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Comments on the Australian Government's Draft Policy Statement:
*Use of environmental offsets under the Environment Protection and
Biodiversity Conservation Act 1999*

November 2007

WWF Australia (WWF), Humane Society International (HSI) and the Tasmanian Conservation Trust (TCT) welcome the ongoing commitment of the Australian Government to the protection and recovery of Australia's unique biodiversity, and encourage the government to continue to protect matters of national environmental significance and to work towards the recovery of species threatened with extinction.

We hope to work closely with the new Australian Government to achieve the best possible outcomes for Australia's biodiversity in challenging times, and welcome the new government's recognition of climate change as a significant driver of environmental change.

We also welcome the opportunity to engage with the Department of Environment and Water Resources (DEWR) in the development of innovative conservation strategies, and towards the effective implementation of the *Environment Protection and Biodiversity Conservation Act 1999* (the Act).

Promoting Biodiversity Conservation

Conservation offsets, which are increasingly promoted by global extractive industry companies as a way of addressing irreversible loss of biodiversity from development, can be defined as conservation actions intended to compensate for the residual unavoidable harm to biodiversity caused by development projects, so as to aspire to no net loss in biodiversity. Before developers and government contemplate offsets they should have first sought to avoid and minimise harm to biodiversity.

In Australia, as a stable and wealthy country, avoiding damage to matters of national environmental significance is well within our capabilities. Publicly funding their maintenance and recovery is certainly affordable should the Australian Government prioritise achieving the objectives set out under our existing national environment laws. WWF, HSI and TCT believe the Australian Government should exercise its powers under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to conserve biodiversity as per the country's commitments under the Convention on Biological Diversity.

The EPBC Act implements not only national consensus on the need to protect our threatened biodiversity, but also implements international or bilateral treaty obligations to which Australia is party, including:

- The Convention on Biological Diversity
- The Convention on Migratory Species
- The World Heritage Convention
- The Convention on Wetlands (Ramsar)
- The Japan Australia Migratory Bird Agreement
- The China Australia Migratory Bird Agreement
- Republic of Korea-Australia Migratory Bird Agreement
- The International Convention on the Regulation of Whaling

We are concerned that trading offset outcomes against approval for damage to Matters of National Environmental Significance (MNES) - whether in an unplanned and haphazard way as is currently done, or more formally through development of a new public policy regime - may well undermine the Government's capacity to meet the objectives of the Act and are contrary to the treaty obligations that the Act seeks to implement. We endorse the submission of the Australian Network of Environmental Defenders Offices in this matter.

The legislative requirement that the Australian Government operate under a precautionary approach (avoiding doing harm, even in absence of certainty that harm will be done) is incompatible with an offsets policy which condones destruction of irreplaceable biodiversity assets especially listed species and habitat.

The idea, raised in the discussion paper, that the use of biodiversity offsets may be required "when convenient" by a regulatory authority raises the question "Convenient to whom?" The draft policy and discussion paper seem to suggest that the Australian Government will apply

a flexible approach to the use of offsets. What is proposed attempts to normalise the current adhoc approach and is contrary to ensuring transparency and accountability in decision-making, and certainly seems to lack consistency and scientific rigor.

The draft policy paper even goes so far as suggesting that “*Where sufficient offsets are not available, consideration of the acceptability of the development will need to take into account the level of offsets that are available as well as social and economic issues*” undermining any real benchmark relating to "no net loss" requirements that must be central to any credible proposal for offset.

The loose and ill-defined nature of the proposed policy engenders no confidence that such an approach will not result in irreversible damage to Australia's mega-diverse status.

Such an approach will undermine the work by private enterprises which, by working with local communities, with NGOs or within an environment close to their activities, seek to go above and beyond the standards set by the existing regulatory environment.

Meeting EPBC obligations on environmental protection must represent the minimum standard for development in Australia, and the Australian Government should encourage business and community leaders to understand and appreciate the inherent value of unique plants, animals and landscapes to current and future generations, rather than continue to establish precedents for their destruction.

Related EPBC Issues

The Auditor-General, in his report *The Conservation and Protection of National Threatened Species and Ecological Communities (Audit Report No.31 2006-07)*¹, suggests that the Minister responsible for administering the Act should improve the accuracy and completeness of the list of threatened species and ecological communities, establish a priority for recovery planning, and strengthen the implementation of the compliance and enforcement strategy underpinning the operation of the Act. The Auditor-General expressed a concern that the department suffers from a lack of capacity to properly administer the requirements of the Act and that the protection of threatened species and ecological communities is inadequately monitored.

