientific Committee and to the Minister for their consideration.

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<sup>60</sup> A non-controlled action is a decision by the Minister that the referred matter will not have a significant impact on one of the six matters of environmental significance.

<sup>61</sup> The department has commented that resources of this magnitude would only bring the existing list up to date. They would not enable the extremely large number of Australian species not previously considered for the list to be evaluated for possible listing.

*Department of the Environment and Water Resources response*

**2.70** Agreed, noting that the full implementation will require the cooperation of the States and Territories.

## 3. Listing Threatened Ecological Communities and Other Listing Processes

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*This Chapter examines the administration of the listing requirements for ecological communities set out in part 13 of the Environment Protection & Biodiversity Conservation Act 1999 as well as the requirements for listing key threatening processes. The Chapter also examines the status of requirements under the Act to complete a register of critical habitat and to perform inventories of species on Commonwealth land and in Commonwealth waters.*

### Introduction

**3.1** The Act requires the Minister to develop and maintain a list of ecological communities, list key threatening processes, keep a register of critical habitat and prepare inventories of species within Commonwealth land and marine areas. The ANAO examined compliance with the requirements of the Act prior to introduction of amendments to the Act in December 2006. A number of requirements have changed subsequent to the amendments. The implications are discussed in the relevant sections of the Chapter.<sup>62</sup>

### Ecological Communities

**3.2** The Act requires the Minister to establish a list of threatened ecological communities divided into ‘critically endangered’, ‘endangered’ and ‘vulnerable’.<sup>63</sup> A threatened ecological community is defined in the Act as ‘the extent in nature in the Australian jurisdiction of an assemblage of native species that:

- inhabits a particular area in nature; and
- meet the additional criteria specified in the regulations (if any) made for the purposes of this definition’.<sup>64</sup>

**3.3** Threatened ecological communities are listed in the same way as threatened species which includes a public nomination process. Prior to

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<sup>62</sup> See Appendix 1 for a comparison of the old and new requirements under the Act.

<sup>63</sup> Section 181 of the *Environment Protection and Biodiversity Conservation Act 1999*.

<sup>64</sup> Section 528 *ibid*.

December 2006, the timeframes required for listing were the same as for threatened species, being twelve months from the date of nomination for the TSSC to consider and give advice, and 90 days for the Minister to make a decision taking the TSSC advice into consideration<sup>65</sup>. Since the amendments to the Act, the listing process for ecological communities has changed and timeframes for the TSSC are determined on a case by case basis according to the amount of time needed to complete an assessment of a nomination.

**3.4** In addition, prior to the amendments of the Act in December 2006, the Act required the Minister to decide whether to amend the list to include an ecological community from a list kept by a State or Territory. The ANAO has assessed compliance with this requirement as an element of the audit fieldwork. The audit findings are set out below in the remainder of this chapter. Amendments of the Act in 2006 subsequently repealed this requirement.<sup>66</sup>

## **Public Nominations of Threatened Ecological Communities**

**3.5** Public nominations are an explicit part of the processes outlined in the Act. The Act allows a person to nominate an ecological community to be included in the national list within a particular category. Non-government organisations concerned with environmental conservation have been active participants in forwarding nominations. As at 30 June 2006 there were 36 listed ecological communities. Of these, 22 were carried over from the previous *Endangered Species Protection Act 1992*.

**3.6** Of the 72 public nominations received since the Act came in to force, 39 of these have been processed by the TSSC and have resulted in 15 listings (covering 31 of the processed nominations).<sup>67</sup> A substantial backlog of 33 public nominations is still to be considered by the Minister. Most of these nominations have required extensions of time from the Minister. A number of nominations have been outstanding for more than three years – well outside the 12 month timeline.

**3.7** Environment conservation groups commented to the ANAO about their concerns at the length of time taken to process nominations. Equally, rural stakeholders have expressed concern to the ANAO about the potential

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<sup>65</sup> See Appendix 1 for a comparison of the old and new requirements under the Act.

<sup>66</sup> See Appendix 1 for a comparison of the old and new requirements under the Act.

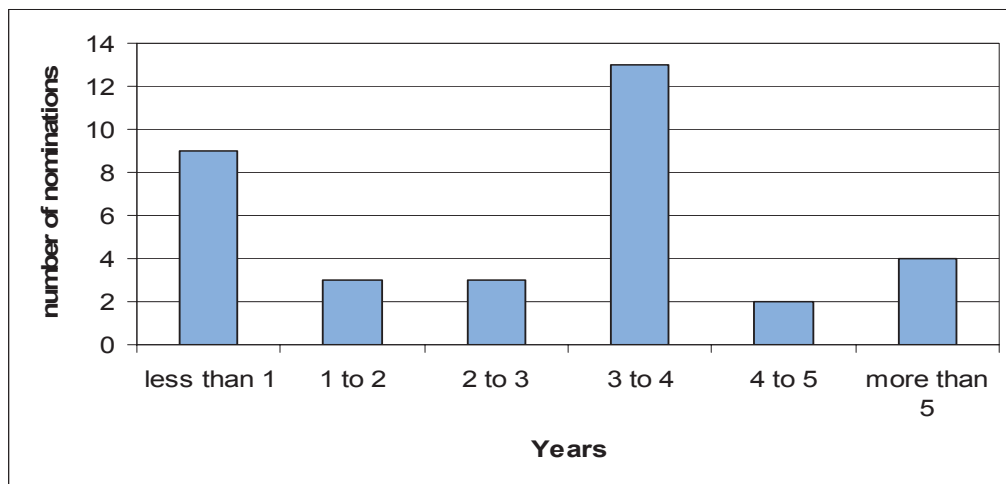
<sup>67</sup> This included 14 new listings and one change to a previously listed ecological community.

economic impact of listing ecological communities within farming communities. This highlights the challenges and complexities in listing ecological communities.

3.8 Figure 3.1 below shows the slow progress in listing nominated ecological communities. Six nominations have been under consideration by the TSSC for over four years. The large number of nominations in the 3 to 4 year band was primarily due to the TSSC reconsidering a large number of nominations previously rejected by the Minister (see paragraph 3.17).

**Figure 3.1**

**Length of Time under TSSC Consideration for Current Ecological Community Nominations**



Source: Department of The Environment and Water Resources

3.9 There have been specific issues that have constrained progress in the handling of nominations for the listing of ecological communities. The specific issues identified were:

- technical challenges in defining ecological communities;
- an expanded consultation process;
- changing priorities in processing nominations; and
- resource constraints.

These are discussed as follows.



### *Technical challenges in defining ecological communities*

**3.10** The department has commented that threatened ecological community listings are inherently more complex than species nominations. The TSSC has also noted the complexity problem and has commented that Australia has:

... naturally variable landscapes where ecological communities undergo a transition from one state to another and from one ecological community to another with no clear demarcation between them. Spatial change in environments can be more gradual, subtle and complex than is the case in most other continents... These problems are compounded when ecological communities occur in fragmented landscapes where natural resource management and land use change become significant ecological drivers that distort, in often idiosyncratic ways, the underlying natural variation. These influences lead to various states or expressions of an ecological community occurring in different conditions from the pristine to the locally extinct.<sup>68</sup>

**3.11** The audit team attended a technical workshop convened to define an ecological community in Tasmania during the course of the audit. The technical challenges in determining boundaries to the ecological community, the minimum area which could constitute a clearly identifiable ecological community and the complex relationships between disturbance and species diversity were evident.<sup>69</sup> This problem of complexity has also been exacerbated by the limitations on quality of information products, including spatial information, to assist proponents and the department in assessing the 'significance' of actions proposed in nominations. The technical complexities highlight the importance of engaging experts and allocating sufficient resources to achieve timely consideration of nominations from the public. These matters are discussed further in the following sections.

### *The expanded consultation process*

**3.12** The approach to public consultation for nominated ecological communities has been expanded since 2005. The department has indicated that the change has been made to enhance public understanding and input to the nomination assessment process. Previously, nominations were made available for public comment for a period of two months on the department's web site after being accepted by the TSSC for consideration. After this public

<sup>68</sup> Threatened Species Scientific Committee (September 2004) Ecological Communities: A Way Forward.

<sup>69</sup> Counterintuitively, highly disturbed areas (for example graveyards) sometimes were rich in biodiversity including threatened species.

consultation period, no further information was provided to the public on the status of the nomination until a decision was made on listing.

**3.13** The department indicated that the original consultation process did not sufficiently allow for consultation with interested stakeholders. Original nominations may have covered an area within a particular State. However, the TSSC considered the nominations within their full national extent rather than just the area originally proposed. The original process only had consultation at the start of the TSSC consideration – before the full national extent of the nomination had been determined. Consequently, stakeholders (including those with technical expertise) outside of the original area nominated would not have been aware of the proposal or contribute to the listing decision.

**3.14** In order to address this problem, the department and the TSSC introduced a new consultation process which included a technical workshop (with relevant experts) and an expanded public consultation. The purpose of the technical workshop was to obtain expert opinion on the nature, extent and condition of the nominated ecological community. Public consultation was expanded to also allow public comment on the outcomes of the technical workshop. This process means that the department can undertake stakeholder liaison with relevant regional, state and national bodies, as well as broader community consultation, over the full extent of the ecological community being assessed.

**3.15** While the process has the potential to enhance the quality and scope of information provided by experts and the general public during the listing process (including the national extent of the nomination), it takes considerably longer to implement. This has been a significant reason why no ecological community nomination has been considered during the twelve month statutory timeframe since 2000 and why these nominations have required extensions of time.

#### *Changing priorities in processing nominations*

**3.16** Over the first six years of the Act, the processing of ecological communities has had a number of changes in focus. As well as considering publicly nominated ecological communities, the Minister was required to review State and Territory lists of threatened ecological communities. When the Act first came into effect, the TSSC and the department concentrated on processing public nominations. However, the TSSC and Department changed focus in 2001 to examine these nominations in a more strategic approach by combining them with an examination of State and Territory ecological

communities. This was done to comprehensively examine ecological communities across Australia so that their national extent could be taken into account.<sup>70</sup>

**3.17** Because of this change in focus, twelve nominations by a non-government organisation were rejected by the Minister on the grounds that the nominations 'did not provide the full national context... and it was therefore difficult to determine if the nomination had been developed at the most appropriate scale.' In deciding this, the Minister indicated that these nominations would be progressed within the context of the review of State and Territory lists. However, the non-government organisation expressed concern that the reasons given for the rejection may have involved 'consideration of matters other than the survival of the ecological community concerned.'<sup>71</sup> Subsequent to this advice, the Minister asked the TSSC to reconsider the nominations.

**3.18** The department stated that the rationale for the strategic approach was 'to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance'.<sup>72</sup> However, following the request by the Minister to reconsider previously rejected nominations, the department shifted focus back to processing public nominations.

**3.19** Seven of the 12 nominations that were originally rejected have now progressed to *Technical Workshop* stage. The department has indicated that advice on the first of these nominations is likely to be forwarded to the Minister in 2007. This will be some six years after the original nominations were made.

### *Resource Constraints*

**3.20** It is apparent that resource constraints have contributed to the slow progress. The resources devoted in processing ecological community nominations allowed, on average, only two to three ecological communities listings per year, while the number of public nominations received per year averaged 8.5.

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<sup>70</sup> The changes in focus in assessing nominations for ecological communities have been particularly apparent in the consideration of woodland nominations. Strategies on grasslands, semi-arid woodlands and alpine woodlands have been completed to date.

<sup>71</sup> Section 187(2) of the Act precludes the Minister from considering any matter that does not relate to the survival of the ecological community concerned.

<sup>72</sup> Nominations do not always address the national extent of an ecological community.

## Reviewing State and Territory Ecological Communities

**3.21** As discussed earlier, the Act prior to December 2006 required the Minister to decide whether to amend the list to include an ecological community from a list kept by a State or Territory.<sup>73</sup> As at 30 June 2006, there were some 700 ecological communities listed by the States and Territories that the Minister needed to consider. This was a substantial and complex task with major resource implications for the department.

**3.22** The department took the view that progress against this backlog required more than merely adopting State listings of ecological communities. Given the requirement that ecological communities be assessed within their national extent (in order to be identified as a matter of National Environmental Significance), each State-listed ecological community was considered as a separate nomination. In addition, each listing under the Act had the potential to incorporate more than one State-listed ecological community. As such, the TSSC developed a 'process for assessing vegetation-based State and Territory listed ecological communities under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)' to assist in review of State and Territory threatened ecological communities. This process used the National Vegetation Information System to redefine:

eligible State and Territory threatened ecological communities into broader, national ecological communities... Once this has been done, these national ecological communities can then be assessed for listing under the EPBC Act. National ecological communities with high levels of threat will be given a higher priority for assessment than national ecological communities identified with lesser threats.

**3.23** Progress on the process for assessing State and Territory ecological communities was slow. In the six years of the Act there were no recommendations to the Minister for listing from the process outlined above. As noted previously (in paragraph 3.17), the department and the TSSC changed priority back to processing publicly nominated ecological communities in late 2001. The TSSC took the view that by processing public nominations they would also make progress in addressing the State-listed backlog. However, the low number of public nominations processed in the six years of the Act did not significantly assist in the review of State and Territory ecological communities.

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<sup>73</sup> Section 185 of the *Environment Protection and Biodiversity Conservation Act 1999* (now repealed). See Appendix 1 for a comparison of the old and new requirements under the Act.

**3.24** The department has indicated that while not all of the State/Territory ecological communities will be high priority, it is important to assess the state listings for their relevance at a national level. The department is currently looking at options to address this concern.

### **Challenges in listing ecological communities**

**3.25** Progress under the previous requirements of the Act in listing ecological communities was slow, with a substantial backlog in the processing of public nominations. Of the 72 public nominations received since the Act came in to force, 39 of these have been processed by the TSSC and this has resulted in 15 listings (covering 31 of the processed nominations). A substantial backlog of 33 public nominations is still to be considered by the Minister. The technical challenge in defining ecological communities within their national context was a major contributing factor to the slow process. Consultation with stakeholders had further delayed the process but improved acceptance of the final decision. In addition, changes in priority between assessing public nominations and strategic assessment did not assist the process.

**3.26** The recent amendments to the Act regarding the nominations process provide that assessments must be completed within twelve months. However, the Minister may approve a longer period if proposed by the TSSC. In the transition period, nominations where the TSSC advice has been provided to the Minister prior to the amendments taking effect can be determined by the Minister to be at the same stage under the new process. The department anticipates that, for any nominations where the Minister does not make such a determination, these will be considered and prioritised under the new listing process within annual assessment periods. This will apply to all 33 current nominations.

**3.27** The new arrangements will effectively remove the backlog in publicly nominated ecological communities. However, with the current level of resources and staff dedicated to ecological communities there is a high risk that nationally significant ecological communities eligible for listing will not be listed within a reasonable timeframe. The department will need to consider strategies to increase its ability to process ecological community nominations to address this risk.

**3.28** In addition, the removal of the requirement to review State and Territory threatened ecological communities creates a risk that eligible communities not identified through public nominations will not be considered

for listing at a national level. Because of the need to ensure consistency on a national basis, the ANAO considers that the State and Territory listed ecological communities should be at least considered by the department and the TSSC within the context of the new listing process. One option would be to expand the Species Information Partnership Program to include ecological communities.

### Recommendation No.3

**3.29** The ANAO *recommends* that the Department of the Environment and Water Resources, in order to ensure that the highest priority ecological communities are listed nationally, undertake a review of the State and Territory lists of ecological communities to determine which communities are eligible for listing under the Act and include these in the new nominations process.

*Department of the Environment and Water Resources response*

**3.30** Agreed.

### Key Threatening Processes

**3.31** In addition to listing threatened species and ecological communities under the Act, the Minister is required to make a list of Key Threatening Processes (KTPs).<sup>74</sup> KTPs are defined as a process that threatens or may threaten the survival, abundance or evolutionary development of a native species or ecological community.<sup>75</sup> The Act also states that ‘the Minister must not add a threatening process to the list unless satisfied that it is eligible to be treated as a key threatening process’.

**3.32** As at 30 June 2006, the following 17 key threatening processes were listed:

- twelve invasive species (including the feral cat, the rabbit, the fire ant, chytrid fungus and beak and feather disease);
- three marine-related threats (two bycatch of species KTPs and the ingestion of marine debris); and
- two threats to ecosystems (climate change and land clearing).

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<sup>74</sup> Section 183 of the *Environment Protection and Biodiversity Conservation Act 1999*.

<sup>75</sup> The department website <<http://www.the department.gov.au/biodiversity/threatened/ktp/index.htm>>.

**3.33** Eight nominations have been rejected by the Minister on the advice of the TSSC. Reasons for the decision were all documented and related to the provisions of the Act. Reasons included matters such as the nature of the threat, the effectiveness of current mitigation measures or the lack of evidence to support a listing.

**3.34** The development of threat abatement plans (TAPs) was not considered appropriate in five listed key threatening processes. These were:

- Land Clearance;
- Loss of climatic habitat caused by anthropogenic emissions of greenhouse gases;
- Incidental catch (bycatch) of Sea Turtles during coastal otter-trawling operations within Australian Waters north of 28 degrees south latitude;
- The biological effects including lethal toxic ingestion, caused by Cane Toads; and
- Loss of biodiversity and ecosystem integrity following invasion by the Yellow Crazy Ant (*Anoplolepis gracilipes*).

**3.35** For decisions not to develop TAPs, the reasons were documented and related to whether or not a TAP would contribute any additional threat mitigation over and above current initiatives and whether or not a TAP would duplicate actions underway or planned by the Government such as the National Greenhouse Strategy in relation to Climate Change. These decisions are also currently under review by the TSSC as required by the Act.

## Listing Critical Habitat

**3.36** Section 207A of the Act requires the Minister to keep a register on which the Minister may list habitat that is critical to the survival of a listed threatened species. Since the Act came into force there have been five listings on the critical habitat register. This number is relatively low compared to the number of listed species. Critical habitat listings are detailed in Table 3.1.

**Table 3.1****The Register of Critical Habitat**

Register of Critical Habitat	Effective
Macquarie Island - <i>Diomedea exulans</i> (Wandering Albatross)	01 July 2002
Northwest corner Belconnen Naval Transmission Station, ACT - <i>Lepidium ginninderrense</i> (Ginninderra Peppercross)	28 Feb 2005
Gluepot Reserve, Taylorville Station and Calperum Station, excluding the area of Calperum Station south and east of Main Wentworth Road. - <i>Manorina melanotis</i> (Black-eared Miner)	05 May 2004
Albatross Island, The Mewstone, Pedra Branca - <i>Thalassarche cauta</i> (Shy Albatross)	01 July 2002
Macquarie Island - <i>Thalassarche chrysostoma</i> (Grey-headed Albatross)	01 July 2002

Source: Department of the Environment and Water Resources

**3.37** When considering the listing of a threatened species the TSSC also recommends to the Minister if critical habitat for a species needs to be put on the register. The TSSC has encountered challenges in identifying critical habitat because of the difficulty in defining boundaries and in particular, the lack of information at the time of listing. Consequently, the TSSC has commented that it has been reluctant to recommend an extensive list of critical habitat as it is very resource intensive and would not necessarily provide any greater protection for threatened species and ecological communities than the listing process itself. Consultations with State and regional bodies during the course of the audit indicated that there were considerable challenges in defining critical habitat in Australia although in small islands or in discrete areas (as in the current list) it is fairly straight forward. The amendments to the Act also now require the Minister to take into account the potential conservation benefit of listing habitat.

**3.38** In the longer term, the development of additional recovery plans and further progress on the Species Information Partnerships Program should assist in identifying and listing critical habitat. Vegetation and species mapping currently being developed in the department should also assist in this regard. The recovery planning process requires the identification of habitat critical to the survival of the species. However, the limited number of recovery plans in place at the present time and the very limited capture of critical



habitat data from them in any case is a real constraint on defining critical habitat.

## Inventories of species in Commonwealth areas

**3.39** Prior to December 2006, section 172 of the Act required the Minister to develop inventories that identified and stated the abundance of threatened species, ecological communities and migratory species on Commonwealth land. The Act required all Commonwealth land to be covered by an inventory within five years of the Act coming into force. Section 173 required the Minister to develop inventories that identified and stated the range of threatened species, marine species, ecological communities and migratory species and cetaceans in Commonwealth waters. These surveys needed to be completed within ten years of the commencement of the Act.<sup>76</sup> Delegations from the Minister place the responsibility for these surveys on all Executive Officers of the department. No one area has direct responsibility for these sections of the Act.