Against this backdrop, WWF, HSI and TCT believe adding another layer of administrative complexity through a 'flexible' biodiversity offsets policy poses an unacceptable risk to species already recognised to face a high probability of near-term extinction.

The Australian Government's own *State of the Environment Report 2006*² notes 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]", and the

¹ http://www.anao.gov.au/uploads/documents/2006-07_Audit_Report_311.pdf

² <http://www.environment.gov.au/soe/2006/index.html>

Auditor-General's report notes "*there are uncertainties and significant scientific gaps in knowledge of species*".

The lack of scientific certainty relating to MNES and the legislative requirement that the Australian Government operate under a precautionary approach must preclude operation of an offsets policy which condones destruction of listed species and habitat. WWF supports the operation of Gold Standard carbon offsets, and potentially operation of biodiversity offsets against some forms of environmental damage where the species or community is not under threat, however the operation of biodiversity offsets against MNES raises insurmountable difficulties in achieving like-for-like trade offs and in achieving no-net-loss outcomes. There can be no guarantee that such an approach will not result in irreversible damage to Australia's mega-diverse status.

If the Australian Government seeks to gain community support for sanctioning destruction of matters of national environmental significance, it must first establish a sound record of avoiding and minimising harm to biodiversity through successful species and habitat recovery programs, and successful management of all other matters of national environmental significance such as Ramsar wetlands.

Establishing a Record of Biodiversity Recovery

In considering the need for the Australian Government to achieve stabilisation prior to any consideration of an offsets program, WWF notes that in 2003 Australia ranked 16th of the OECD countries in extent of the national reserve system with only 10.1% of the land area in any type of protected area, and only 6.7% in national parks.

The severe lack of protected habitats is a major reason for the endangerment of Australia's unique flora and fauna. In the 2002 *Terrestrial Biodiversity Assessment*, 41% of EPBC Act listed endangered or vulnerable species had a declining trend, 11% a rapidly declining trend. Five species were considered extinct; 37% had an unknown trend, and only 17% of species had a stable or recovering trend on average across the sub-bioregions where trends were scored as known.

Considering all the above, it is clearly reckless and irresponsible for governments to consider allowing intact natural areas to be cleared and developed for housing, agriculture and industry when so much of the landscape is already highly degraded and could be used instead for such purposes, without any need for offsets since there is nothing to be lost by developing already degraded sites.

The National Strategy for the Conservation of Australia's Biological Diversity committed the Australian, State and Territory governments to a 10 year program to establish a Comprehensive, Adequate and Representative (CAR) National Reserve System (NRS) on private, indigenous and public lands by 2000.

This national commitment built on the 1992 *National Forest Policy Statement* and the Australian Government's commitment in late 1992 to establish the *National Reserve System Cooperative Program*, which amongst other things was to provide incentives to the States and Territories to cooperate in progressively developing the National Reserve System by the year 2000, including funds for land acquisition. A comprehensive and representative reserve system was not developed by 2000.

In 2001 the combined Australian, State and Territory governments except those of the Northern Territory, Queensland and Tasmania adopted the "*National Objectives and Targets for Biodiversity Conservation 2001-2005*" which included a commitment to develop a CAR reserve system by 2005. These targets were not met by 2005.

In 2004, new targets toward a CAR reserve system were adopted through the intergovernmental agreement "*Directions for the National Reserve System: a partnership approach*" but few jurisdictions will be able to make the targets set out in the *Directions* at current slow rates of reserve system development, and low levels of funding set aside by combined Australian, State and Territory governments for strategic growth of the reserve system.

Considering that a significant proportion of Australia's threatened biodiversity still relies on strong regulation of activities on private land, the Australian Government's proposal to allow destruction of nationally and internationally significant habitat areas, in the hope that a 'convenient' and 'flexible' offsets policy might at some point deliver a better environmental outcome, which the Australian Government may or may not have the capacity to monitor, is unrealistic and misleading.