**3.40** The primary tool used by the department to identify species in Commonwealth terrestrial areas is its Species Profile and Threats (SPRAT) database and maps. The SPRAT report for species on Commonwealth land identified 158 listed species that definitely occur and 498 species that may occur on Commonwealth land. However this report does not outline the abundance of each of the species listed or provide certainty as to the actual species on Commonwealth land. Without identifying the abundance on Commonwealth land the SPRAT database and maps alone do not satisfy the requirements of section 172 of the EPBC Act.

**3.41** The ANAO appreciates that fully complying with these provisions of the Act has been a significant challenge given the competing priorities flowing from other parts of the Act. Nevertheless, information on species on Commonwealth land can be important in protecting matters of national environmental significance.

**3.42** For the National Parks estate managed within the department, a more detailed 'Functional Species Inventory for Commonwealth Reserves' has been prepared. This inventory has specifically been established to record historical

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<sup>76</sup> The amendments to the Act have now removed the mandatory requirement for the Minister to do surveys of marine areas and inventories of land areas; instead the Minister may perform these at his discretion. See Appendix 1 for a comparison of the old and new requirements under the Act.

as well as present species information with the specific aim of informing National Park planning and species conservation for:

- Booderee National Park;
- Christmas Island National Park;
- Kakadu National Park;
- Norfolk Island National Park;
- Pulu Keeling National Park; and
- Uluru – Kata Tjuta National Park.

**3.43** In the Department of Defence (which is the Commonwealth’s largest land holder) there are Environmental Management Plans (EMPs) for major facilities, although not for every site. Defence regards land use change or the construction of new facilities as the catalyst for improving information on threatened species and ecological communities. The EMPs address the protection and conservation of biodiversity at the major sites via the integration of threat mitigation strategies. Defence employs specialist consultants to undertake ecological surveys of Defence facilities. They provide lists and report on the type, number and condition of vulnerable flora and fauna species and communities present at each major facility. Defence has developed management strategies, using these ecological surveys, to structure its activities in a manner that does not threaten the survival of the vulnerable species and communities identified.<sup>77</sup>

**3.44** A key part of the Act that relies on the surveys of species being accurate and complete is the recovery plans for species on Commonwealth land. For species on Commonwealth land, recovery plans are required to be completed within specific timeframes.<sup>78</sup> Without an accurate inventory of species on Commonwealth land, the department cannot clearly identify which recovery plans need to be given priority for completion. In relation to determining the recovery plans required, the department commented that substantial survey work would need to be done to adequately document all listed threatened species on Commonwealth land.

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<sup>77</sup> Defence Environment Report (2003).

<sup>78</sup> Section 273(1) of the Act states that in the case of a threatened species or threatened ecological community that is critically endangered a recovery plan must be in place within two years of listing. Species or ecological communities listed as endangered have a three year timeframe while those listed as vulnerable have a five year timeframe.

**3.45** For Commonwealth marine areas, the Act requires surveys of threatened species and cetaceans to be completed. The department has undertaken an examination of cetaceans in Australian waters and has recently developed a database to record cetacean sightings across Australia. The department indicated that the 'survey work to fulfil this requirement is ongoing. To date the Australian Government has invested in over \$3 million worth of marine based survey work'. Detailed survey work on species has also been undertaken by the Great Barrier Reef Marine Park Authority (GBRMPA). GBRMPA has information on all identified fauna and flora of the Great Barrier Reef World Heritage Area.<sup>79</sup> Much of this work is based on detailed surveys of the reef area and includes specific information on listed marine species such as sea-snakes, dugong, marine turtles, cetaceans and birds. In many cases the abundance of species is recorded, although GBRMPA has commented on the difficulties in determining the conservation status of marine species because of factors that include:

- marine populations have characteristics that make detection difficult;
- fluctuations in breeding population size and survival rates can obscure long-term trends;
- patchy distributions can make reliable estimates of density or population size difficult to obtain. Often only quantum changes in numbers can be detected; and
- adequate methodologies for detecting and determining trends in abundance for rare species are generally lacking.

**3.46** This highlights some of the challenges in complying with the provisions of the Act in marine waters. The amendments to the Act now remove the requirement for the Minister to prepare an inventory. The Act now states that the Minister '**may**' prepare an inventory of species in Commonwealth areas.

**3.47** Nevertheless, having accurate information about the species in Commonwealth waters is still important in the allocation of permits, or for activities that might impact on migratory species such as cetaceans.

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<sup>79</sup> Great Barrier Reef Marine Park Authority (2004), Fauna and Flora of the Great Barrier Reef World Heritage Area.

## 4. Preparation of Recovery Plans and Threat Abatement Plans

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*This Chapter examines key requirements in the Act relating to the preparation of recovery plans and threat abatement plans (TAPs) for threatened species and ecological communities.*

### Introduction

**4.1** The Act outlines matters relating to the preparation of recovery plans for listed threatened species and ecological communities, and TAPs for key threatening processes. Recovery plans set out the research and management actions necessary to maximise the long-term survival of a threatened species or ecological community. Recovery plans and actions in particular are important as they provide a basis on which funds available for biodiversity protection and conservation can be prioritised and directed. TAPs provide for the research, management, and any other actions necessary to reduce the impact of a listed key threatening process on a threatened species or ecological community. The ANAO examined whether key requirements in the Act relating to the preparation of recovery plans and TAPs have been met, and are being administered effectively by the department.

**4.2** The ANAO examined compliance with the requirements of the Act prior to introduction of amendments to the Act in December 2006. A number of requirements have changed subsequent to the amendments. The implications are discussed in the relevant sections of the Chapter.<sup>80</sup>

### Preparation of recovery plans

**4.3** Prior to December 2006, the Act stated that the Minister must exercise his powers to ensure that there is always in force a recovery plan for each listed threatened species and ecological community.<sup>81</sup> The new amendments no longer require recovery plans for all species or ecological communities. Instead, the Minister must decide which species and ecological communities

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<sup>80</sup> Amendments to the Act now require the Minister to ensure that there is approved conservation advice for each listed threatened species (except for species that are extinct or that are conservation dependant) and each listed threatened ecological community. The Minister now has the discretion to decide which species also require a recovery plan. See Appendix 1 for a comparison of the old and new requirements under the Act.

<sup>81</sup> Sections 267 and 273. s 269A exempts extinct and conservation dependent species from this requirement.

require recovery plans. However, the ANAO has examined compliance against the Act prior to the amendments. The findings are discussed below.

**4.4** As at 30 June 2006, there were 264 recovery plans in place for threatened species (249) and ecological communities (15). These plans cover some 340 species and 15 ecological communities.<sup>82</sup> Approximately 20 per cent of all the threatened species and communities listed under the EPBC act were covered by a recovery plan as at 30 June 2006.

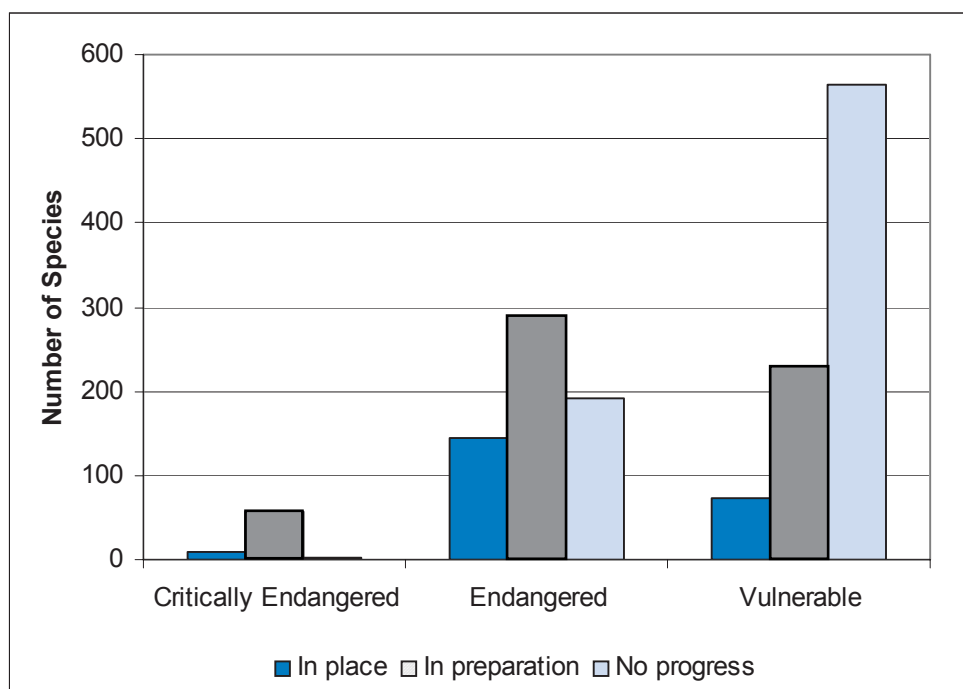
**4.5** Prior to December 2006, the requirement for a recovery plan applied to 1 568 (95 per cent) of the 1 684 listed threatened species. Species and ecological communities categorised as either 'extinct' or 'conservation dependent' were exempt from the recovery plan requirement. Figure 4.1 outlines the progress made to date on developing recovery plans. The figure shows the number completed, the number currently being written and recovery plans that have not, as yet, commenced.

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<sup>82</sup> Calculations from the endorsed category on the the department inventory of recovery plans. In some cases ecological communities recovery plans also include recovery of threatened species within the ecological community.

**Figure 4.1**

**Number of listed threatened species covered by a recovery plan, as at 30 June 2006**



Source: ANAO analysis of the department data. Note that one additional species was classified as extinct in the wild and also requires a recovery plan

**4.6** Although recovery plans were required to be prepared for all listed threatened species and ecological communities, they were also required to be in place within specific timeframes for threatened species and ecological communities that occur in a Commonwealth area. This is discussed later in this Chapter.

**4.7** To ensure that all species and ecological communities have some information to assist in recovery actions, the Act now requires the Minister to ‘ensure that there is approved conservation advice for each listed threatened species and ecological community (except one that is extinct or conservation dependent) at all times while the species or community continues to be listed’. The intention of the conservation advice is to provide advice about what priority actions are appropriate to stop the decline or support the recovery of a listed species or ecological community.

## The national picture for threatened species and ecological communities

4.8 Aside from the requirement that the Minister ensure that plans are in force for listed threatened species, the Australian Government also committed to the *National Objectives and Targets for Biodiversity Conservation for 2001–2005*. This commitment, entered into by the Australian, State and Territory governments, set a target of having recovery plans in place for all nationally listed critically endangered and endangered species and ecological communities by 2004.<sup>83</sup>

4.9 As illustrated in Figure 4.1, a significant number of recovery plans for threatened species and ecological communities were either still in progress or not yet started. At the time of the commitment in 2001, there were 583<sup>84</sup> endangered and critically endangered species and 21 threatened ecological communities listed under the Act. Table 4.1 outlines the performance against the commitment.

**Table 4.1**

### National Objectives and Targets for Biodiversity Conservation for 2001–2005

	Species <sup>85</sup>	Ecological communities
Number of species/ecological communities in 2001 committed to having recovery plans in place by 2004	583	21
Total recovery plans completed by 2004	126 <sup>86</sup>	15
Total recovery plans outstanding	457	6

Source: ANAO analysis of the department data

4.10 Table 4.1 shows that only 126 species (22 per cent) of the 583 species committed had recovery plans completed by 2004. Only an additional 49 recovery plans were completed between 2001 and 2004. Of the species with

<sup>83</sup> See page 9 of the *National Objectives and Targets for Biodiversity Conservation, 2001–2005*.

<sup>84</sup> This figure is based on the 583 species classified as endangered transferred across from the ESP Act 1992. At this time there were no species classified as critically endangered.

<sup>85</sup> This data is calculated at 30 June 2005.

<sup>86</sup> This includes 77 recovery plans created prior to the commitment and 49 completed between 2001 and 2004.

recovery plans yet to be completed, 275 recovery plans were at various stages of being completed and some 182 had not yet been started.

**4.11** For the 21 listed threatened ecological communities requiring recovery plans, 15 had recovery plans in place by 2004. Of the remaining six recovery plans yet to be completed, four were in preparation and two had not yet been started.

**4.12** The main reason for this result was that there were inadequate resources allocated to ensure that the commitment could be achieved by 2004. A consequence of this target not being met was that a subsequent target for recovery plans to be incorporated into regional management strategies for the Natural Heritage Trust could not be achieved. This has also diminished the capacity of the department to achieve significant results from the operation of the Act.<sup>87</sup> While recognising that the amendments to the Act have shifted the focus from recovery plans to recovery actions, recovery plans still have an important role to play in protecting endangered species and ecological communities. They have also been a key outcome indicator and performance measure for the department since the inception of the Act in 2000. Consequently, further progress could reasonably have been expected.

## Threatened Species and ecological communities in Commonwealth areas

**4.13** Prior to December 2006, the Act imposed strict timeframes on the development of recovery plans for species and ecological communities on Commonwealth land. The timeframes were:

- two years for species or communities categorised as ‘critically endangered’;
- three years for species or communities categorised as ‘endangered’ or ‘extinct in the wild’; and
- five years for species or communities categorised as ‘vulnerable’.<sup>88</sup>

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<sup>87</sup> The department has indicated that statistics relating to the production of recovery plans is a useful indicator of progress. However, the documents produced also need to be adequate in terms of providing information for a number of purposes such as improving SPRAT profiles and assisting proponents and the department in EPBC Act referrals and assessments. This highlights the importance of having recovery plans in place for every listed species and ecological community and that they are reviewed every five years.

<sup>88</sup> See Appendix 1 for a comparison of the old and new requirements under the Act.



**4.14** As noted in Chapter 3, there were gaps and shortcomings in terms of the completeness of the Commonwealth inventory of threatened species and ecological communities that occur in a Commonwealth area. The department does not know the number of species or ecological communities for which recovery plans were required to be made. However from the best available information, the department has estimated that there are 158 species<sup>89</sup> and 16 ecological communities that are likely to be found on Commonwealth land.

**4.15** From an analysis of the department data, statutory timeframes for recovery plans have not been met for all threatened species that occur in Commonwealth areas. In particular, only four (of 21) recovery plans have been completed for critically endangered species—the most ‘at risk’ category of threatened species for which a recovery plan is required. By contrast, more recovery plans have been completed for ‘endangered’ species (29) and ‘vulnerable’ species (40). Recovery plans are in progress for most of the remaining threatened species; three have yet to be started. Figure 4.2 illustrates the status of recovery plans for threatened species that occur in a Commonwealth area.<sup>90</sup>

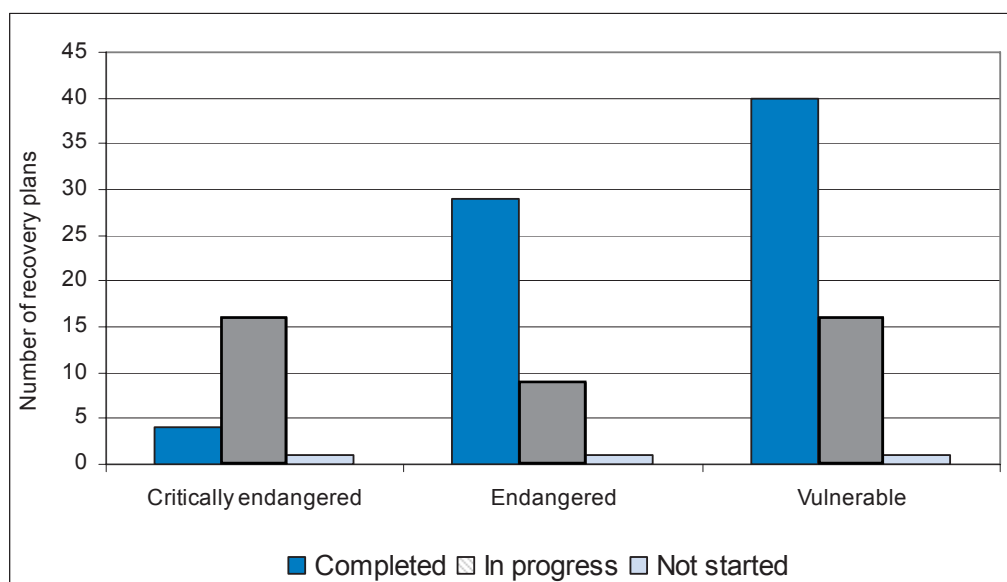
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<sup>89</sup> The ANAO has based its analysis of performance in this area against the 158 species noting that there are another 498 threatened species that may be on Commonwealth land.

<sup>90</sup> The department in its 2004–05 annual report commented that they have focused on completing plans for species in Commonwealth areas, with the making of recovery plans for eight Christmas Island species including Abbott’s booby, the Christmas Island Pipistrelle, and the Christmas Island goshawk, considered to be the rarest endemic bird on Christmas Island.

**Figure 4.2**

**Status of recovery plans due for threatened species that occur wholly or partly in a Commonwealth area, as at 30 June 2006**



Source: ANAO analysis of the department data

**4.16** Statutory timeframes have also not been met for all threatened ecological communities that occur in a Commonwealth area. Recovery plans have been completed for seven (of 16) ecological communities in Commonwealth areas. A further seven plans are in preparation, with two yet to be started.

**4.17** The amendments to the Act remove the requirement for the Minister to produce recovery plans for species and communities in Commonwealth areas within specific timeframes. As noted above, the Minister has the discretion as to which species or communities require a recovery plan. While the requirement has been removed, there may be circumstances warranting a recovery plan for species and communities in Commonwealth areas given the importance the Act places on the management of actions in Commonwealth areas.

## Prioritisation of Recovery Plans

**4.18** Prior to December 2006, the Act stated that the Minister must obtain and consider the advice of the TSSC on the times and the order in which recovery plans need to be made. When the TSSC provided listing advice to the

Minister on a listing decision, it also provided advice on the priority of a recovery plan.

**4.19** The scientific advice from the TSSC is critically important in determining priorities. The magnitude of the threats to a particular species can impact on how quickly a recovery plan is needed. For example, while a species may be critically endangered, its habitat may be secure with minimal threats while a more abundant endangered species could be facing an immediate threat and need a rapid framework for recovery actions.

**4.20** The department has commented that the advice given by the TSSC was not the only consideration taken into account when deciding on which recovery plans to fund. The department has indicated that their key priorities in deciding on recovery plans were:

- whether the species was on Commonwealth land;
- the conservation status of the species (particularly if it is 'critically endangered', 'endangered' or 'vulnerable');
- if there is an identified pressing need - for example if a species is being referred for decisions on an action, or if State agencies identify implementation actions that were not working due to out of date biological information;
- the ability to fund the review and plan out of current year's funding;
- the ability of a State agency or a potential contracted party being available and having sufficient expertise; and
- the ability for the department to manage and process additional contracts within budgetary timelines.

**4.21** The evidence considered by the ANAO during the audit indicated that the department had set priorities using the above criteria in the allocation of resources for recovery planning. However, less than ten percent of species listed had scientific advice from the TSSC on the priority for the recovery plan. The ANAO considers that without this advice, decisions on the investment in recovery plans are unlikely to achieve the best biodiversity outcomes. Of the plans currently under preparation, it was unclear which should be given the highest priority and processed first.

**4.22** Amendments to the Act now explicitly require the TSSC to provide the Minister with advice on whether or not a recovery plan is needed and, if so, outline the priority and timeframe for the completion of the recovery plan.

Where a recovery plan is not required, conservation advice will identify key threats and prioritise activities needed to protect and recover threatened species and ecological communities. This amendment raises the priority for the department to work with the TSSC in developing scientific advice for recovery actions for all listed threatened species and ecological communities.

## Commonwealth-State-Territory cooperation on recovery plans

**4.23** The Act makes provision for recovery plans to be developed by: the Commonwealth; jointly with relevant States and Territories; or by adopting a State or Territory plan. Of the total recovery plans that have been completed as at 30 June 2006,<sup>91</sup> only a small number (18) of plans have been prepared by the Commonwealth. The remaining plans were developed by State and Territory Governments or modified from State and Territory Plans. As noted previously, there are a significant number of recovery plans underway. Of the 416 single species, multi species, regional and ecological community recovery plans being prepared, 98 per cent are contracted to State Government environment agencies.

**4.24** The preparation of recovery plans with the States and Territories can be an effective approach because States and Territories often have better knowledge of their endemic threatened species and ecological communities, and, in many cases, have existing recovery plans which can be modified to suit the requirements of the national Act.