Risks Associated with Offsets Policy Under EPBC

Our groups note that the discussion paper says "*the ongoing approval of developments without offsets will lead to a decline in many species*". Considering one of the primary purposes of the Act is to give the Australian Government the power to protect matters of national environmental significance, WWF, HSI and TCT are concerned by the implication that past approvals have led to a decline in species. This suggests the Australian Government has not met its responsibilities under the Act and, as such, represents a grave situation.

Fundamental to the operation of any law or policy aimed to protect unique, irreplaceable public assets from private development is the existence of a core reservoir of natural capital which is not available for trade. Similarly, fundamental to the operation of an offsetting policy is the presumption that habitat - beyond the core reservoir of natural capital - is available to be traded against. In the case of matters protected by the EPBC Act, WWF, HSI and TCT do not believe Australia, despite its first world nation status, has secured either a representative reserve system, or has a superabundance of terrestrial and marine habitat for threatened species in good enough condition against which to trade.

The Australian Government's lack of action in recognising areas critical to the survival of threatened species and ecological communities under the EPBC Register of Critical Habitat suggests that more action must be taken to ensure irreplaceable areas of nationally-important habitat are not available for offsetting through state-based programs.

The discussion paper and draft policy do not suggest how the development of offsets will enhance Australia's capacity to conserve its biodiversity by protecting native species and promote recovery of threatened species or engage indigenous interests in land management. Rather the draft policy document and discussion paper seems to suggest that trading of approvals for the right to destroy nationally threatened species and ecosystems will be useful in raising funds for recovery planning, research and education. WWF, HSI and TCT believe these activities must remain core funding priorities within the environment portfolio's budget.

To propose that state-sanctioned damage to an internationally significant area, such as World Heritage site, could in any way be offset to the satisfaction of the community is stretching the bounds of reasonable policy, and potentially undermines Australia's ability to meet its international obligations on management of World Heritage and Ramsar-listed sites.

Outcomes from Existing EPBC offsets

The Department of Environment and Water Resources plainly already implements an ad hoc offsets policy through the opportunity provided by the legislation to require conditions to achieve minimisation of significant impact. Whether this is an appropriate use of this legislative tool is unproven.

The discussion paper admits that "*the ongoing approval of developments without offsets will lead to a decline in many species*". This is no more or less than a frank admission that the Australian Government has failed to meet its responsibilities under the Act. Greater action to assess and account for the cumulative impact of EPBC approvals may prove much more effective in solving the problems relating to ongoing approvals, than the offsets approach proposed.

WWF, HSI and TCT were disappointed to note that no robust evaluation of existing offset outcomes is included in either the draft policy or the discussion paper to prove their value in guaranteeing "no net loss" of biodiversity. Indeed case studies cited below suggest that the de facto offsets policy implemented by the Department has failed to meet even that minimal standard.

Similarly, the discussion paper and draft policy provide no evidence to support the notion that the formalisation of offsets will enhance Australia's capacity to conserve its biodiversity, protecting previously unprotected native species and habitats or engage indigenous interests in land management.

Rather the draft policy document and discussion paper seems to suggest that trading of approvals for the right to destroy nationally threatened species and ecosystems will be useful

in raising funds for recovery planning, research and education, none of which guarantees “no net loss”. WWF, HSI and TCT believe these activities must remain core funding priorities within the environment portfolio's budget, not funded by essentially selling off the biodiversity the EPBC Act is supposed to protect.

The legislative requirement that the Australian Government operate under a precautionary approach (avoiding doing harm, even in absence of certainty that harm will be done) is incompatible with an offsets policy which condones destruction of irreplaceable biodiversity assets.

CASE STUDY - Clearing of Critically Endangered Woodland

WWF, HSI and TCT notes the Australian Government's recent approval for clearing 50ha of critically endangered White-Box-Yellow Box-Blakeley's Red Gum Grassy Woodlands and derived grasslands. We note the Australian Government approved the clearing with an offset requirement relating predominantly to a change in land tenure.

Addressing the operation of key threats on an ecological community is proposed as a potential indirect offset in the policy paper, however this offset provision seems rather to directly facilitate further operation of the key threat of further clearing identified by the NSW Scientific Committee:

There is no doubt that this ecological community is subject to ongoing threats across its range. These include further clearing, deterioration of remnant condition and degradation of the landscape in which remnants occur (NSW Scientific Committee 2002).