**4.25** The department advised that in engaging State or Territory agencies to complete recovery plans, the average time it set for completion of such plans was 18 months. However less than five per cent<sup>92</sup> of plans contracted have been completed within agreed timeframes. As illustrated in Figure 4.3, the majority of plans contracted to State and Territory agencies in the period 2001 to 2006 have not yet been completed. From available data for the years 2001–02, 2002–03 and 2003–04, some 57 122 and 80 plans respectively are outstanding. Most of these plans have been in preparation for three or more years.

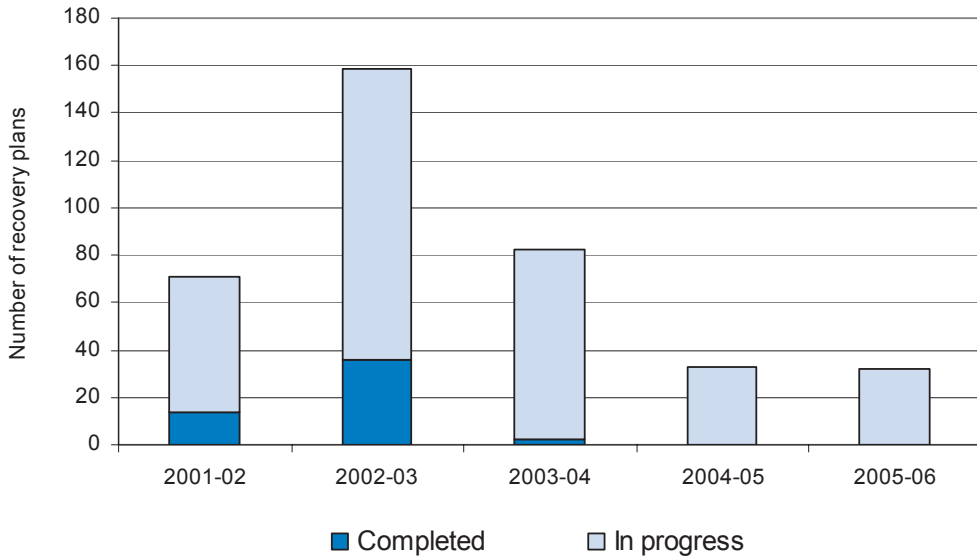
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<sup>91</sup> That is, 151 plans for threatened species that occur wholly or partly in a Commonwealth area, and 73 for threatened species that occur only outside a Commonwealth area.

<sup>92</sup> This figure is based on an analysis of the inventory of recovery plans by the department, comparing financial year endorsed with financial year contracted.

**Figure 4.3**

**Status of recovery plans by contract year being prepared by State agencies, on behalf of the Commonwealth, as at 30 June 2006**



Source: ANAO analysis of the department data<sup>93</sup>

**4.26** The department advised that a key reason for these delays was a reduction over recent years in the number of staff with relevant expertise in the States assigned to undertake recovery planning. ANAO consultations with the States indicated that there were significant pressures on resources in this area. The ANAO recognises that the department cannot influence staffing numbers in State agencies - especially given the small size of the contracts involved. However, resource constraints within State agencies underscores the importance of setting clear priorities on the order in which plans are to be completed (taking into account the risk of extinction of threatened species and ecological communities). It also suggests the need for the department to develop contingency plans to better manage this risk and reduce the dependence on the States to produce recovery plans.

**4.27** Another factor contributing to delays is that, since 2001-02, there have been a number of minor adjustments recommended by the TSSC for recovery plans. For example, there is now a requirement for indigenous groups to be

<sup>93</sup> The recovery plans illustrated in this graph account for 58 per cent of total recovery plans in preparation or in place. The department data for recovery plans prior to 2000 is not sufficiently precise to indicate contract year. In addition, dates on contracting of some recovery plans were not available.

consulted during the preparation of recovery plans. The ANAO found that, although the department has requested States to comply with the requirements for indigenous consultation in particular, it has not updated the agreements to reflect such changes. In most cases, little financial consideration was made to assist the States and Territories in meeting these additional requirements.

**4.28** There is a significant backlog of recovery plans to be completed. While the department is optimistic that significant progress can be made in 2006–07, the ANAO considers that based on progress to date, in a best case scenario all recovery plans currently in preparation (representing approximately two-thirds of listed threatened species and ecological communities) are likely to be completed by 2009. The remaining one-third of species and ecological communities will be covered by conservation advice.

**4.29** The ANAO considers that operational timeframes need to be set to improve the likelihood that recovery plans will be completed in a timely manner and to determine in what circumstances a recovery plan will be required in the future. One option for expediting progress in this area would be to expand the pool of experts producing recovery plans. This could include contracting other relevant bodies along with State environment agencies. This could include private sector firms as well as academic institutions or relevant Commonwealth agencies where appropriate.

## **Recommendation No.4**

**4.30** The ANAO *recommends* that the Department of the Environment and Water Resources, in consultation with the Threatened Species Scientific Committee:

- (a) review all recovery plans in preparation and identify a priority order and a timetable for their completion;
- (b) complete recovery plans for all priority species and ecological communities, in accordance with the timetables set for their preparation; and
- (c) consider contracting a range of expert providers to assist in expediting the completion of recovery plans.

*Department of the Environment and Water Resources response*

**4.31** Agreed.

## Content of Recovery Plans

**4.32** Recovery plans are required to meet specific content specifications prescribed by the Act. To ensure that these criteria are met the recovery plans are checked for compliance by the department. In addition, there is a public comment period for all recovery plans, during which additions, changes and comments can be incorporated. Once complete, the plan is presented to the TSSC where it is considered. If the committee is satisfied that the criteria have been met, it is then forwarded to the Minister for consideration and if agreed, approval. This process allows significant scrutiny of recovery plans before they are approved by the Minister to ensure that they meet the requirements of the Act. A sample of ten recovery plans was reviewed by the ANAO across different States and years. These recovery plans all met the requirements of the Act.

**4.33** From discussions with stakeholders, the ANAO found that there was a broad consensus that recovery plans were a very useful tool as they outlined the priority actions for recovering species. Stakeholders identified that the content and recovery actions identified in the plan were being used as the basis for recovery actions across Australia. A particularly successful aspect of some recovery plans was the use of formal recovery teams to monitor, coordinate and implement the recovery plan for a particular species. Stakeholders also commented that care was needed in the development of recovery plans to ensure that an appropriate balance is set between additional research and a focus on concrete actions.

**4.34** The department has indicated that once a recovery plan is in place it remains in force unless revoked. For many recovery plans this means that the timeframes written in the recovery plan for the actions to be done have lapsed but the plan remains 'in force'. Aspects of the recovery plan will remain relevant although time-sensitive objectives or requirements will be largely redundant and the latest scientific research will not necessarily be integrated into the recovery planning actions. Where new research fundamentally changes the basis of the recovery planning actions or where it introduces new risks, the need for a new or updated recovery plan can be critical to the success of the actions and investments being made by the government. A further point is that the content in the earlier recovery plans is unlikely to meet the criteria set out by the Act and the TSSC and may not have the best available actions.

**4.35** Predominantly, plans are written to identify actions over a five year period but will usually have long term goals extending upwards of 15 years.

Plans need to be reviewed and updated after their five years to ensure that the actions required are current and will assist in achieving the long term goals of the plan. Up to 60 per cent of all recovery plans have timeframes<sup>94</sup> that have lapsed. Although these recovery plans are still technically in force, ensuring that the EPBC Act requirements are met, it is unlikely that any plans with outdated recovery actions will be as effective at achieving long term goals. This suggests that further efforts will need to be made to ensure that the actions in recovery plans are as current as possible.

## Implementation, review and cost of recovery plans

### Implementation

**4.36** The Act states that, once prepared, recovery plans must be implemented and must be reviewed at intervals of no longer than five years.<sup>95</sup>

**4.37** The department has indicated that they have no resources to monitor how many plans are being implemented or what progress is being made against the targets and requirements in the national recovery plans. The ANAO recognises that current resources are ‘stretched’ in the department just managing the development of recovery plans. Nevertheless, if the department is unable to comment on the implementation of recovery plans overall, it does leave a significant gap in their capacity to report on progress towards the outcomes of the Act.

**4.38** ANAO consultation with stakeholders indicated that numerous completed recovery plans were not being implemented due to lack of resources. Even in the Wet Tropics World Heritage area there is ‘no systematic recovery planning for any plant species’.<sup>96</sup>

**4.39** The department does not have processes to monitor the actions identified within recovery plans and could only provide the ANAO with limited information on recovery actions that have been implemented. The Victorian Government’s Actions for Biodiversity Conservation (ABC) system is an example of how recovery actions can be monitored and reported on and is discussed in Case Study 2 below.

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<sup>94</sup> That is, recovery plans with specific end dates.

<sup>95</sup> See sections 269 and 279 of the EPBC Act.

<sup>96</sup> Wet Tropics Management Authority Annual Report 2005.



## Case Study 2 the Actions for Biodiversity Conservation System

The ABC is a web-based information system designed to store, update and retrieve information about actions to recover threatened species and communities: The purpose of ABC is to:

- identify priority locations for threatened species & communities and priority management actions at those locations;
- communicate actions and priorities to land managers;
- monitor progress towards implementation by recording and reporting on results;
- prepare and review Action Statements and Recovery Plans; and
- record and report on the state and trends for threatened species & communities.

The system enables Catchment Management Authorities (Commonwealth NRM regions), State Parks and volunteer conservation groups to identify what actions they can take to conserve a species within a region. The ABC system also ensures that anyone implementing actions reports back on the progress and performance of the actions taken.

**4.40** If such a system like the ABC was adopted at the national level, it would assist the department in monitoring and reporting on recovery plans.

### Review

**4.41** Reviews of recovery plans are a requirement of the Act and also provide useful lessons learned. However, progress has been slow in this area. Of the 56 recovery plans due for review as at 30 June 2006, only one such review has been completed in the form of a newly written recovery plan.<sup>97</sup> The remaining 55 reviews are either underway (38) or not yet started.

**4.42** To date, one recovery plan has resulted in a change in the conservation status of a listed species. However, this is an isolated case and there is no clear process as to how the information gained in a recovery plan could feed back into the listing process.

**4.43** Recovery plans are required to identify 'habitat critical to the survival of the species'. However this information is not used to provide information on listing as critical habitat under the provisions of the Act (see Chapter 3). While it is recognised that the TSSC has concerns that critical habitat can be difficult to define, there is an opportunity to use the outputs from the recovery plans to assist in better meeting the requirements of the Act in this regard.

**4.44** Without proper reviews of recovery plans there is little information that can feed back into the listing of species and ecological communities or the decisions on investments made in recovery actions. The ANAO considers that the department could improve on the use of information produced through recovery plans.

<sup>97</sup> The Glossy Black Cockatoo.

## Cost

**4.45** Recovery plans vary in cost depending on whether they cover a single species and whether it is endemic to a localised area, a State or extends over a number of States and Territories. For example, a recovery plan for an endemic plant species with a limited range would involve minimal cost. However, for an animal species with an extensive range across multiple State jurisdictions the cost can be high. For ecological communities the cost of a recovery plan can also be significant. Table 4.2 outlines some indicative costs for different types of recovery plans.

**Table 4.2**

### The cost of recovery plans

Recovery plan type	Approximate cost estimates	Conditions
Single species – endemic flora	\$5 000 – \$ 10 000	for flora with limited range
Single species – endemic flora	\$10 000 – \$ 20 000	for flora with extended range across State/Territory jurisdictions
Single species – endemic fauna	\$15 000 – \$25 000	for fauna with a limited range
Single species – endemic fauna	\$25 000 – \$65 000	for fauna with extended range across State/Territory jurisdictions
Multi species – endemic flora	\$30 000 – \$60 000	–
Multi Species - across jurisdictions fauna	\$45 000 – \$200 000	–
Ecological Communities	\$ 150 000 – 200 000	–

Source: Department of the Environment and Water Resources

**4.46** The TSSC has recently approved an approach to streamline and simplify recovery plans by separating the ‘management actions’ required from the scientific ‘species specific’ information. The majority of new recovery plans (currently in preparation) will be prepared using this format. This approach may reduce the long term costs associated with updating recovery plans in the future by focussing changes or updates only on the management actions. However, care will be needed to ensure that this new approach balances expediency with the practical needs of those parties involved in implementing the recovery plans as well as the requirements of the Act.

**4.47** In addition to the above approach, the department has indicated that ‘the department is examining the scope for multi-species recovery plans with

integrated threat abatement activities which have applicability in particular regions'. A recent report considered by TSSC identified that these types of plans could be more cost effective to write and implement than single species plans. However they should only be used where appropriate for the recovery actions needed for the species. The report identified that, 'Landscape plans (that cover numerous species over a broad geographic area) can protect the whole environment, while multi-species plans are best for general habitat outcomes and single species plans for addressing critical habitat'. There are now 43 multi-species and landscape plans in preparation that will cover some 300 listed threatened species when completed. In particular, landscape plans for the South West coast of Western Australia and Norfolk Island aim to cover over 100 and 46 species respectively.<sup>98</sup>

**4.48** The costs involved in developing recovery plans for all outstanding required species and ecological communities are likely to be substantially based on the above estimates. This highlights the critical importance of setting clear priorities for action and also suggests that multi-species recovery plans may have an important role to play in both managing costs and in speeding up the recovery effort in the future.

## Recommendation No.5

**4.49** The ANAO *recommends* that the Department of the Environment and Water Resources improve the management of recovery plans by:

- (a) conducting a review of all recovery plans that have exceeded their statutory timeframes;
- (b) developing a timetable and allocating resources to ensure that future reviews of recovery plans are completed within their statutory timeframes; and
- (c) considering the development of a dedicated system to manage recovery actions, monitor their implementation and measure the progress of species against their short, medium and long term recovery goals.

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<sup>98</sup> The department has commented that in considering the utility of multi-species and landscape plans, consideration needs to also be given to the important role of the plan in providing information to facilitate the production of SPRAT profiles (discussed in the earlier chapters) and assistance to proponents and the department in the referrals, assessment and compliance processes. If such information is not provided in streamlined plans, its production will still be required for these other purposes. This may impact on the costs and efficiency savings attributed to these processes.

## *Department of the Environment and Water Resources response*

**4.50** Agreed, noting the changes to statutory timeframes and the role of the conservation advice under the amended EPBC Act.

### **Reporting of recovery plans**

**4.51** Reporting to Parliament on the provisions of the Act relating to recovery planning is important as it is a requirement of the Act and provides an assurance that Commonwealth investment is appropriately targeted and managed. Under s.518 of the Act, the Minister is also required to table a report in Parliament at the end of each financial year on actions required under the Act (or regulations) that were not completed within the required timeframe. This includes the preparation and review of recovery plans within specified times.

**4.52** The 2004–05 Annual Report stated that:

The Australian Government continued to make a substantial investment in recovering threatened species through developing and implementing recovery plans. Over 800 nationally threatened species and ecological communities now have recovery plans in place or in preparation.

**4.53** However, the Annual report did not report on the shortcomings in meeting Ministerial commitments to achieve recovery plans for all listed ‘critically endangered’ and ‘endangered species’. This would have been useful as it could have at least discussed the resource constraints that limited the achievement of the commitment. In addition, reporting on the combined total for recovery plans in place and in preparation obscures the fact that so many recovery plans are only in the early stages of completion. A more balanced report would identify and separate those plans in preparation from those completed - particularly as there was no timeframe specified for their completion.

**4.54** In relation to recovery plans for species on Commonwealth land, the 2005–06 annual report noted that 84 plans were required and 29 were overdue. However, this data is not particularly informative as it does not indicate the number of plans completed or the number of plans required to be completed.

**4.55** As identified earlier, 117 out of the 158 species identified on Commonwealth land were due to have recovery plans in place by June 2006. The department statistics report only on the number of plans, including multi species and regional plans. This does not give an accurate picture of which species required recovery plans and which have them in place. In addition, the

department has again only reported on plans that are either in preparation or in place and does not report on the species that do not have a plan underway.<sup>99</sup> To improve the reporting of recovery plans, the department should report on those species that require a recovery plan and also separate this into their conservation categories.

**4.56** The reasons identified in the EPBC 2005–06 annual report, were ‘...[the need for] reassessment of the conservation status and distribution of some species, and the need to ensure adequate time for stakeholder consultation and incorporation of comments from public exhibition processes.’<sup>100</sup> However, it might also have been useful to comment that a key reason for late plans was that State agencies were not able to produce them within agreed time frames.

## Recommendation No.6

**4.57** The ANAO *recommends* that the Department of the Environment and Water Resources ensure that its reporting to Parliament reflects the status of recovery plans by separating ‘completed’ and ‘in progress’ recovery plans.

*Department of the Environment and Water Resources response*

**4.58** Agreed.

## Threat Abatement Plans

**4.59** The Act requires threat abatement plans (TAPs) to provide for the research, management, and any other actions necessary to reduce the impact of a listed key threatening process on affected species and ecological communities.<sup>101</sup> The intent of the legislative provisions is to ‘maximise the chances of the long-term survival in nature of native species and ecological communities affected’. In other words, the Act is strongly focused on the achievement of outcomes.

**4.60** TAPs offer the opportunity to address threats that cut across multiple species and provide the focus to deal with threats in a more efficient and effective way. By taking into account the impacts of the key threatening process on a range of native species, TAPs can help to identify and prevent more common species from becoming threatened. For example, the TAP for

<sup>99</sup> Figure 2.2 identifies three species that do not have a plan in place or in preparation.

<sup>100</sup> EPBC annual Report 2004–05 appendix 4.

<sup>101</sup> Section 271 of the *Environment Protection and Biodiversity Conservation Act 1999* and the department website <<http://www.thedepartment.gov.au/biodiversity/threatened/tap/index.html>> (27 September 2006).

the incidental catch (or bycatch) of seabirds during oceanic longline fishing operations outlines actions to assist a number of listed and non listed species such as albatross and petrels. (See case study 3 below).

### ***Case Study 3 Threat Abatement Plan for the incidental catch (or bycatch) of seabirds during oceanic long line fishing operations***

Worldwide, there has been recognition of the serious threat posed by longline fishing activities on seabirds. Tens of thousands of seabirds have been accidentally killed each year on longline hooks set in the world's oceans.<sup>102</sup> Longline fishing commenced in the southern oceans in the 1950's and operates in almost all Australian waters today. The incidental catch (or bycatch) of seabirds during oceanic longline fishing operations was listed as a key threatening process in July 1995. A Threat Abatement Plan was approved by the Minister in August 1998. The Threat Abatement Plan (TAP) expired in August 2003 which resulted in a review and a proposal for a revised TAP.<sup>103</sup>

The department stated that over the life of the first plan, substantial progress toward reducing the key threatening process was achieved. This conclusion was based on the number of fisheries recording incidental catch rates being well below 0.05 birds per 1000 hooks, the maximum permissible level set by the plan as a performance indicator. However, whether this is because of declining bird numbers or variability in the bird distribution patterns is not clear as mitigation measures in the Eastern Tuna and Billfish Fishery recorded seabird bycatch levels that exceeded 0.05 birds per 1 000 hooks until 2004/2005.

The original prescription of allowing night setting of lines throughout the year reduced the capture of albatrosses. However, changes in the distribution of fishing efforts in eastern Australian waters have since led to significant problems with bycatch of flesh-footed shearwaters. This is so serious that this species has been nominated for listing as a threatened species. In addition, information on the level and nature of interactions between seabirds and fishing gear is still incomplete in all domestic pelagic tuna fisheries, the Coral Sea Fishery and the Southern and Eastern Scalefish and Shark Fishery. This highlights the need for the consideration of strengthened measures to address the problem of bycatch.

The link between the TAP and recovery plans for threatened seabirds as well as international conservation efforts such as the *FAO International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries* is well illustrated in this case study. The TAP relies on these recovery plans to collect specific data on trends in the populations of those threatened species found breeding in Australia.

It will be important to monitor, over time, whether the populations are still declining (and hence the lower bycatch rate per hook) and whether the measures adopted have actually been working. A revised TAP has been prepared and is currently being considered by the Minister.

**4.61** The EPBC Act allows for the Minister to (at any time) decide whether to have a threat abatement plan (TAP) for listed key threatening processes. As noted in paragraph 3.34, for twelve of the 17 listed key threatening processes the Minister decided to produce threat abatement plans.

<sup>102</sup> G B Baker and B S Wise (August 2005) The impact of pelagic longline fishing on the flesh-footed shearwater *Puffinus carneipes* in Eastern Australia <[www.sciencedirect.com](http://www.sciencedirect.com)>.