Similarly, the Australian Government's own advice on this particular ecological community acknowledges the catastrophic level of decline already experienced. The excerpts below are taken from the *Advice to the Minister for the Environment and Heritage from the Threatened Species Scientific Committee (TSSC) on Amendments to the List of Ecological Communities under the Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) relating to White-Box-Yellow Box-Blakeley's Red Gum Grassy Woodlands and derived grasslands³

Table 5 – Overall Extant and Pre-Clearing extents of Box - Gum Grassy Woodland and Derived Grassland Communities

State	Current Area (ha)	Pre-1750 Area (ha)	% cleared
Queensland	93,371	285,662	67
New South Wales	250,729	3,717,366	93
Australian Capital Territory	10,865	32,000	66
Victoria	61,360	976,627	94
TOTAL	416,325²	5,011,655	92³

² Note this estimate includes areas in poor condition and therefore covers a much larger area than the listed ecological community.

³ Due to the estimate of current extent being greater than the listed ecological community this figure is an under-estimate of decline.

³ <http://www.environment.gov.au/biodiversity/threatened/communities/pubs/box-gum.pdf>

The available data show that over 90% of the original extent of this ecological community has been cleared (Table 5).

The New England Tablelands Bioregion Draft Regional Vegetation Management Plan classifies this ecological community as endangered (less than 10% of pre-1750 extent remaining or 10-30% of pre-1750 extent remaining and <10,000 ha extent remaining) (Voller et al. 2003). This assessment was not based on condition, but on the clearance of overstorey trees, so it is likely that the ecological community as defined has an even smaller extent.

The net change in the extent of the ecological community as a result of the offset provision is a loss of 50ha. In making such a decision the Australian Government has facilitated the further operation of a key threatening process on a critically endangered ecological community.

Given that the offset requires only a change in land tenure over an area already legally protected due to its status as a nationally-listed ecological community and that national law requires the Australian Government to work towards its recovery, it is difficult to interpret this decision as a 'net gain' outcome in any way.

Using the proposed NSW Biobanking tool, it is highly unlikely that the ratio of clearing to offset exercised in this case would meet the NSW Government's proposed requirements for a ratio of 10 hectares for every hectare cleared.

All other potential conservation outcomes in this instance seem to hinge on the implementation of a Remnant Vegetation Offset Plan which is not available and will not be available even to the Department for twelve months. Given the constraints the Department expressed to the Auditor-General regarding a lack of resources for compliance, monitoring and enforcement, the added responsibility of enforcing offset provisions to guarantee developers deliver net gains to the environment over the long-term may well be too onerous.

In this case, we suggest the draft policy's concern that "*offsets are not a guarantee in themselves for delivering conservation outcomes*" is well-founded. We are also concerned that this approval has gone ahead in the absence of any public policy on offsets, and that a significant proportion of a critically endangered ecosystem will disappear as a result.

CASE STUDY: Mission Beach offsets and Cassowaries

We were concerned to read the case study relating to a resort development in Mission Beach in Queensland as a good example of biodiversity wins through offsets. Certainly the perception in the local community is that the EPBC offsets package has resulted in a net loss of habitat, and potentially a further decline in an EPBC-protected species.

According to Brenda Harvey, President of Community for Coastal and Cassowary Conservation Inc (C4), "*We've got all these developments, and EPBC [referrals] are saying*

we need to have offsets. They're not really achieving anything. When they're removing essential habitat, they can't replace it. Giving money for traffic control isn't going to replace essential habitat.

"Most of the cassowaries are killed on the roads or by dogs, so increasing the traffic will have an immediate impact on cassowary numbers. Certainly we have less cassowaries in the Mission Beach area now."

Ms Harvey also suggested that while the development of the original site has gone ahead, revegetation of riparian area is yet to deliver any viable habitat.⁴ Terraine, the non-government natural resource management organisation contracted to deliver the offset outcome, confirmed that a tender process has been undertaken to combine \$50,000 made available by the Australian Government through the offsets with other funding in order to manage weeds on 13 sites within the Mission Beach cassowary habitat and replant some areas, however there appears to be little direct link between the provision of additional funding for maintenance of existing habitat, creation of new habitat and the assessed impacts of the approved project.