<sup>103</sup> The provisions of the current TAP continue to apply to all fisheries managed by the Australian Government until such time as the new TAP is in place.

**4.62** In the case of land clearance, the reason for not having a threat abatement plan was the current mitigation measures in place such as Commonwealth and State commitments through the Natural Heritage Trust to 'reverse the long-term decline in the quality and extent of Australia's native vegetation cover by 2001' as well as the National Framework for the Management and Monitoring of Australia's Native Vegetation.<sup>104</sup> Advice to the Minister noted that a threat abatement plan would not contribute any additional threat mitigation over and above current initiatives and would duplicate existing practices. The Minister gave a commitment to review the decision at five yearly intervals as required by the Act.

**4.63** In 2003 the TSSC reviewed the decision in the light of new policy commitments such as measures to reduce land clearing through the *National Action Plan for Salinity and Water Quality* and the extension to the *Natural Heritage Trust*. The Committee agreed that at that time a threat abatement plan was not considered a feasible, effective or efficient way to abate land clearing. However, the TSSC requested that the department monitor implementation of the current national approach to abate the threat of land clearing and regularly report progress to the Committee. This matter has particular relevance within the context of illegal land clearing in Australia and the absence of effective compliance and enforcement. This matter is further discussed in Chapter 6 on 'Referrals and assessments'.

**4.64** Of the twelve plans, ten threat abatement plans have been written and finalised. The two threat abatement plans yet to be produced are the *Injury and fatality to vertebrate marine life caused by ingestion of or entanglement in, harmful marine debris* and the *Predation by exotic rats on Australian offshore islands of less than 1 000 km<sup>2</sup> (100 000 ha)*.

## Timeframes

**4.65** Section 273 (4) of the Act identifies that a TAP must be made within three years of listing. In all but two cases examined by the audit, the TAP was produced within the required timeframe. The first outstanding TAP, on the impact of marine debris, was due in August 2006. The process is behind schedule. The department has indicated that this is due to a recent decision to

<sup>104</sup> The 2001 State of the Environment Report found that clearing of native vegetation remains the single most significant threat to terrestrial biodiversity. Approximately 500,000 hectares of native vegetation was cleared in Australia in 2000. The report indicated that the rate of land clearing had increased and that there was not a unified response within Australia or within various regions. Land clearing was also reported to continue at different rates despite apparently tight legislative mechanisms. (SOE 2001 pp. 73-74).

engage the States and the Northern Territory in a national approach. The TSSC is scheduled to consider a draft for public comment in mid-2007. Completion of the final TAP (for addressing the impacts of exotic rats on offshore islands) is not required until March 2009 and the department expects that this deadline will be met.

## Review of Threat Abatement Plans

**4.66** Under the Act, the Minister must review TAPs within five years and decide whether to remove or update the TAPs. Of the five TAPs due for review all have been completed. The reviews cover the TAPs addressing the impacts of feral goats, feral rabbits, feral cats, European red foxes and the incidental catching of seabirds during oceanic longline fishing operations. A review process has also commenced for the threat abatement plan addressing the impacts of the root-rot disease *P. cinnamomi*.

**4.67** The review of the four feral animal TAPs was conducted under a single review process. This review was initiated prior to the five year deadline elapsing and has yet to be finalised. Draft findings from the review indicated that there is a need to:

- strengthen the alignment between the TAPs and the requirements of the Act – particularly in terms of identifying responsible parties (not required by the Act), timelines and funding;
- provide greater oversight of the TAPs by creating TAP implementation teams to advise on projects under the TAP. On these teams there should be relevant experts from government and non-government organisations;
- increase awareness of TAPs within State bodies and more generally through better communication; and
- involve community groups more to assist with on-ground works.

**4.68** The four feral animal TAPs are currently being revised to include greater discussion of priorities and actions. The key conclusion from the report was that despite a number of successful projects, many of the original TAP objectives and actions are yet to be resolved. The report identified that there ‘has been a relatively small amount of money available to implement TAPs’. The department has commented that there are challenges in developing realistic timelines and coordinating funding for implementation because of the number of stakeholders involved in the implementation of the TAP.



**4.69** However, the ANAO considers that the review highlights the importance of making every effort to progress implementation of actions to abate threats to species and ecological communities. Otherwise, the intent and objectives of the legislation will not be met. The ANAO also considers that the engagement of other stakeholders and relevant parties would be useful to identify the roles and responsibilities of interested parties— especially where actions involve private or State government land.

## Reporting on Threat Abatement Plans

**4.70** Reporting on TAPs has been generally more informative than for recovery plans. The department commented on outcomes in its annual report. ‘Key outcomes achieved in the implementation of threat abatement plans over the year included progress in developing direct control measures for particular invasive species (such as a poisoned bait for feral cats and the development of a vaccine to protect psittacine species against beak and feather disease), or for groups of invasive species (such as trial fencing designs for excluding invasive vertebrates from areas of value, including conservation areas)’.

**4.71** The department also reported on the status of plans noting that ‘as at 30 June 2005 threat abatement plans addressing feral pigs, beak and feather disease, and chytrid fungus were close to completion. A further two plans, one addressing tramp ant species (including imported red fire ant) and one on the impacts of marine debris, are under development’. In the 2005–06 Annual report the department commented that new threat abatement plans went into operation for feral pigs, beak and feather disease and chytrid fungus as well as for managing the impact of tramp ants on Australia’s biodiversity. However, the report did not comment on the status of the plan for managing the impacts of marine debris. This is an area that could be strengthened in future reports so as to provide greater continuity of reporting over successive years.

## 5. Commonwealth Investment in Biodiversity Conservation Actions

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*This Chapter examines the implementation of biodiversity conservation involving threatened species and ecological communities listed under the Environment Protection & Biodiversity Conservation Act 1999. Principally, the chapter focuses on the resource issues and progress in addressing the threats to listed threatened species and threatened ecological communities. The two major programs examined in the chapter are the Natural Heritage Trust and the Biodiversity Hotspots program.*

### Introduction

**5.1** Commonwealth investment in biodiversity conservation targeted at threatened species and ecological communities is primarily funded through the Natural Heritage Trust and the Biodiversity Hotspots Program. The majority of recovery efforts nationally are managed by State and Territory agencies often with federal financial assistance. The chapter focuses on these materially significant programs.

### Biodiversity conservation and the Natural Heritage Trust

**5.2** The Natural Heritage Trust (NHT) was established by the Australian Government in 1997 to help restore and conserve Australia's environment and natural resources. The NHT invests in activities that aim to 'conserve, repair and replenish Australia's natural capital infrastructure'. The first phase of the NHT was designed to provide financial assistance to individuals, groups and all levels of government to address issues of land and water degradation and biodiversity decline.

**5.3** In May 2001, the Australian Government extended the Trust until 2008 with \$1.3 billion 'in recognition of the continued major natural resource management challenges facing the country'. 'Conserving biodiversity' was recognised as one of the three key themes. 'Protecting and restoring the habitat of threatened species, threatened ecological communities and migratory birds' was identified as one of the ten priority areas for action.

**5.4** The NHT is the primary source of Commonwealth investment funding to assist threatened species and ecological communities. Consultations with State, regional and local bodies, during the course of the audit, highlighted its critical importance in providing resources for both the development of

recovery plans and for their implementation at the national, State or regional level.

**5.5** Activities under the NHT are undertaken at national, regional and local levels. This report focuses on the two components which accounted for 93 per cent of funding allocations in 2004–05 (that is, the national and regional components). Within these components the ANAO examined the elements relevant to the conservation of threatened species or threatened ecological communities. State government and non-government organisations consulted during the course of the audit indicated that the NHT funding was critical to the achievement of conservation outcomes relevant to threatened species and threatened ecological communities and there was little alternative funding for implementing recovery planning.

### **Alignment of the EPBC Act and the Natural Heritage Trust**

**5.6** The second reading speech for the Act identified the complementary link between the NHT and the Act in addressing the conservation of Australia’s biodiversity. In addition, in 2001 Ministers made a commitment to have all jurisdictions incorporate the recovery of threatened species and ecological communities into integrated catchment/regional management plans by 2005.<sup>105</sup>

**5.7** In practice, an alignment of the *Environment Protection and Biodiversity Conservation Act 1999* with the NHT could assist in the achievement of the objectives of the Act. Without a direct link between the Act and the program it is difficult to demonstrate that the NHT has focused on the most nationally important conservation needs first.

### **NHT at the national level**

**5.8** Actions at the national level attract the second largest component of NHT investment (41 per cent in 2004–05). At this level the NHT supports government projects that will have a national or broad scale outcome including projects carried out by State and Territory governments and themes that cross State, Territory and regional boundaries. These projects are the principal source of funds for some departmental activities. The department has reported that project funding includes some funding to cover administrative costs including salaries.

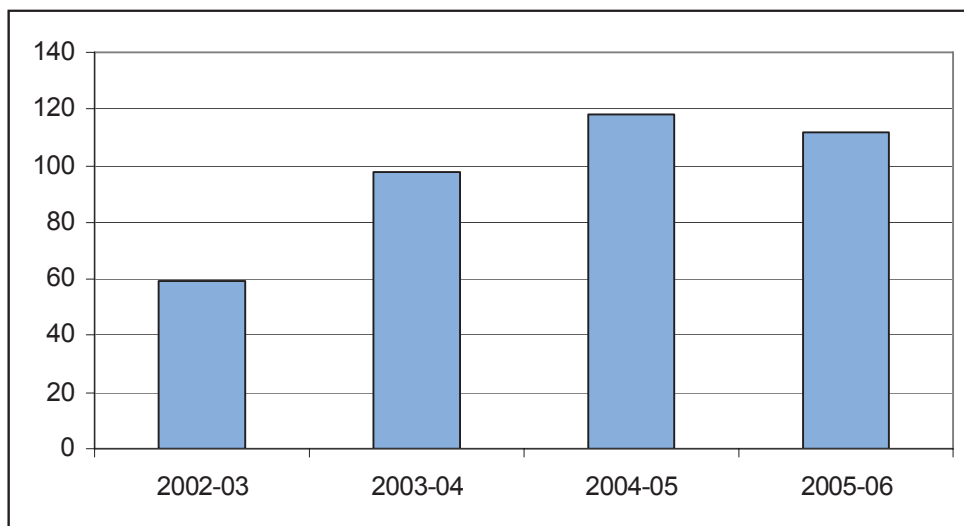
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<sup>105</sup> Department of the Environment and Water Resources (2001) National Objectives and Targets for Biodiversity Conservation 2001–05.

**5.9** A total of \$386.3 million has been spent on the national investment stream to date with between 12-17 per cent being spent directly on threatened species each year. The total expenditure for the national investment stream is set out in Table 5.1. Programs such as the National Reserve System are funded under the National Investment Stream of the Trust and have implications for threatened species and ecological communities. However, they were not included in the scope of the audit.

**Figure 5.1**

**National Investment Stream (\$million over five years from 2002–03)**



Source: Department of the Environment and Water Resources

**5.10** The national investment stream supports the Threatened Species Network, a community based program of the Natural Heritage Trust and World Wide Fund for Nature (WWF) Australia. The network comprises a team of people who support projects that enable all Australians to be involved in hands-on conservation. The network’s projects are funded through the Natural Heritage Trust’s Threatened Species Network Community Grants Program.

**5.11** The NHT Annual report indicates that the network’s activities during 2004-05 ‘benefited over 260 species and ecological communities listed under the *Environment Protection and Biodiversity Conservation Act 1999*. This included developing 35 new projects that were funded under the grants program. The network also provided advice on threatened species to over 70 advisory panels, recovery teams, and assessment panels. In addition, the network has been able to survey 144 492 hectares and conserve 122 116 hectares through

habitat management such as fencing, revegetation, translocation and weed and predator control’.

**5.12** In 2004–05 the Australian Government announced a further three years of funding for the Threatened Species Network and its community grants program, totalling over \$4.5 million. Other components of the National investment stream relevant to threatened species included:

- an effective eradication response to introduced marine pests;
- three recovery plans covering Humpback whales, Southern Right whales and a combined plan for Blue, Fin and Sei Whales;
- two pilot projects for regional recovery plans covering 100 nationally listed threatened species (including implementation of recovery actions for over 40 threatened species); and
- a gap analysis of current conservation efforts nationally to identify listed threatened species and ecological communities for which recovery plans exist, but that are not currently addressed through recovery or threat abatement activities.

**5.13** While there is evidence to suggest that the National Investment Stream (NIS) is both important and very relevant to the achievement of biodiversity conservation outcomes specified in the NHT, it is not yet possible to assess the extent to which this component has made a substantial difference in regard to program objectives. With the information systems employed to assess the performance (financial and management) of investments under NIS, it is not practical to measure the extent to which NIS investments contribute to the achievement of NHT objectives and outcomes. This is due to the lack of standard, meaningful and quantified monitoring and evaluation system for NIS investments and associated performance management systems at both the project and investment stream levels.<sup>106</sup>

**5.14** The evaluation recommended that such a system be introduced by June 2006. The department has agreed to this recommendation and has recognised the need to further strengthen monitoring and evaluation of the NAP/NHT successor programs currently being designed. Considerable effort is currently underway to review gaps in the current monitoring, evaluation and reporting framework, overcoming constraints and impediments to timely and

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<sup>106</sup> ITS Global (2006) Evaluation of the National Investment Stream of the Natural Heritage Trust of Australia, Final Report.

appropriate reporting, and assessing the potential for harmonisation of activities required for reporting at national, State, regional and local government levels.

**5.15** A further issue raised in the evaluation was the use of NHT resources for departmental running cost purposes. The report expressed concern that eighteen staff members were employed in the department on 'routine and ongoing responsibilities such as providing advice to the Threatened Species Scientific Committee Secretariat and providing assistance to landholders in interpretation of the EPBC Act'. However, the use of NHT funds for departmental purposes was a decision by Ministers. The ANAO notes that such decisions are consistent with the legal provisions of the *Natural Heritage Trust of Australia Act 1997* in so far as funding can be allocated for 'purposes incidental or ancillary' to any of the primary purposes of the Act such as environmental protection or natural resource management.<sup>107</sup>

**5.16** The department has sought supplementary funding four times since the introduction of the Act but these were not agreed to by government. Some minor reallocations of other departmental resources were made during this time to accommodate other resourcing requirements. In 2005 the department sought to develop a cost recovery regime but this was also not agreed to by government and the department was directed to reallocate resources from other areas within the department. However, these measures have not been sufficient to address the performance shortfall in this area.

**5.17** NHT funding has provided supplementation to meet at least some of the key requirements. However, as noted from earlier chapters this is still insufficient to meet the department's obligations under the EPBC Act. Consequently, important Government commitments such as having recovery plans in place for all critically endangered and endangered species by 2004 were not met.

**5.18** The ANAO recognises that resourcing decisions of this type are the responsibility of Ministers. It is the responsibility of the department to advise Ministers of the options and the risks associated with these options. The department has done this and the matter will be subject to further consideration in the next Budget.

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<sup>107</sup> Section 8 of the *Natural Heritage Trust of Australia Act 1997*.

## NHT at the regional level

**5.19** Actions at the regional level attract the largest component of Natural Heritage Trust investment (52 per cent in 2004–05). A key focus of the second phase of the NHT has been integrated investment based on regional delivery model. At the regional level, 55 of 56 regions<sup>108</sup> across Australia have now developed integrated natural resource management plans and investment strategies. The plans identify priorities for funding under both the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality.<sup>109</sup>

**5.20** Due to the integrated nature of regional delivery, many investments identified as having a focus on a particular natural resource (for example water, soil or biodiversity) will also address other issues. Projects may have multiple outcomes, for example, a revegetation project may lower water tables to mitigate dryland salinity while also establishing, enhancing and protecting habitat for threatened species. This makes it difficult to precisely identify and report on investment in one particular area such as biodiversity.

**5.21** Some \$251 million of NHT funds from 2002–03 has been expended on biodiversity conservation with \$78 million of this expenditure on activities where the ‘primary matter for target’<sup>110</sup> was *Significant native species*. The expenditure over time is outlined in Figure 2.1 below.

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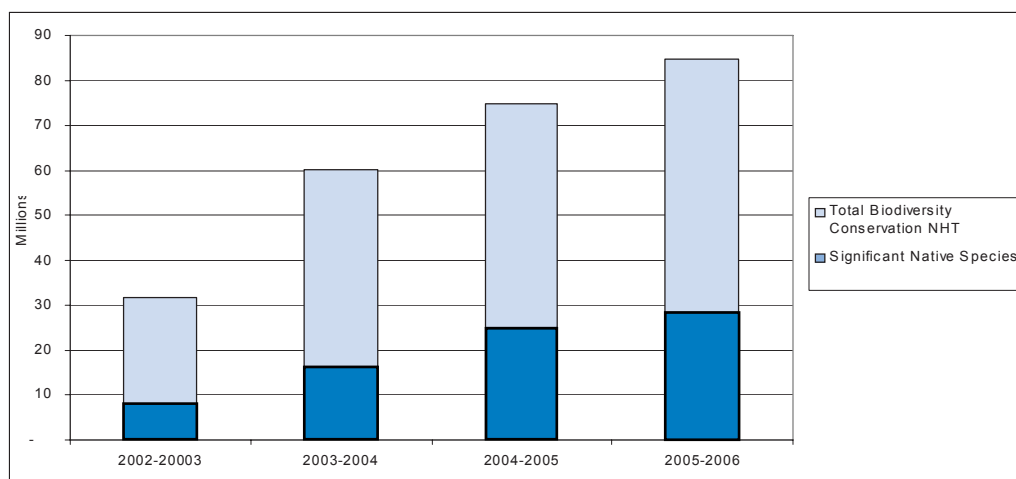
<sup>108</sup> As at 30 June 2006.

<sup>109</sup> The National Action Plan for Salinity and Water Quality (NAP) is a joint commitment of \$1.4 billion over seven years between the Commonwealth State and Territory Governments, for regional solutions to salinity and water quality problems. The NAP is delivered jointly at the regional level with the NHT.

<sup>110</sup> Projects address key matters for targets through identifying long term, resource condition targets (10-20 years) and shorter term or intermediate targets called management action targets (1-5 years).

**Figure 5.2**

**Approved funding for biodiversity conservation within the Natural Heritage Trust 2002–03 to 2005–06**



Source: Department of The Environment and Water Resources

**5.22** Within the NHT expenditure on biodiversity conservation, there was a substantial variation in funding between regions. The highest funded regions were the South West region in Western Australia (\$11.3 million) and the Northern Rivers region, NSW (\$11.25 million).<sup>111</sup> The lowest funded regions were Kangaroo Island (\$1.95 million) and Lower Murray/Darling (\$1.9 million). The South West region in Western Australia in particular is part of a recognised world biodiversity hotspot with significant biodiversity and species under threat. <sup>112</sup> Case Study 4 illustrates a major cross regional investment project, the Southeastern Red-Tailed Black Cockatoo.

<sup>111</sup> This includes estimated expenditure for 2006–07 and 2007–08 as well as actual data from the four earlier years.

<sup>112</sup> the department has indicated that regions such as the South West and the Lower Murray/Darling receive significant NAP funding to address land management and rehabilitation activities addressing water quality and salinity issues. The NAP investment complements the NHT investment in a region and includes the management and protection of riverine and wetland communities and associated species and so direct and indirect investments in biodiversity conservation and threatened species also occurs through NAP funded activities.



### *Case study 4 the Southeastern Red-Tailed Black Cockatoo*

The Southeastern Red-Tailed Black Cockatoo recovery plan is a good example of cooperative efforts being undertaken by three regions: the Wimmera region (Vic) in partnership with the Glenelg Hopkins region (Vic) and the South East region (SA). This project has been undertaken in conjunction with the implementation of the recovery plan for the endangered Buloke ecological communities. All three regions have specific resource condition and management action targets that are designed to assist in the recovery of the species. \$1.3 million has been allocated from the NHT for habitat mapping and modelling, improved management and rehabilitation of habitat and communication activities. The anticipated output for this project is the protection of 1500 ha of cockatoo habitat by 2008.

**5.23** While investments in some regions offer the potential for promising results, biodiversity has not been a high priority for all regions. For example, issues relating to soils and salinity generally take priority in western NSW catchments.<sup>113</sup> Some of the more recently established regions have been slow to develop biodiversity conservation plans and strategies. In many cases the scientific data and technical support has not been available to assist regions in developing these plans and strategies – particularly in terms of setting regional biodiversity priorities.

**5.24** In Queensland, a review of the program in 2003 highlighted that the NHT program has not operated at a landscape scale and has not been targeting national, State or regional areas for biodiversity conservation.<sup>114</sup> This is particularly important given that under Commonwealth or State legislation, 16 per cent of Queensland's vertebrate, five per cent of butterfly and 13 per cent of plant species are listed as endangered, vulnerable or rare. Two species of marine fish are classified as critically endangered, three are classified as endangered and five are classified as vulnerable. Ten per cent of Queensland's terrestrial regional ecosystems are classified as endangered with a further 22 per cent being of concern.<sup>115</sup> Regional bodies have made further progress and have now completed regional plans (finalised 2004–05) and investment strategies.

**5.25** In recognition of the need for further action in Queensland, the Commonwealth and State governments have developed the 'Biodiversity Back on Track' initiative outlined in Case Study 5 below.

<sup>113</sup> V Read and Associates in association with Bessen Consulting Services (July 2003) Mechanisms for improved Integration of Biodiversity Conservation in Regional NRM Planning, p. 50.

<sup>114</sup> V Read and Associates in association with Bessen Consulting Services (July 2003) op. cit., p. 59.

<sup>115</sup> Environment Protection Agency (Queensland, 2005) 'Back on Track' – A framework for prioritising species conservation and recovery in Queensland.

## Case Study 5 – the Biodiversity Back on Track Program

‘Through the NHT \$176 263 was provided in 2005–06 in financial support to the Queensland Environment Protection Agency to develop guidance and to work directly with natural resource management regional bodies and government agencies to better determine regional species priorities and where to focus investment.<sup>116</sup> The program aims to prioritise species, regardless of their current classification so as to determine the level of management required to conserve and recover native wildlife. The three criteria are:

- Probability of extinction;
- Consequences of extinction (such as whether or not the species is endemic or a keystone species crucial to a particular ecosystem); and
- Potential for successful recovery.

This approach has the potential to improve the capacity of Queensland regions in terms of setting priorities for biodiversity conservation. This is particularly important as the total identified needs in regions are well beyond the resource levels allocated for the NHT. A further \$162 932 has been committed in 2006–07.

**5.26** In most regions, current levels of investment are expected to achieve between 10-20 per cent of high priority targets Australia-wide.<sup>117</sup> While some regional organisations are confident about achieving their targets, most are concerned that current levels of investment will be insufficient to achieve their biodiversity targets.<sup>118</sup> Regions that are already monitoring trends (North East Victoria) continue to detect a decline in high priority biodiversity areas. They have also indicated that funding levels are insufficient to impact on the threats sufficiently to reverse the decline.<sup>119</sup>

**5.27** Regions provide progress reports on an annual basis against key output categories that reflect progress against targets. This information is made available in the annual Regional Programs Summary Report. The primary focus on reporting so far has been on outputs which have a direct link to the management action targets and indicate the progress being made against the relevant target. The targets are used through the planning and investment strategy process to identify projects/activities and the outputs to achieve the targets.

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<sup>116</sup> Biodiversity Back on Track in Action, Guidance to determine species priorities and improve conservation management

<sup>117</sup> Griffin NRM Pty Ltd and URS Australia Ltd (January 2006) Biodiversity Conservation in Regional Natural Resource Management; An Evaluation of the Biodiversity Outcomes of Regional Investment; Overview Report p. 40.

<sup>118</sup> A key challenge for regions in southern Australia to meet biodiversity targets is the impact of the current drought. The Department has indicated the projects under the NHT have been adjusted to allow works to continue that are not affected by the drought or that will help mitigate the affects or improve recovery following the drought. However, some good works have been damaged during the drought.

<sup>119</sup> op cit., January 2006.

**5.28** However, as at June 2005 few regions were able to report on substantive progress against resource condition targets (that is, major anticipated outcomes such as the condition of 30 priority areas of remnant vegetation within threatened ecosystems, vegetation associations and important wetlands improved by 2010). Some regions have yet to establish clearly defined resource condition targets (that is, specific, time bound and measurable). At this stage reporting on progress of the longer term targets is problematic. There is ongoing work between the Australian and State Governments and regions to address this issue.

**5.29** The primary focus on reporting so far has been on outputs. For biodiversity conservation, some of the key measures are set out in Table 5.1 below.

**Table 5.1**

**Examples of key regional investment outputs from the Natural Heritage Trust to June 2005**

Regional investment Outputs	Total to June 2005
Number of recovery plans	137
Area (hectares) of habitat management	1.4 million (including some investment from the NAP)
Area (hectares) protected by fencing specifically for significant species/ecological community protection	11,560 (including some investment from the NAP)

Source: Department of the Environment and Water Resources;

**5.30** The challenge for the final evaluation of the NHT will be to demonstrate that appropriate investment priorities have been set to achieve the most critically important biodiversity conservation needs first.

**5.31** A further issue in regard to the regional component and the NHT is the alignment with the processes associated with the *Environment Protection and Biodiversity Conservation Act 1999*. The department has stated that ‘the Australian Government strongly encourages regions to incorporate national priorities including the implementation of recovery plans in their investment strategies’. Some regional bodies such as the Murray Catchment in Victoria use threatened ecological communities derived from the EPBC Act and other areas of national environmental significance. However, other regional bodies use State threatened species lists, while others are struggling to reconcile regional priorities with State and national conservation targets and recovery actions.

There is no requirement for alignment as the focus of the NHT has been on devolving responsibility to the regions consistent with their accredited plans and investment strategies. The department has indicated that investment of program funds is more likely in regional programs if there is alignment with national priorities.

**5.32** The NHT is a crucial resource for implementing recovery plans and actions designed to conserve threatened species. The evaluation of *Biodiversity Outcomes of Regional Investment* report<sup>120</sup> identified positive investment attributes for the regional investment model for biodiversity conservation – particularly in matters such as increasing community commitment and the engagement of key stakeholders.<sup>121</sup>

**5.33** However, currently, it is not clear to what extent the regional approach will contribute to the overall biodiversity outcomes anticipated for the NHT. Progress has been slow particularly in regions that have only recently been established. The level of resource allocation is well below that required to meet the identified needs of the regions for biodiversity conservation. Where initiatives have been well targeted there may be long lead times before any certainty as to success of recovery efforts. In addition, significant threats such as drought have actively worked against efforts in some regions to measure and achieve conservation results. Some regions have also had difficulty in establishing targets and priorities for effective biodiversity conservation.

**5.34** Better identification of national biodiversity conservation priorities in regional plans and investment strategies would improve the process. Monitoring the success (or otherwise) of recovery planning implementation would also provide valuable lessons learned and assist those regions looking to build on the successes of the leading regions. It is currently not possible to comment on the success or otherwise of recovery planning implementation overall as there is insufficient data at this time to gain any meaningful results. The ANAO considers that while there are inevitably long lead times for results in this area, a focus on intermediate outcomes for actions designed to address threatened species and ecological communities should be a priority in the design of future NHT programs.

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<sup>120</sup> (Griffin NRM Pty Ltd and URS Australia Ltd, January 2006 op cit.)

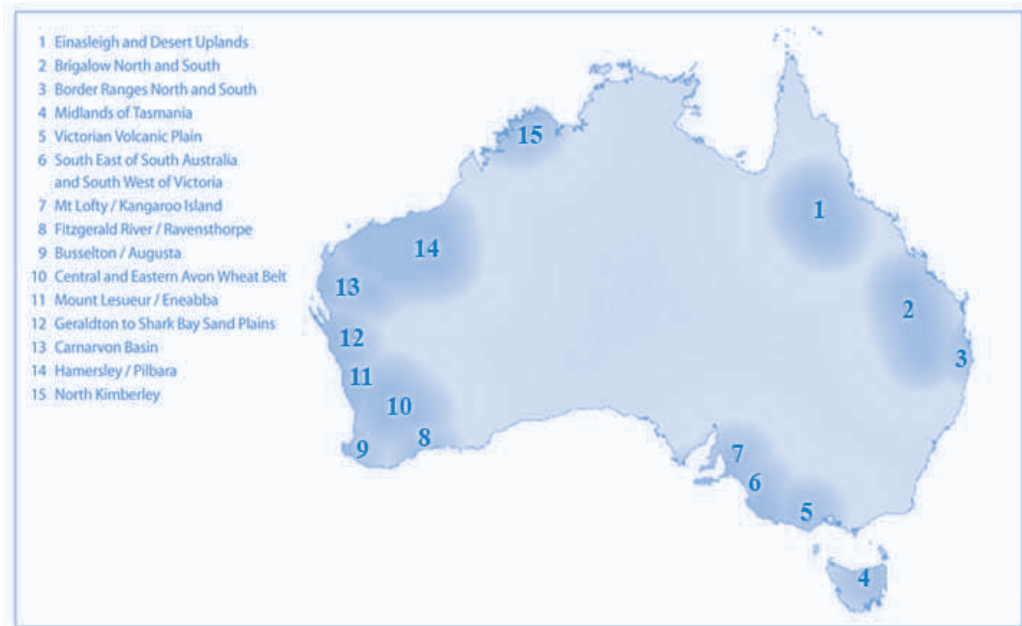
<sup>121</sup> The Evaluation of Biodiversity Outcomes of Regional Investment report (Griffin NRM Pty Ltd and URS Australia Ltd, January 2006) identified positive investment attributes for the regional investment model for biodiversity conservation – particularly in matters such as increasing community commitment and the engagement of key stakeholders.

## The Biodiversity Hotspots Program

**5.35** The \$36 million Biodiversity Hotspots program was announced by the Prime Minister in August 2004. \$36 million was committed over four years to conserve Australia's biodiversity hotspots. The program was designed to address areas that were rich in biodiversity and under immediate threat.<sup>122</sup>

**5.36** Australia's 15 national biodiversity hotspots were announced in October 2003 after work by the Australian Government's Threatened Species Scientific Committee to identify the priority areas.<sup>123</sup> The areas identified are set out in the map below (Figure 5.3). The edges of the hotspots were made deliberately 'fuzzy' in recognition of the scientific uncertainties and the nature of regions based on the ebb and flow of animals and plants in response to different seasons and natural resource conditions.

**Figure 5.3 Biodiversity Hotspot regions**



Source: Department of The Environment & Water Resources

**5.37** The program aimed to protect biodiversity values in hotspots by providing incentives to landholders and assisting conservation groups to purchase land to be managed for conservation.

<sup>122</sup> The department Annual Report 2003–04 p. 40.

<sup>123</sup> \$50 000 was provided to the Committee through the Natural Heritage Trust.

**5.38** The Biodiversity Hotspots Program has run for three financial years; 2003–04 to 2005–06 and was planned to run over four financial years, ending in June 2007. The 2003–04 first tranche funding of \$6 million was provided as a one-off allocation. It was announced by the Prime Minister to fund two specific activities proposed by former Senator Meg Lees – the Mount Lofty initiative and the purchase of a North Queensland property (Brooklyn Holding was purchased after the sale of the originally agreed property – Wharps Holding – fell through). The second tranche of \$30 million for the Hotspots program was approved to run for three financial years 2004–05 to 2006–07.

**5.39** Table 5.2 outlines the original appropriations and the actual expenditure as at 30 June 2006.

**Table 5.2**

**Biodiversity Hotspots Program expenditure as at 30 June 2006**

Year	Original Appropriation	Expenses Administered	Expenses Departmental
2003–04	6	4.50	-
2004–05	10	1.67	0.5
2005–06	10	4.57	0.5
2006–07	10	-	0.5 (est)
<b>Total</b>	<b>36.00</b>	<b>10.74</b>	<b>1.50</b>

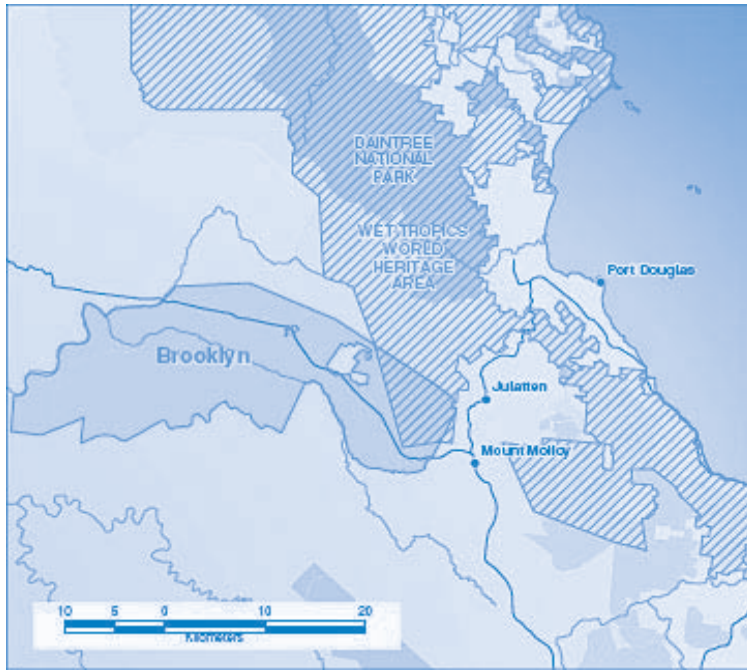
Source: Department of the Environment and Water Resources (The program has been re-phased to 30 June 2008 to take account of the underspends and the return of funds from one property acquisition)

**The program’s implementation**

**5.40** To date the initiatives funded under the program have been:

- \$4.5 million to purchase Brooklyn Station, a property in far north Queensland (2004);
- \$2 million to purchase Ellenbrae Station in Western Australia (2004 but the sale did not proceed);
- \$1.5 million to establish stewardship agreements with private landholders in the eastern Mount Lofty Ranges in South Australia (2004–06); and
- \$6 million to the Australian Rainforest Foundation in 2004 for land acquisitions (\$5 million in the Daintree region) and Cassowary conservation works (\$1 million in the Cairns to Cardwell region).

## Brooklyn Station, North Queensland



Source: Newsletter of the Australian Wildlife Conservancy, October 2004

**5.41** The Brooklyn Station purchase was a land acquisition to be conducted and subsequently managed by the Australian Wildlife Conservancy (AWC) a private conservation organisation. It is a diverse property of 60 000 hectares supporting more than 290 bird species. However, it is located outside any identified biodiversity hotspot. Some 5 000 hectares of the property are included in the Wet Tropics World Heritage Area. The property is reported to contain 40 per cent of all Australian bird species and 30 per cent of all Australian mammal species. 45 of the species on the property are listed as threatened with extinction.<sup>124</sup>

**5.42** In June 2004, the AWC wrote to the then Minister for the Environment, informing him that negotiations for a separate acquisition (Wharps Holding) had fallen through and presented Brooklyn Station as an alternative option. The department reviewed the environmental values and recommended the purchase on the merits of the proposal. The Minister agreed on 2 July 2004. The AWC has publicly announced that the property will have legal protection in perpetuity under a conservation agreement with the Queensland Government and that it has established an active management program.

<sup>124</sup> Newsletter of the Australian Wildlife Conservancy, October 2004 p. 4.

### *Ellenbrae Station*

**5.43** In August 2004, a \$2 million purchase was proposed by the AWC for Ellenbrae Station in Western Australia. The then Senator Meg Lees concurrently wrote to the Environment Minister suggesting a \$10 million package that included Ellenbrae. On 31 August 2004, the Minister approved the purchase of Ellenbrae Station and a funding agreement was entered into with AWC. The agreement included a clause that purchase had to be complete by 31 August 2005. This condition was not met and a process to recover the funds was commenced. Funds were returned with interest in 2005–06 and reapplied to the program budget from 2006–07.

### *Stewardship agreements for landholders within the Mt Lofty Ranges*

**5.44** The stewardship agreements for landholders within the Mt Lofty Ranges was part of the original program design and was announced by the Prime Minister in his media release of 20 August 2004. The Prime Minister agreed to provide funding for the region in response to a proposal from Senator Lees. The actions aimed to protect grassy woodland communities which are among the most threatened ecosystems in Australia. The region corresponds with an identified biodiversity hotspot.

**5.45** Once the region was selected, the boundaries used in establishing the target area for the delivery of the stewardship project were documented and were based on the advice of a technical committee that included local expertise. The department commented that the process used the best available information on biodiversity values and landholder/property characteristics for the region.

**5.46** The decision to fund the Mt Lofty Ranges project also preceded the development of formal guidelines for wider stewardship elements of the program across Australia. While progress has been slow, the early details from the competitive bidding process indicated a number of positive achievements. In particular, from a pool of 50 interested landholders, the initiative resulted in 33 bids being submitted and 19 of these bids being successful with 1,456 hectares being included in the conservation initiative.

**5.47** The price differential per hectare between successful and unsuccessful bids was of the order of 80 per cent lower for the successful bids—a strong indication of value for money. However, as yet there is no data on the extent of conservation for listed threatened species or to what extent the initiative will result in long term conservation on private land after funding has ceased.



*Land acquisitions and incentives in the Daintree Region and Cassowary conservation in North Queensland*

5.48 In 2004, a grant was made to the Australian Rainforest Foundation (ARF). The ARF was allocated a grant of \$5 million for land acquisitions, covenants and landowner incentives in the Daintree region of North Queensland and a grant of \$1 million for conservation of the Cassowary (a listed threatened species) in the Cairns to Cardwell region. This commitment also preceded the development of formal guidelines for wider stewardship elements of the program across Australia.

Cassowary conservation

5.49 While the Wet Tropics region has high levels of endemic species, the region was not an identified Biodiversity Hotspot. There was also no opportunity extended to other organisations or regions for similar projects of merit. Although the \$1 million funding for Cassowary conservation was made without any Departmental brief or consideration of the merits of the proposal by the department, the then Minister documented his reasons for the decision in his press release of 27 August 2004. He commented that:

Of the \$6 million from the Biodiversity Hotspots program, \$1 million will be specifically invested to continue vital conservation works that ensure the future of a Wet Tropics Icon – the cassowary. [The Minister also commented that] ...the ARF is in an ideal position to provide considerable flexibility and innovation in its approach and its ability to attract private sector funds for land conservation, including offering tax incentives. It has an established track record in the Daintree and is actively engaged in a number of initiatives with major private sector corporations to conserve land in this important environment.

5.50 While the National Recovery Team was not consulted prior to the funding decision, the National Recovery Plan for the Southern Cassowary contains a priority action 'to encourage the retention and protection of cassowary habitat on private land'.<sup>125</sup> This priority is important as the primary cause of the species decline in the wet tropics is habitat loss and fragmentation, with over 80 per cent of the wet tropical coastal lowlands having been cleared. While responsibility was vested in the Queensland Parks & Wildlife Service, rather than the ARF, the actions in the contract are consistent with the broad intent of the recovery plan.

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<sup>125</sup> Recovery plan for the southern cassowary *Casuarus casuarinus johnsonii* 2001–05 p. 12.

## Daintree region covenanting and stewardship

**5.51** The Commonwealth, through the ARF, has supported purchasing high conservation value land in the Daintree for resale with a conservation covenant attached – that is, maintaining private ownership through a revolving land fund. As at December 2006, the ARF had purchased 14 high conservation value properties for \$3.772 million. For one of these purchases, a conservation covenant had been applied and resold by the ARF.

**5.52** Since the original agreement between the Commonwealth and ARF, an Alternative Planning Scheme (APS) for the Daintree came into force, placing a development ban on 58 per cent of freehold lots. This scheme was supported by the State government. In addition, the State provided a \$10 million package to compensate landowners for the development changes. Delay in the introduction of the APS has significantly restricted the ARF's ability to invest Commonwealth funds in land suitable for re-sale and meet the milestones and objectives of the agreement with the Commonwealth. To overcome this, the ARF is currently seeking national interest in a sponsorship program for properties in its portfolio. The ARF is exploring whether high conservation value blocks can be protected under a conservation agreement and offered to philanthropic organisation/individuals or sponsored by philanthropic interests with a dedication to the National Park Estate in the future.

## **Stewardship payments and acquisitions in other regions**

**5.53** The current arrangements for the Biodiversity Hotspots program provide stewardship payments and financial support to land-holders to help them protect existing natural habitats with high conservation values. In addition, funds will be provided for the voluntary acquisition of land. \$21 million in funding has been allocated for these arrangements. The payments will provide support to those land managers that have already made a commitment to maintaining the biodiversity values of their properties. Investments were to be determined on the basis of a competitive tender process to deliver the specified biodiversity outcomes.

**5.54** This part of the Biodiversity Hotspots program has had little progress, largely because of the delay over how the program was to be delivered. The initial guidelines included a stewardship component to be delivered through a competitive tender process. This was approved by the Prime Minister on 14 August 2004, prior to the last election. In February 2005, the tender process for an agent to deliver the program nationally was 'put on hold' pending consideration of an alternative arrangement. In September 2005, the then

Minister considered other options for delivery including the replacement of the tender-based stewardship component with a grant program delivered by the department directly to landowners.

**5.55** After nearly two years, the Minister announced the program guidelines on 9 June 2006. The guidelines are consistent with the original design of the program. However, the guidelines refer to areas with intact well-represented areas and areas with high numbers of endemic species rather than necessarily to sites within the 15 identified biodiversity hotspots. In other words the program could result in projects being funded outside of the 15 identified priority areas. The ANAO considers that care will be needed to ensure that the Government's objectives currently in place for the program are met in a cost effective manner. Funding for sites outside original 'Hotspots' regions would need to be rationalised and the reasons would need to be appropriately documented – especially if lower priority sites or projects are selected.

## 6. Referrals and Assessments

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*This Chapter examines the management of the referral process and assessments for actions that may or are likely to have a significant impact on threatened species or ecological communities.*

### Introduction

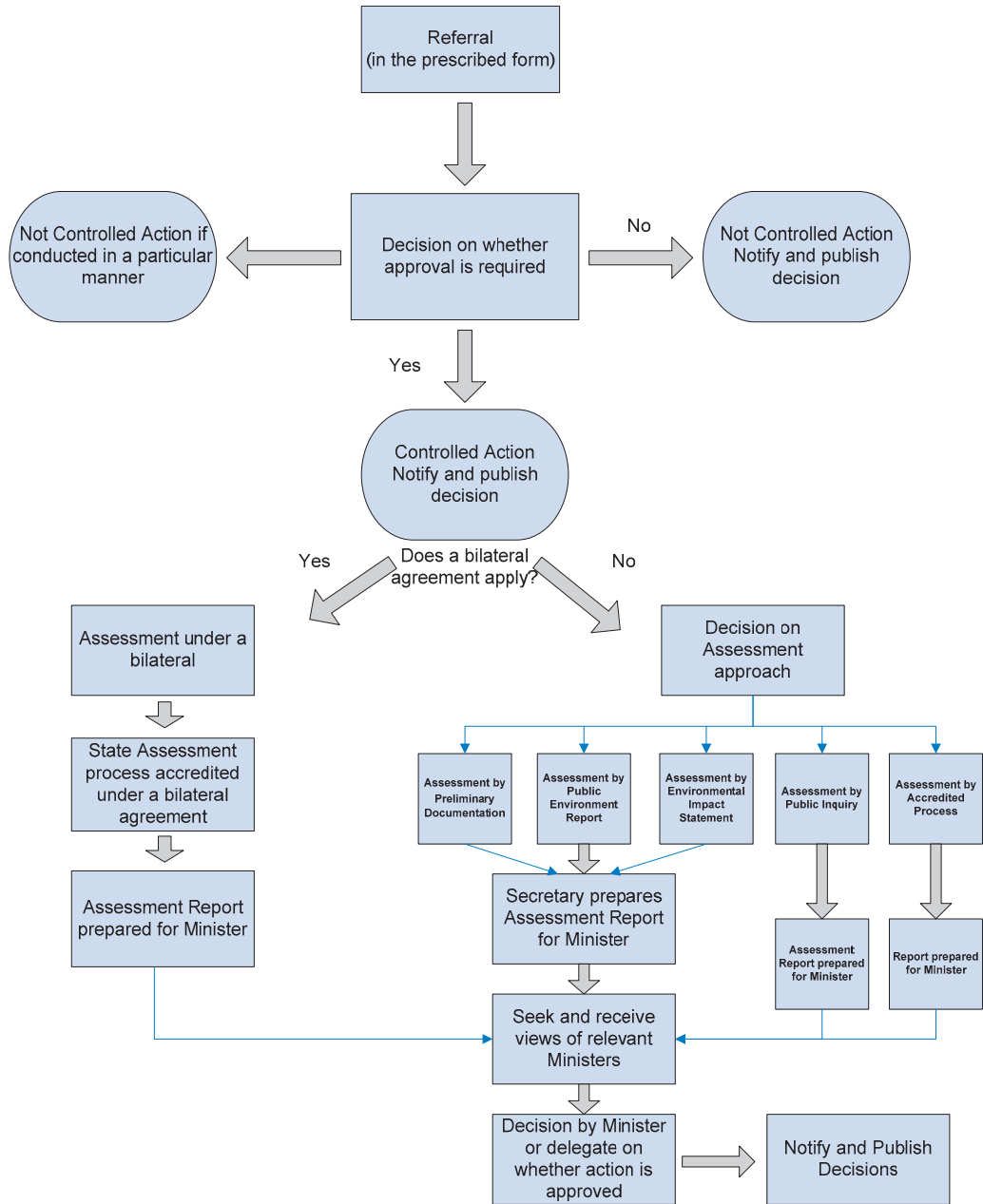
**6.1** Chapter 4 of the Act provides for the referral and assessment of actions that are likely to have a significant impact on matters of national environmental significance. A referral is the first decision point in the assessment process. The decision on referrals determines whether the proposed action triggers the Act and consequently whether or not the Australian Government has the power to regulate the action.

**6.2** In some cases, an action does not require assessment and approval if it is undertaken in a manner that will ensure any potential significant impacts are avoided or reduced to the extent that they will not be significant – that is, the action will be taken in a 'particular manner'. The 'particular manner' conditions are documented in the Environment Minister's decision.

**6.3** If the action requires approval, it will be designated a 'controlled action' and is assessed in terms of its likely environmental impact. Figure 6.1 outlines the process.

**Figure 6.1**

**The process for referrals, assessments and decisions**



Source: Department of The Environment and Water Resources

**6.4** There are seven matters of national environmental significance outlined in the Act. These are:

- Listed threatened species and ecological communities;
- World heritage properties;
- National heritage places;
- Wetlands of international significance;
- Listed migratory species;
- The environment in Commonwealth marine areas; and
- The environment in relation to nuclear actions (including uranium mining).

**6.5** The Act places the onus on the proponent (that is, the person with an action that is likely to have an impact on one or more of the matters above) to 'refer' the action to the Australian Government for consideration. The audit focused on the first matter of national environmental significance, threatened species and ecological communities. This category was responsible for the largest number of referrals made and consequently was the major trigger for the provisions of the Act. In 2005–06 the threatened species and ecological communities category accounted for 43 per cent of decisions made by the Minister or his delegate.<sup>126</sup>

## **Progress in ensuring that all appropriate referrals are being made**

**6.6** The assumption underpinning the compliance and enforcement model is that the regulated community will voluntarily comply with legislation if they are provided with the relevant information and assistance. Therefore, it is critically important that there is sufficient dissemination and promotion of the requirements of the legislation. Audit Report No.38 2002–03 *Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999*, noted the challenges in ensuring that all appropriate referrals were being made since the Act came into force. In particular, relatively few referrals were being made from industries such as agriculture.

**6.7** Figure 6.2 highlights the changes in referrals, controlled actions and related matters since the commencement of the Act. There has been a slight

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<sup>126</sup> This included both particular manner decisions and controlled actions.

upward trend in referrals since 2000–01. However, referrals classified as ‘not a controlled action’ have remained high over the six year period; accounting for over half of all decisions in some years. While a number of potential proponents are provided with an assurance that their actions will not trigger the Act if they are classified as ‘not a controlled action,’ this can be a significant impost on these applicants and a drain on departmental resources.<sup>127</sup> This is because referrals involve no charge on proponents and the department has to carry the cost of assessing the proposed action. It is an important area to consider in the light of current Government priorities to streamline government regulations following the release of the report from the Task Force on reducing the regulatory burden on business.<sup>128</sup>

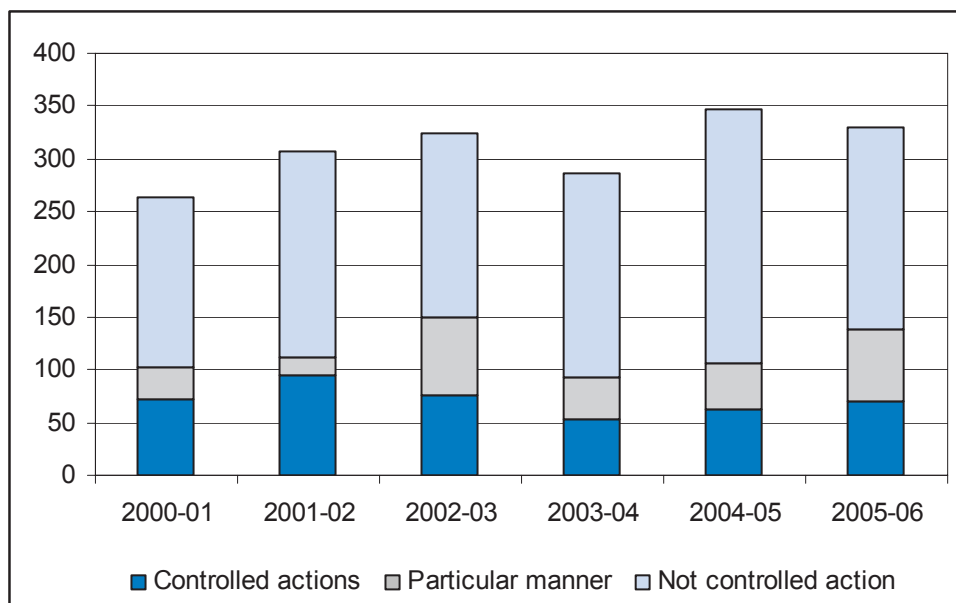
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<sup>127</sup> If proponents are formally assessed as a ‘non-controlled action’ it does provide immunity against third party injunctions. Nevertheless, the cost of assessing unnecessary referrals remains an issue. It is Government policy for regulatory activity to be conducted on a cost recovery basis. The Department sought agreement for this from Ministers in 2005 but this was not supported.

<sup>128</sup> (15 August 2006), Government response to the Task Force on Reducing the Regulatory Burden on Business.

**Figure 6.2**

**Decisions on Referred actions and their classification under the EPBC Act**

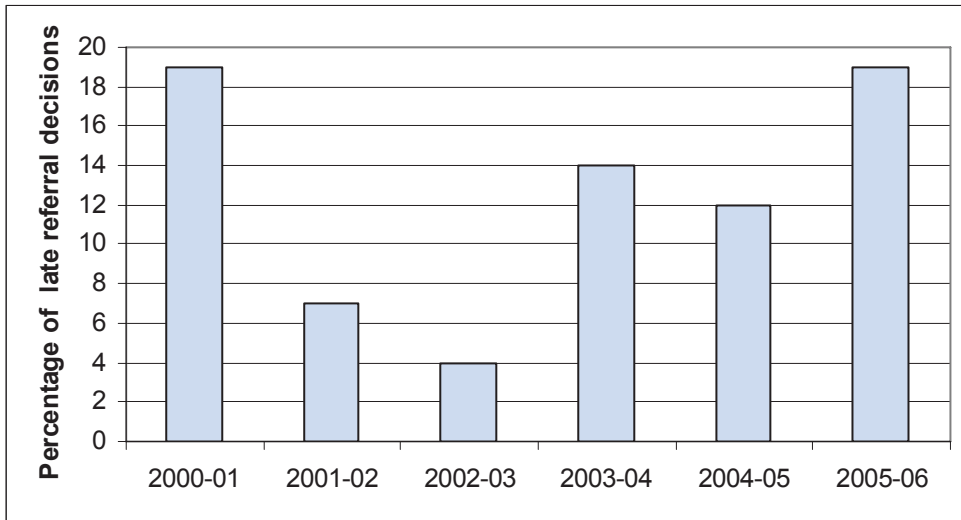


Source: Department of the Environment and Water Resources

### Compliance with time frames

6.8 The Act states that the Minister (or his delegate) needs to make a decision on a referred action within 20 business days. Audit Report No.38 in 2002-03 highlighted that the timeliness of decision-making under the Act was 'generally in accordance with the timeframes required'. Where the timeframes were not met, the reasons were documented and reported. However, since that time compliance with statutory timeframes has significantly deteriorated. This is illustrated in the following graph (Figure 6.3).



**Figure 6.3****Percentage of referral decisions made outside statutory timeframes**

Source: Department of the Environment and Water Resources

**6.9** From a 96 per cent compliance rate in 2002–03, the number of decisions made within the timeframe declined to 81 per cent in 2005–06. In addition, in the same period, the average business days late for a decision increased from 1.9 to 2.4 days.

**6.10** The ANAO considers that this decline is a trend that could have significant impacts for proponents seeking to carry out actions, particularly if the referral is not a controlled action. The department has indicated that the reasons for the deterioration in compliance with timeframes were the increased complexity of actions referred and the lack of precise data on whether the referred action will impact on a matter of national environmental significance. There is work in progress within the department to address this data deficiency and may improve compliance with timeframes in the future.

## Communication and promotion of the Act

**6.11** Since the ANAO audit in 2002–03 which recommended improved guidance for potential proponents, there has been progress in terms of improving general as well as industry specific policy guidance. There are now:

- significant impact guidelines which provide overarching guidance on whether an action requires approval under the EPBC Act as well as

significant impact guidelines for Commonwealth agencies or actions impacting on Commonwealth land;

- industry guidelines which provide specific guidance have been completed for offshore seismic operations and offshore aquaculture. Guidelines for wind farms, agriculture, urban development and local government are in preparation;
- nationally threatened species and ecological communities guidelines which provide guidance on specific threatened species (such as the Tiger Quoll and the Tasmanian Devil) and ecological communities (such as the bluegrass ecological community); and
- Practice Guides which provide guidance on the application of specific provisions of the Act such as particular manner decisions.

**6.12** In relation to ANAO recommendations concerning attempts to circumvent the Act (such as by submitted staged referrals where each part falls below the national significance threshold), the department has tightened the guidelines and specifically referred to the scope of referrals. The guidelines note that:

...proposed actions should be considered at the broadest possible scope. This included all stages and components of the action, all related activities, and all related infrastructure such as roads and powerlines if applicable. If the action consists of a series of activities or a number of related activities, you should consider the impacts of each activity and then consider the combined impacts of those activities.<sup>129</sup>

**6.13** There are significant challenges for the department in ensuring that all relevant referrals are made and that matters that do not meet the national environmental significance test are not referred. A consultancy report commissioned by the department into compliance assurance in 2005 found from a sample of nine local governments around Australia that there were 32 potential referrals not made in 2003–04.<sup>130</sup> Extrapolating across the 673 local councils in Australia, this suggests that, in aggregate, there is likely to be a materially significant number of missed referrals each year. It is unlikely that

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<sup>129</sup> EPBC Act Policy Statement 1.1, Significant Impact Guidelines, p. 6.

<sup>130</sup> The ANAO recognises that responsibility for referring an action to the Commonwealth Environment Minister lies with the person proposing to take that action. A local government is only obliged to refer an action that the local government itself proposes to take. It is not responsible for referring the actions of other proponents, even though it may become aware of the nature of such actions through its own approval processes.

all councils would have an equal number of missed referrals, as the department sample was based on those council areas that should have been generating high rates of referrals. However, the ANAO considers that it is likely that the number of referrals should be greater than the 341 made in 2005–06.

**6.14** The consultancy report identified that there was a lack of awareness in relation to the obligations and procedures under the Act, particularly at local government officer level. The report also commented that the Compliance Assurance Pilot Project commissioned by the department, also highlighted this problem. The report commented that:

The EPBC Act is difficult to administer, as there is a general lack of awareness of the obligations under the legislation and when understood, the trigger for referral (significant impact on a matter of NES) is not necessarily clear cut. There is quite a varied level of understanding of the requirements under the EPBC Act. It cannot be said that there is a good understanding in local government. If this is the case for professional officers, it is likely to be far worse for private proponents. ...Even where a good understanding of the EPBC Act provisions exists, there is a legitimate un<sup>131</sup>certainty about when a proposal ought to be referred.<sup>132</sup>

**6.15** The promotion of the objectives and requirements of the Act is essential given that the emphasis is placed on the person carrying out an action to lodge a referral. This is particularly important as there is no longer an EPBC educational unit responsible for promoting understanding and awareness of the Act. The department is now largely reliant on its website to inform potential proponents.

**6.16** The lack of a compliance and enforcement presence by the department was also commented on by State and regional stakeholders during the audit process. While the department has been building a strong presence in regional Australia through the regional natural resource management framework, this has not extended to the regulatory functions of the Act.<sup>133</sup>

**6.17** The department is currently conducting a strategic review and analysis of referrals (or their absence) in key regions of Australia. This includes the

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<sup>131</sup> The service provider for this service has decided to discontinue the function and at the time of the audit, the department had not obtained the services of an alternative provider.

<sup>132</sup> Environment Protection and Biodiversity Conservation Act 1999 – the Compliance Assurance Pilot Project; QELA Conference 2006, 'Making it Better', p. 5.

<sup>133</sup> There was no interest from the regions consulted during the course of the audit in taking on this regulatory function.

world-scale priority biodiversity hotspot in the south west of Western Australia, as well as in the national priority areas of North Queensland and the Victorian coastal zone west of Geelong. All these regions have high population and growth pressures as well as significant biodiversity conservation priorities. A key consideration emerging from this work will be how to lift the profile of the department and the provisions of the Act in these regions.

**6.18** It is also relevant that State and regional bodies have commented to the ANAO that some of the smaller local authorities in high growth regions have limited professional or technical resources and have been struggling to meet local and State planning requirements. This means that they have limited capacity to assist proponents with their EPBC Act obligations. Commonwealth EPBC requirements. However, funding provided through the Natural Heritage Trust (NHT) in Western Australia has assisted local councils in mapping important biodiversity habitats and the distribution of listed species. This is an important pilot initiative that provides an illustration of how the Commonwealth in cooperation with the States, can constructively engage with local councils in priority regions. It may also be appropriate for the Commonwealth to consider formal agreements with key local authorities in cooperation with the States to facilitate a stronger local presence for the EPBC Act in regional Australia.

## Referrals from the agriculture and forestry sector

**6.19** Since 2002–03<sup>134</sup>, referrals from the rural sector have continued to be low. Referrals from the agriculture sector were 2.8 per cent of total referrals, or 46 out of 1 630 referrals to June 2006. The number of referrals from forestry is likely to be low because of exemptions made under the Act. Similarly, the Act provides for exemptions for lawful continuation of land use which impacts on agricultural activities. The department has commented that it has appointed an EPBC Information Officer to the National Farmer’s Federation to better inform the rural sector. This has been an important initiative by the department because ‘clearance of native vegetation is the single most significant threat to terrestrial biodiversity’.<sup>135</sup>

**6.20** A recent report from the New South Wales Auditor-General suggests significant problems with illegal land clearing. The report highlighted that

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<sup>134</sup> The date when the ANAO last conducted an audit into the referrals and assessments process.

<sup>135</sup> Australian State of the Environment Committee, State of the Environment Report 2001, p. 73.

30,000 hectares of native vegetation were ‘illegally’ cleared in 2005.<sup>136</sup> This was classified as ‘illegal’ under NSW State, rather than federal legislation. However, given the number of listed threatened species and ecological communities in these areas, it is likely that some of this illegal clearing could have been in breach of the EPBC Act. In particular, the ‘White Box-Yellow Box-Blakely’s Red Gum Grassy Woodlands and Derived Native Grasslands’ are listed under the Act as a critically endangered ecological community with 93 per cent being cleared in NSW and 92 per cent being cleared nationally. In the IBRA<sup>137</sup> region based around Walgett NSW, (part of a region identified as having a high level of illegal land clearing), there are eight endangered and 35 vulnerable species. Table 6.1 outlines the estimated illegal clearing rate by region from the NSW Auditor-General’s report.

**Table 6.1**

**Estimated illegal clearing by region within NSW in 2005**

Region	Estimated illegal clearing (Hectares)
North Coast	460
Hunter	1 450
South Coast	630
Central West	17 160
Far West	6 810
Barwon	2 270
Murray/Murrumbidgee	910
<b>Total</b>	<b>30 000</b>

Source: NSW Department of Natural Resources, June 2006 (Cited in NSW Auditor-General’s Report on Regulating the Clearing of Native Vegetation; July 2006)

**6.21** The NSW Auditor-General’s report highlighted that the NSW Department of Natural Resources had not as yet, achieved any significant increase in cooperation or compliance from farmers. However, the report notes

<sup>136</sup> Clearing of native vegetation results in the spread of dryland salinity, soil loss and erosion, deterioration of water quality, adds to the greenhouse effect, lowers productivity, and facilitates the establishment of weeds and other exotic species. Clearing for agriculture, is the single greatest threat to Australian woodland birds. For every 100 hectares of southern woodland cleared an estimated 1 000–2 000 birds die as well as many other organisms. (Birds Australia with financial support from the Natural Heritage Trust; The State of Australia’s Birds, 2005).

<sup>137</sup> The Interim Biogeographic Regionalisation for Australia (Thackway & Cresswell 1995, Environment Australia 2000) categorizes the Australian continent into regions of like geology, landform, vegetation, fauna and climate. There are 80 such regions throughout Australia.

that farmers remained concerned that State legislation may affect their future ability to manage their land and earn an income.

**6.22** Illegal land clearing concerns have been documented across Australia – not just in NSW. The Productivity Commission inquiry into the *Impacts of Native Vegetation and Biodiversity Regulations (2004)* quoted a Queensland study that identified 61,000 hectares of potential illegal clearing in that State. A further 3,000 hectares of illegal land clearing were reported from Western Australia since July 2001. In South Australia the reported cases of alleged illegal land clearing fluctuated between 120 and 152 per annum.<sup>138</sup> The Productivity Commission commented that:

Where cases of illegal clearing have been reported, the rate of prosecution has generally been low across all jurisdictions. Where prosecution has resulted in conviction, the size of the penalty has been less than the maximum permitted.

**6.23** This highlights the challenge for the department in addressing land clearing as a key threatening process and suggests that federal and State governments' may need stronger awareness raising and enforcement actions to achieve national outcomes. At a minimum a well designed communication and education program is essential and this needs to be backed up by monitoring and effective compliance and enforcement actions.

**6.24** At the national level, the department has provided an out-posted officer on secondment to the National Farmers Federation since 2002–03. The out-posted officer provides a range of services such as advice on aspects of the Act, assistance with referrals, guides facts sheets, information and training to relevant stakeholders. This is an important initiative to promote the Act to potential proponents. Some 92 presentations (involving 1,380 farmers from 920 farm businesses) have been conducted since 2002. This represents contact with approximately one per cent of the target audience.<sup>139</sup> Despite the considerable efforts being made, the current resource allocation is insufficient to fully engage all relevant rural and regional stakeholders throughout Australia – especially in the absence of the EPBC Unit which previously undertook much of the work in this area.

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<sup>138</sup> Productivity Commission Inquiry Report No.29, 8 April 2004, *Impacts of Native Vegetation and Biodiversity Regulations*; p. 106.

<sup>139</sup> As at 30 June 2004 there were about 130 500 establishments undertaking agricultural activity in Australia. Approximately 336 700 people were employed in agriculture in 2005. Australian Bureau of Statistics Year Book Australia (2006) p. 408.

## Key issues in referrals

**6.25** The ANAO recognises that there are significant challenges involved in administering a complex Act that relies largely on self-regulation - that is, the onus of compliance rests with individuals and organisations in terms of whether or not their activities have, or are likely to have, a significant impact on a matter of national environmental significance. While the department has taken steps to improve guidelines for the promotion of required referrals under the Act, the evidence from a number of sources discussed in this chapter suggests that these efforts have not been sufficient to reasonably improve awareness and facilitate the number of referrals that could have reasonably been expected.

**6.26** In some sectors the numbers of referrals appear very low, while at the same time there a large number of referrals being made from other sectors that are unnecessary because they clearly do not impact on a matter of national environmental significance.<sup>140</sup> There is a need to improve the profile of compliance with the Act – particularly in regions with significant threats to listed species and ecological communities. A comprehensive program of promotion and awareness raising is needed to lift the profile of compliance with the Act and to discourage unnecessary referrals. While there are a range of means to address this matter, one option to improve communication of the Act could include formal agreements with state and/or local government bodies to promote the legislation in the interest of preserving regional and local (nationally listed) threatened species and ecological communities.

**6.27** If administrative steps are not taken to improve performance in this area, it is unlikely that the projects that are required to be referred to the Minister under the Act will be referred. The ANAO recognises that such an approach is likely to involve additional resources and would need to be considered within the context of existing departmental priorities and future budget demands.

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<sup>140</sup> the department has commented that not all not controlled action decisions are unnecessary referrals. Some government agencies and large companies routinely refer as a risk treatment and to ensure legal certainty.

## Recommendation No.7

**6.28** The ANAO *recommends* that the Department of the Environment and Water Resources encourage all required referrals under the *Environment Protection and Biodiversity Conservation Act 1999* by:

- (a) focusing renewed efforts and resources on promoting compliance with the Act in priority regions of Australia;
- (b) building strong compliance partnerships with key local governments (in cooperation with State agencies) in high priority regions of Australia to ensure where practicable, that matters of national environmental significance are considered earlier in the planning process; and
- (c) considering the scope for providing assistance, through programs such as the Natural Heritage Trust, to additional key local governments in high priority regions of Australia to enable mapping and documentation of listed threatened species, ecological communities and critical habitat.

*Department of the Environment and Water Resources response*

**6.29** Agreed.

## Assessment of controlled actions

**6.30** Once the Minister (or delegate) has decided that a referral is a controlled action, the action must be assessed. Assessments can take a number of forms such as an environmental impact statement, a public inquiry or an assessment based on preliminary documentation.<sup>141</sup> Assessments can take between a few months and a number of years to complete depending on the complexity of the issues and the amount of information available.

**6.31** There is a widening gap emerging between the number of controlled actions and the number of assessments completed. Over the past six years, in each year the number of assessments completed has been significantly less than the number of referrals required to be assessed. Figure 6.4 illustrates this widening gap.

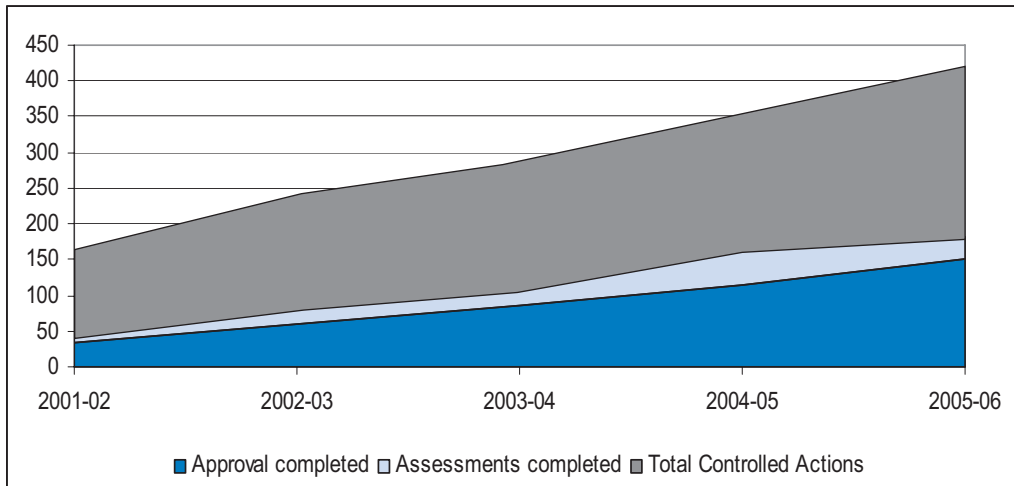
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<sup>141</sup> Preliminary documentation is an assessment based primarily on documentation provided during the referral process.



**Figure 6.4**

**The widening gap between total controlled actions received and assessments and approvals completed.**



Source: Department of the Environment and Water Resources

**6.32** These delays have increased the amount of time taken to complete an assessment. If these delays are seen to be excessive by potential proponents, there is a disincentive for proponents to refer actions to the Commonwealth. The department has indicated that delays have been largely driven by the time it takes to obtain information from proponents. While the recent amendments to the Act are likely to streamline and improve the efficiency of the processes, the department will need to closely monitor the compliance with statutory timeframes and adjust resource allocations if delays continue.

## 7. Compliance and Enforcement

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*This chapter examines the design and implementation of the compliance and enforcement framework for the Environment Protection and Biodiversity Conservation Act 1999.*

### Introduction

**7.1** Compliance and enforcement are crucial to the effective operation of legislation. A compliance and enforcement framework should be designed to assist in achieving the objectives of legislation in a cost effective manner. Activity should encompass a range of actions from information dissemination and education through to monitoring likely or potential areas of risk, auditing conditions of approvals and ultimately, legal action, if necessary, to ensure that the provisions and integrity of the legislation are upheld.

**7.2** Audit Report No 38 2002–03, Referrals, Assessments and Approvals under the *Environment Protection and Biodiversity Conservation Act 1999* noted that education and awareness raising had been a priority measure for the department in the lead up to the commencement of the Act and over the first two years of its operations.<sup>142</sup> While the department’s plan for monitoring of actions was well underway, implementation was at an early stage. The department did not have information on the number of approved actions that had been commenced or that had been completed.

**7.3** Particular manner actions (ie those that were not a controlled action if conducted in a particular manner, thereby avoiding the environmental assessment process), were not subject to any formal monitoring or audit. Consequently, the department at that time was not in a position to know whether the actions undertaken by proponents were consistent with the conditions of approval. At that early stage, no legal action had been taken by the department in response to identified potential breaches of the Act.

**7.4** The ANAO made a recommendation to strengthen monitoring and review arrangements through measures such as requiring proponents to advise The department of the progress of relevant approved actions, considering an accreditation scheme and/or delegations for Commonwealth agencies, tracking of activities post approval and providing advice to

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<sup>142</sup> Audit Report No.38 2002–03, Referrals, Assessments and Approvals under the *Environment Protection and Biodiversity Conservation Act 1999* p. 21.

proponents on their continuing obligations for projects classified as ‘particular manner’. In order to enforce the provisions of the Act, the ANAO also recommended that the department finalise as soon as practicable the compliance and enforcement procedures and guidelines, ensure that there were timely and effective responses to all potential breaches of the Act, and include, in the guidance to Commonwealth agencies, appropriate advice in regard to contractors and their obligations to comply with the provisions of the Act. These recommendations were agreed to by the department.

7.5 The ANAO examined compliance with the requirements of the Act prior to introduction of amendments to the Act in December 2006. A number of requirements have changed subsequent to the amendments. The implications are discussed in the relevant sections of the Chapter.<sup>143</sup>

## Compliance and enforcement policy and implementation strategy

7.6 Subsequent to the ANAO audit in 2002–03 the department introduced a new Compliance and Enforcement Policy in August 2004. The policy sets out the broad framework for compliance and enforcement action. The objectives of the department’s compliance and enforcement policy are that compliance and enforcement activities and arrangements:

- help achieve the objectives of legislation and of management plans;
- maximise compliance with legislation;
- enhance the community’s capacity to protect the environment and heritage and conserve biodiversity; and
- are generally accepted as appropriate by stakeholders and the wider community.<sup>144</sup>

7.7 To implement the policy, the department has developed a Compliance and Enforcement Strategy.<sup>145</sup> The model used by the department has been to implement a range of measures that allows for a flexible and responsive approach to achieving legislative compliance.<sup>146</sup> The model has been based on

<sup>143</sup> See Appendix 1 for a comparison of the old and new requirements under the Act.

<sup>144</sup> Department of the Environment & Heritage (August, 2004), Compliance and Enforcement Policy.

<sup>145</sup> The first strategy was introduced in 2002 and the second in 2006 following recommendations arising out of the 2004 Departmental Audit of Compliance and Enforcement.

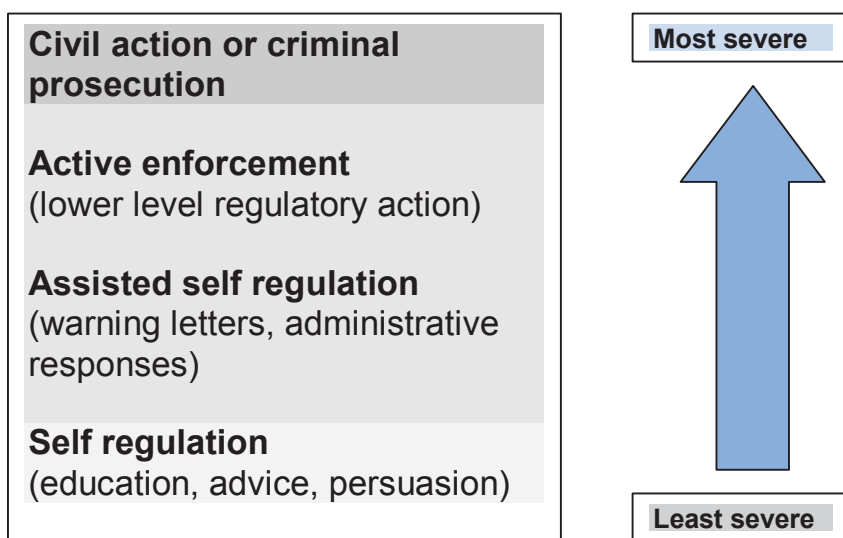
<sup>146</sup> Department of the Environment & Heritage (January, 2006), Compliance and Enforcement Strategy.

the Heads of Commonwealth Operational Law Enforcement Agencies Committee recommendation to encourage compliance by ‘making full use of all available and appropriate means.’

7.8 The model assumes that most of the regulated community will voluntarily comply with legislation if they are provided with the relevant information and assistance. It therefore promotes self-compliance, with an emphasis on education and cooperative assistance for those at the lowest level of risk. For members of the community who do not voluntarily comply, there is an escalating range of measures to civil action and criminal prosecution at the top of the risk hierarchy. This is illustrated below in Figure 7.1.

**Figure 7.1**

**Department of The Environment and Water Resources compliance and enforcement hierarchy**



Source: Department of The Environment and Water Resources Compliance & Enforcement Strategy

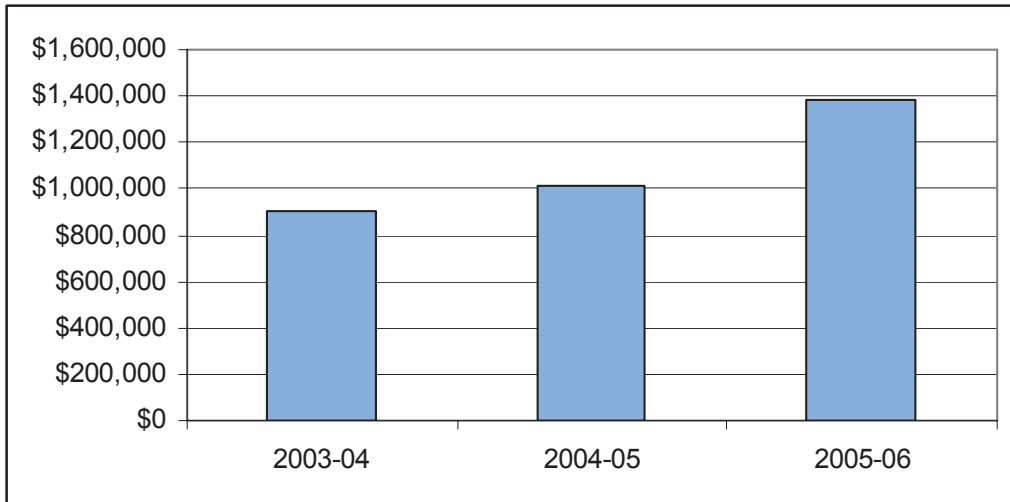
7.9 As identified in Chapter 5<sup>147</sup> since the introduction of the Act, administration has been funded from within existing departmental resources with supplementation from the Natural Heritage Trust (NHT). \$5.45 million was redistributed from elsewhere in the department in 2005–06 and some \$8.5 million is projected for 2006–07. From zero in 2000–01, the NHT provided \$8.5 million in 2005–06. This is projected to decrease to \$7.8 in 2006–07.

<sup>147</sup> See paragraphs 5.15, 5.16, 5.18.

**7.10** The compliance and enforcement function which is supplemented from the NHT, has steadily increased in resources since the 2002–03 audit by the ANAO. This is illustrated below in Figure 7.2.

**Figure 7.2**

**Expenditure on compliance and enforcement (\$m)**



Source: Department of the Environment and Water Resources

**7.11** A key function for the Compliance and Audit Section will be the implementation of the Auditing Strategy which was finalised in June 2006. From the inception of the Act to 30 June 2006, 424 controlled actions have been determined involving 152 approval decisions. In addition, there have been 281 decisions involving a non-controlled action if carried out in a particular manner. Monitoring and testing of compliance with the conditions attached to particular manner decisions and approvals are important administrative controls and essential if the department is to measure and report on results from the operation of the Act. The department has indicated that improvements to internal procedures relating to approvals and condition setting are also an outcome of the audit program.

## Compliance with terms and conditions

**7.12** Following an agreed ANAO recommendation from the 2002–03 audit report, the department introduced strengthened management and reporting requirements for actions not requiring a decision if carried out in a particular manner. There is now a requirement for proponents to commit to and report on actions deemed to be 'not a controlled action if carried out in a particular

manner'. All particular manner decisions now involve a standard notification letter to proponents with a proponent now required to 'notify the department immediately if the proposal cannot be undertaken in accordance with the required measures.' Proponents are advised that penalty provisions may apply if the referred proposal is not undertaken in accordance with these measures. Proponents are also advised that implementation of the specified manner may be audited by the department at a future date.

**7.13** The department procedures also require a 'risk assessment' matrix to be completed for all 'not controlled action - particular manner' decisions and controlled actions. For those identified as high risk, a copy of the matrix is provided to the Compliance and Audit Section. The Compliance and Audit Section can then include these higher risk decisions into their audit program, as relevant. This is a well designed framework to manage conditions in this area of administration. However, as yet the department does not have sufficient information to know whether particular manner decisions are generally met or not. There is no follow up on the requirements and no effective management of information coming in from proponents. The department has advised that this will be addressed within the context of the compliance and enforcement framework which is currently being implemented. This is clearly a high priority area for attention as there is little point having a strong operational design if monitoring actions are not being (fully) implemented.

**7.14** In terms of conditions on controlled actions, there has been no comprehensive examination as to whether or not terms and conditions are being met. Consequently the department is not well positioned to know how effective the Act has been in meeting its objectives and whether or not the conditions that are being placed on approvals are efficient and effective. This gives an unfair advantage to proponents who breach conditions. It also creates the perception that the department is not seriously enforcing its own legislation. This is particularly important as the Act contains 86 criminal and 17 civil penalty provisions and is the Commonwealth's primary means of protecting matters of national environmental significance.

**7.15** Nevertheless, the department has, to date, conducted a small number of audits on a voluntary basis with proponents to ascertain whether or not conditions have been met. This involved nine audits including four out of 152 controlled actions – 2.63 per cent, four out of 281 'particular manner' decisions – 1.4 per cent and one involving trade in wildlife which is not within the scope of this audit.

**7.16** Table 7.1 outlines the results of eight separate audits conducted by the department on compliance with conditions (the audits). The audits were voluntary, that is they were conducted with the agreement of the proponent.

**Table 7.1**

**Voluntary audits conducted by the Department of The Environment and Water Resources (2003–04 and 2004–05)**

Voluntary audits	Non-compliant actions	Partial compliance actions	Compliant actions
<i>Non-controlled action if carried out in a particular manner</i>			
1. Seismic survey	1	2	5
2. Seismic survey	-	1	5
3. Seismic survey	-	3	4
4. Seismic survey	-	6	12
<i>Controlled action</i>			
5. Wind farm	3	-	10
6. Recreation facility	3	-	4
7. New commercial development	-	5	3
8. Mining operation	2	7	3
<b>Total</b>	<b>9 (12 %)</b>	<b>24 (30 %)</b>	<b>46 (58 %)</b>

Source: ANAO analysis based on voluntary audit reports to the Department of The Environment and Water Resources (Actions includes separate parts or subdivisions of conditions).

**7.17** The audits were a very small sample of compliance actions with decisions and may not necessarily provide a good representation of the results across all sectors. Nevertheless, they at least provide an indication of how a small number of proponents are meeting conditions or otherwise. The evidence from the audits indicates that generally, most conditions (88 per cent) are met or partially met by proponents. It is noted however, that a portion, 12 per cent of actions, were non-compliant with the original approval. The level of compliance with particular manner conditions is higher overall than for controlled actions.

**7.18** There are a number of important issues that have emerged from the audits of conditions. First, the absence of documentation in some cases suggests that the department needs to provide supplementary guidance to proponents as to what is a minimum standard of documentation to

substantiate evidence of compliance. The ANAO considers that verbal assurances alone are not adequate to demonstrate compliance with conditions.

**7.19** According to the audits, most areas identified as partial compliance or non-compliance were not likely to have a serious impact on a matter of national environmental significance. They were more a question of timing of actions or minor procedural points of non-compliance. However, in some cases, (such as the impact of a wind farm on the orange-bellied parrot and other listed species) there could have been an impact on a critically endangered species.<sup>148</sup> In any case, administrative conditions imposed under the Act are not negotiable. They are all meant to be fully undertaken and addressed as they are part of a legally binding, statutory decision. This should be an important priority for attention in the implementation of the department's compliance and enforcement strategy.

**7.20** Equally, it is critical that the lessons learned from the audits are disseminated across the teams engaged in developing conditions for future particular manner decisions and controlled actions. As noted in ANAO audit report 38 from 2002–03:

Limiting the EIA (environmental impact assessment) process to assessed, as opposed to actual impacts, imposes a fundamental constraint on achieving its basic objective, namely environmental protection. All project decisions are made in the face of uncertainty, contingent upon forecasts and predictions made in EIA. Yet all predictions of future events are inexact at best, and uncertainty increases in relation to our lack of knowledge concerning project impacts and/or particular environmental systems. Lack of adequate monitoring and follow-up perpetuates this situation.<sup>149</sup>

**7.21** The above quotation emphasises the important link between obtaining actual results (such as from audits) and the achievement of the outcomes for the legislation.

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<sup>148</sup> After 14 months of operation, the project is reported to have resulted in the deaths of twenty birds (including a listed wedge-tailed eagle) and eleven bats. A further two wedge-tailed eagles have subsequently been killed. This raises the issue of the adequacy of conditions and the critical importance of the department having the information from their audit program to influence the quality of future decisions.

<sup>149</sup> Sadler, B 1996 *International Study of the Effectiveness of Environmental Assessment: Final Report*, p. 15.



## Recommendation No.8

**7.22** The ANAO *recommends* that the Department of the Environment and Water Resources further strengthen compliance with the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* by:

- (a) auditing a representative sample of decisions with conditions (including both particular manner and controlled actions) each year;
- (b) advising proponents of the minimum requirements for documenting actions undertaken in relation to conditions; and
- (c) consolidating the results of the audits and disseminating them to all relevant officers in the department and including them in the department's annual report to Parliament on the operation of the *Environmental Protection and Biodiversity Conservation Act 1999*.

*Department of the Environment and Water Resources response*

**7.23** Agreed.

## Incidents, investigations and legal actions

**7.24** In any effective compliance and enforcement regime, an agency should have a clear strategy for managing incidents, investigations and legal actions. Coercive actions such as seeking legal remedies through civil or criminal penalties are not actions to be taken lightly and can involve considerable financial costs and loss of credibility if unsuccessful. However, a failure to properly and transparently investigate significant areas of non-compliance can leave the department open to accusations that it is not seriously enforcing its own legislation or that it has been influenced by parties with vested interests.

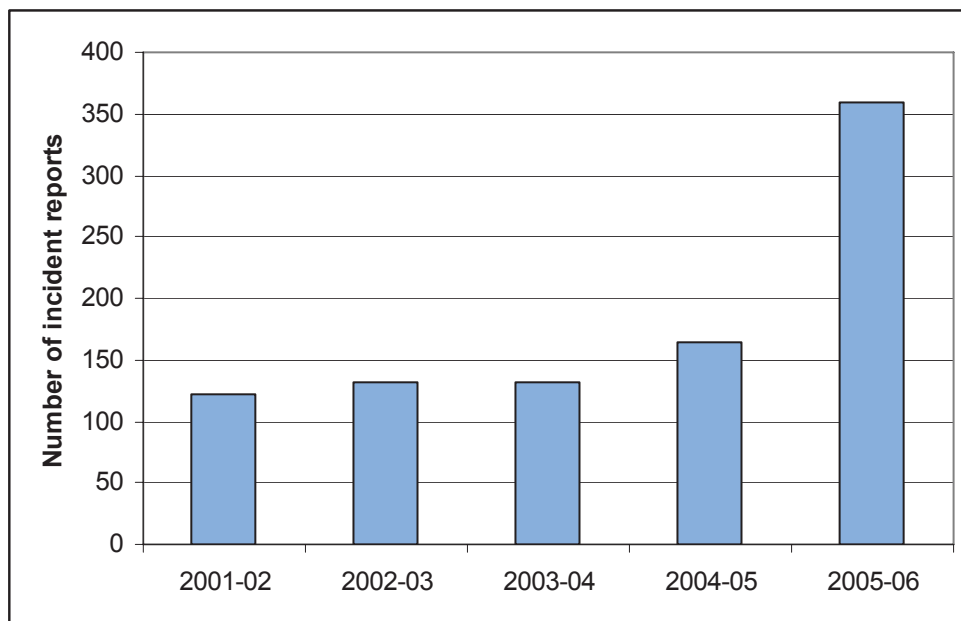
**7.25** Audit report 38 from 2002–03 found the department's capacity to manage incidents, investigations and legal actions was at an early stage of development. The department had acknowledged the challenges facing its compliance and enforcement function and the quality of its compliance plans was variable and the compliance, enforcement and auditing functions had been under-resourced. The department indicated it 'was developing a better compliance framework that reflected the high priority set by Parliament'. Additional resources had been committed in the forward estimates towards compliance and enforcement functions.

**7.26** Since the 2002–03 ANAO audit, the number of reported incidents (that is, reports of matters or actions that may be in breach of the Act) has increased

significantly and is now more than double those reported in 2002–03. This is illustrated below in Figure 7.3.

**Figure 7.3**

**Incident reports in relation to potential breaches of the Environment Protection & Biodiversity Conservation Act 1999**



Source: Department of the Environment and Water Resources

**7.27** The department was initially slow to fully implement a compliance and enforcement function. The Environment Investigations Unit only completed its first full year of operation in 2004–05 even though the formation of the unit was a priority for the department’s delivery of enforcement functions from July 2000. Nevertheless, the unit has recruited specialist investigators and hosts out-posted officers from the Australian Federal Police and Australian Customs Service.<sup>150</sup> However, the increasing workload from incident reports has placed considerable pressure on the department’s resources. This will need to be carefully managed with clear priority setting if the reported increase continues into the future.

**7.28** Since the 2002–03 audit, the department has been involved in 21 legal actions some of which have had an impact on the administration of the Act. In the Gwydir Wetlands case the department successfully prosecuted a breach of

<sup>150</sup> Annual Report Department of the Environment and Water Resources Annual Report 2004–05 p. 86.

the Act and established a legal precedent for future cases. Since the last audit, the ANAO considers that the department has made progress in allocating specific staff and resources to investigating incidents and in some cases pursuing legal action. If the large increase in 2005–06 incident reports becomes an ongoing trend, the department will need to give careful consideration to their priorities and resourcing levels in this area proportional to the level of the increase in workload.

## 8. Key Issues and Priority Actions

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*This Chapter outlines the way forward for the department in addressing audit findings and improving the administration of the Environment and Biodiversity Conservation Act 1999.*

### Introduction

**8.1** Protecting and conserving threatened species and ecological communities has been a significant challenge for the department. Three factors have constrained progress and limited the achievement of the objectives of the Act. These were:

- the scale of the prescribed tasks required by the legislation;
- the technical requirements for assessing, protecting and conserving over a thousand individual species and hundreds of ecological communities; and
- the limited resources allocated to the task.

**8.2** The department has indicated to the ANAO that it has been very aware of its lack of capacity to properly administer the requirements of the Act. Evidence obtained during the course of the audit indicated that Environment Ministers were informed of the difficulties in meeting the statutory obligations under the Act and Ministers had noted the approaches and initiatives that have been taken to better meet the objectives of the Act.

**8.3** To assist in addressing its capacity to administer the requirements of the Act, the department has sought supplementary funding and cost recovery options to increase the resource base for the administration of the Act. However as noted in paragraph 5.17, these options were not agreed to by the government. In the absence of either sufficient budget funding or cost recovery, the department has made incremental reallocations within the Portfolio to give priority to some of the most urgent demands. Financial supplementation (\$18 million from 2003–04 to 2005–06) from the Natural Heritage Trust has also assisted the department in priority areas such as support for the work of the Threatened Species Scientific Committee.

**8.4** In the absence of additional funding to implement new EPBC Act functions, the Department has indicated that it has, ‘increasingly shifted funding into the administration of the Act through a reprioritisation of its activities. In the Financial year 1999–2000 immediately prior to the

commencement of the Act, core environmental assessment and wildlife protection work was carried out in two branches of the department with a combined annual budget of some \$6.8 million. In the current financial year [2006–07] core work covers more than four branches with a combined annual budget of over \$25 million. Although about \$12 million the increase came from the NHT, the rest of the additional funding has come from other areas of the department in recognition of the priority the department has attached to EPBC Act administration.’

**8.5** However, the reallocations made by the department have not been sufficient to address the shortfall in resources in this area. There has been a range of administrative shortcomings in the department’s administration of the legislation – particularly in regard to: excessively slow progress in listing species and ecological communities, inadequate implementation of the compliance and enforcement of conditions of approval under the Act and gaps in the data and documentation to support listing of species transferred from the earlier Act.

**8.6** In circumstances where resources are constrained, departmental strategies for resource allocation to achieve legislative compliance should be well targeted and directed to the priority areas that will achieve the objectives of the legislation. The ANAO considers that the department was slow in the early years of the Act to adjust its strategies to ensure it met its responsibilities to administer the Act. However, more recently, the department has introduced a number of initiatives to improve the administration of the Act. In particular, initiatives include steps to better align the national list with those of the States/Territories and better information systems to support the referrals and assessments process.

**8.7** The protection of threatened species and ecological communities is inadequately monitored and the focus of available funds is not targeted sufficiently to national biodiversity conservation priorities. However, the ANAO notes that without Commonwealth funds through the NHT, many more species and ecological communities would have no actions undertaken to protect and recover them. The threats to biodiversity in Australia remain, and significant efforts are required if the objectives of the Act are to be fully realised.

**8.8** The amendments to the Act may reduce the workload for the department in key areas. For example, there is no longer a requirement for consideration of State and Territory listed ecological communities and the

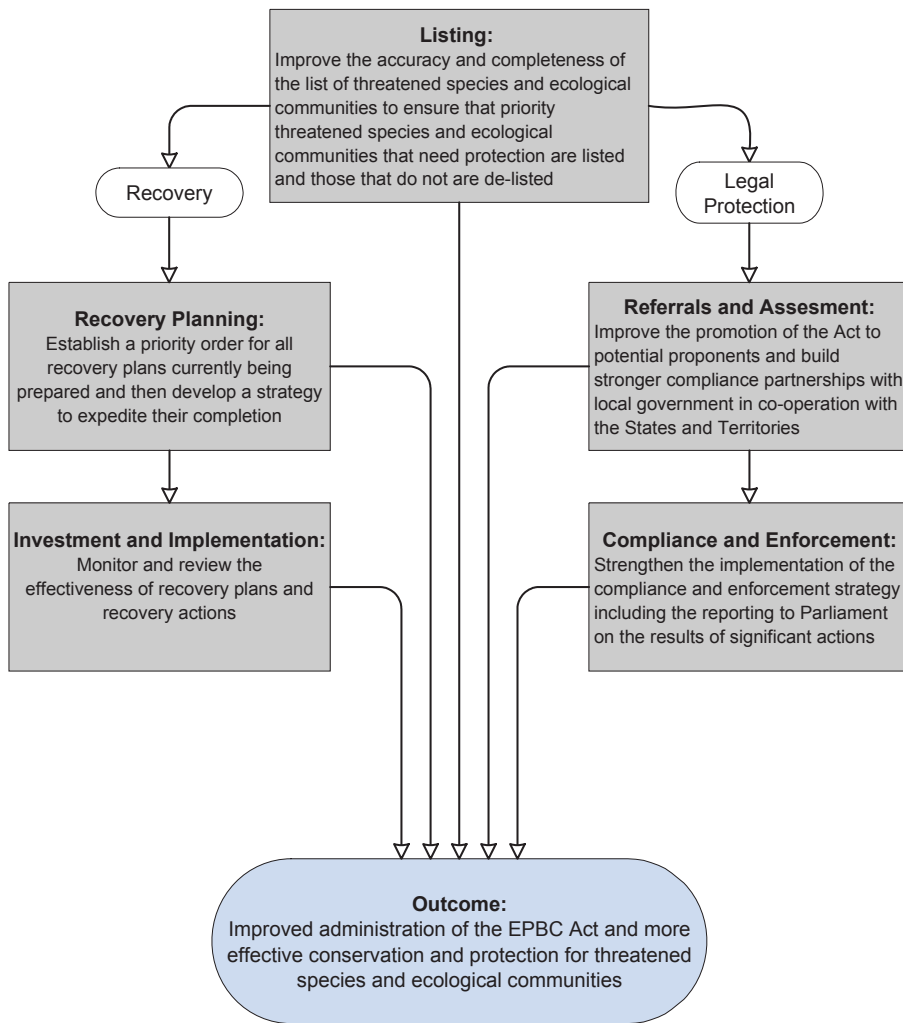
Minister now has the discretion as to whether or not to have a recovery plan for listed threatened species and ecological communities. However, the new requirements for the protection of marine fish species may increase workload pressures in terms of monitoring the effectiveness of recovery targets in management plans.

**8.9** In addition, the amendments to remove the legal requirement for the lists of threatened species and ecological communities to be kept up to date should not preclude the administrative requirement to ensure that the lists are accurate and relevant. Otherwise the objectives of the Act could be put at risk.

## **Future directions**

**8.10** The ANAO has made eight recommendations designed to improve performance by the department of the Environment and Water Resources and to focus attention on key directions for the future. These key directions are largely contingent upon the development of a management strategy that includes the allocation of sufficient resources to responsible areas within the department. The key directions are reflected in figure 8.1 as follows:

**Figure 8.1**  
**Future Directions**



Source: ANAO

Ian McPhee  
Auditor-General

~~the~~ Terra ACT  
29 March 2007





# Appendices



## Appendix 1: December 2006 Amendments to the EPBC Act 1999

Paragraph Number	EPBC Act reference	Old Act	Amended Act
2.7. 3.3	Section 181 to 194	Nominations received throughout the year for threatened species and ecological communities. Once accepted by the Minister, the nomination is forwarded to the TSSC which has 12 months to give the Minister a recommendation on the nomination. The Minister may extend the 12 month period if he believes the TSSC requires more time.	The listing process is now formalised into 12-month assessment periods. Each year the Minister may determine key themes to establish priorities for the forthcoming assessment period. The Minister then invites nominations from the public. The Minister, on advice from the TSSC, determines on a case by case basis the amount of time needed to complete an assessment of a nomination.
2.25	Section 189	The Minister has 90 days to decide on whether a nomination should be listed, after receiving the recommendation from the TSSC.	The Minister has 90 days to make a decision but he can extend this if he requires more time.
2.38	Section 179	A species is eligible to be included in the conservation dependant category at a particular time if, at that time, the species is the focus of a specific conservation program the cessation of which would result in the species becoming vulnerable, endangered or critically endangered.	A species is eligible as conservation dependant as per the old Act or if it meets the following four criteria: <ul style="list-style-type: none"> <li>• The species is a fish</li> <li>• The species is the focus of a plan of management that provides for the management actions necessary to stop the decline of and support the recovery of the species</li> <li>• The plan of management is in force under a law of the commonwealth or of a State or Territory</li> <li>• Cessation of the plan of management would adversely affect the conservation status of the species</li> </ul>
2.42, 2.65	Section 185 (1)	The Minister must take all reasonably practical steps to amend, as necessary:	Section repealed

Paragraph Number	EPBC Act reference	Old Act	Amended Act
		<ul style="list-style-type: none"> <li>• The list of threatened species</li> <li>• The list of threatened ecological communities</li> </ul>	
3.4	Section 185 (2)	The Minister must decide whether to amend the list of threatened ecological communities to include threatened ecological communities in lists kept by a State, or a Territory or the body known as the Australian and New Zealand Environment Conservation Council	Section repealed
3.39	Section 172	The Minister must prepare inventories that identify and state the abundance of the listed threatened species, listed ecological communities, listed migratory species and listed marine species in Commonwealth land areas within 5 years of the commencement of the Act	The Minister <u>may</u> prepare inventories that identify and state the abundance of the listed threatened species, listed ecological communities, listed migratory species and listed marine species in Commonwealth land areas. No timeframes apply.
3.39	Section 173	The Minister must prepare surveys that identify and state the abundance of cetaceans present in Commonwealth marine areas and listed threatened species, listed ecological communities, listed migratory species and listed marine species in Commonwealth marine areas within 10 years after the commencement of the Act	The Minister <u>may</u> prepare surveys that identify and state the abundance of cetaceans present in Commonwealth marine areas and listed threatened species, listed ecological communities, listed migratory species and listed marine species in Commonwealth marine areas. No timeframes apply.
4.2	Section 269 A	The Minister must exercise his or her powers under this section to ensure that there is always in force a recovery plan for each listed threatened species (except one that is extinct or is a conservation dependant species) and each listed threatened ecological community.	The Minister is to ensure that there is approved conservation advice for each listed threatened species (except one that is extinct or a species that is conservation dependant) and each listed threatened ecological community. The Minister now has the discretion to decide which species also require a recovery plan.

Paragraph Number	EPBC Act reference	Old Act	Amended Act
4.13	Section 273	Timeframes on the development of recovery plans for species and ecological communities on Commonwealth land: <ul style="list-style-type: none"> <li>• two years for species or communities categorised as 'critically endangered';</li> <li>• three years for species or communities categorised as 'endangered' or 'extinct in the wild'; and</li> <li>• five years for species or communities categorised as 'vulnerable'.</li> </ul>	Section repealed
7.5	Section 85	A number of options to assess the impacts of a referred action deemed to be a controlled action including assessment by preliminary documentation, public environment report or public inquiry	Inclusion of a new option to assess a referral through the use of information included in the original referral decision..

Source: ANAO and EPBC Act 1999

## Appendix 2: Agency Response



Australian Government

Department of the Environment and Water Resources  
Office of the Secretary

Mr Ian McPhee  
Auditor-General  
Australian National Audit Office  
GPO Box 70  
CANBERRA ACT 2601

Dear Mr McPhee

Thank you for the final copy of the audit report on the Conservation and Protection of National Threatened Species and Ecological Communities.

I appreciate the spirit in which this has been undertaken and the relationship that has developed between your Office and my Department. I believe that this positive relationship has assisted you to identify recommendations that will, in turn, help my Department's management of these important national issues in the future.

The Department recognises that the timing of the audit created difficulties for your Office as amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (the Act) were considered and came into effect late in the course of the audit. The Department appreciates the efforts of the Audit Office to take account of the requirements of the amended Act in the report. I believe this has made the report a more useful document that provides guidance on the way forward with administration of the Act, rather than merely looking backwards at a situation that no longer applies.

We consider the report to be fair and balanced in its discussion and conclusions in relation to the Department's administration of the Act with respect to the matters under consideration. Clearly there are areas where the Department has not met its statutory obligations under the Act. There are several reasons for this including the magnitude of those statutory obligations and resource constraints in meeting them. I believe it is important to note that the Department identified areas of concern at an early stage in its administration of the Act, advised Ministers of these issues, and developed approaches to ensure that the objects of the Act were met as far as practicable.

A good example of the problems the Department and responsible Ministers have faced was our ability to develop recovery plans for listed threatened species and ecological communities in the timeframes set down in the pre-amended Act.

Given that this requirement applied to more than 1,600 entities, such a monumental task was always going to be extremely difficult, even with far greater resources being available than was the case. Of course, the Parliament has since recognised that the requirement to have a recovery plan for every individual entity listed as threatened was not a particularly useful objective. The amendments to the Act reflect the view that there is a variety of ways of achieving the objectives of the Act in this regard, including conservation advice and recovery plans that are multi-species or regional in nature as well as individual recovery plans where appropriate.

I believe that the recommendation in the report will assist the Department to continue to improve our administration of the Act in accordance with its objectives. The Department's responses to the recommendations and general comment for inclusion in the Executive Summary are attached.

Thank you for the opportunity to comment.

Yours sincerely



David Borthwick  
Secretary

14 March 2007

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Protective Security Principles (in Audit Report No.21 1997–98)	Dec 1997