"Delivery mechanisms are really important. Sometimes the proponent isn't necessarily skilled in delivering the outcome. My personal view is, if the proponent accepts the condition, they need to engage someone to ensure they comply with the conditions," Tony O'Malley from Terraine. *"Certainly I'm in no way saying that the offsets will make up for the project's impact."*⁵

While the short-term funding of the Cassowary feeding station provided through the offset was a successful and important response to Cyclone Larry, its long term impact on cassowary viability remains to be proven. Habitat loss and road fatalities on the coastal plain are still the main drivers of Cassowary population decline.

The contract relating to traffic impacts with James Cook University mentioned in the discussion paper has yet to be honored. While \$75,000 has been promised to Terraine, the research has not been undertaken and the funding has not been dispersed.

"We don't want to have to rely on funding from development approvals to get basic research work done," said Terraine's Tony O'Malley.

According to cassowary researcher Les Moore⁶, the coastal population is declining rapidly. Reasons for decline include long-term loss of habitat, fragmentation, unviable isolated population sizes and road fatalities.

"These things go into the bureaucracy and no one actually really knows what's going on," said cassowary researcher Les Moore. *"We're getting 30% of all the animals that die at Mission Beach are run over by cars. The survival rate of chicks is currently 4-6%."*

⁴ pers.comm between Brenda Harvey and Averil Bones 28th November 2007

⁵ pers.comm Tony O'Malley and Averil Bones 29th November 2007

⁶ pers.comm Les Moore to Averil Bones 28th November 2007

As we understand it, some works have been done on the resort development and clearing of vegetation has already occurred. The traffic impact, and associated loss of cassowaries, remains unknown. In this instance, it will certainly be challenging for the Australian Government to illustrate no net loss of biodiversity relating to the offset package.

The groups does not believe the Australian Government has developed a realistic mechanism to ensure the ecological success of management actions related to offsets, and has provided little information to suggest that monitoring of outcomes, even in the few existing offset requirements, has been adequate.

Conclusions and Recommendations

WWF, HSI and TCT do not believe offsets are appropriate for use in relation to matters of national environmental significance, but rather that matters protected under the EPBC Act should be conserved. WWF, HSI and TCT believe areas identified through recovery plans as habitat critical to the survival of species must be off limits to development and that the Australian Government should take on responsibility for protection and maintenance of habitat relating to matters of national environmental significance.

The principle of offsets presupposes that MNES which are the subject of a development footprint are replaceable. However, the very fact that a listed species is endangered or vulnerable due to habitat loss or degradation constitutes an admission that such habitat as remains is critical and is often irreplaceable in a time frame meaningful to the recovery of the threatened species or threatened ecological community in question.

We continue to hold concerns that DEWR is operating from a poor knowledge base on which to judge offsets, even those that might operate at the state level. The EPBC Act's Register of Critical Habitat has only five entries, compared for example with 493 critical habitats for the 1351 species listed under the United States' *Endangered Species Act*⁷. While some recovery plans under the Act define habitats critical to the survival of threatened species and ecological communities, these do not appear on the EPBC Register, and may well be destroyed through inept EPBC offsets or offsets operated by state governments.

WWF, HSI and TCT believe the Australian Government should fully exercise its powers to protect and conserve Matters of National Environmental significance, and provide adequate funding as part of core spending on environmental issues for the recovery and management of World Heritage areas, Ramsar wetlands, threatened species and ecological communities.

⁷ http://ecos.fws.gov/tess_public/SummaryStatistics.do

The Australian Government must work with states to refine 'no go' or 'red flag' conditions for offsets in order to:

- ensure no clearing of Nationally- or state-listed endangered ecological communities or threatened species habitat;
- guarantee World Heritage, National Heritage and Ramsar sites cannot be damaged or destroyed due to their unique and irreplaceable status and the unlikelihood of like-for-like trade-offs through use of offsets;
- provide appropriate opportunities for developers to offset environmental damage that is not related to MNES, which also takes into account the uncertainties and backlog associated with the EPBCA's listing process per the precautionary principle;
- provide opportunities for state governments, NRM agencies, local communities and business to contribute to a national plan to establish habitat connectivity as an adaptive strategy for climate change; and
- develop a national plan to identify and protect climate-critical habitat such as climate refuges, corridors and stepping stones as a key element in buffering biodiversity against anthropogenic climate change.

WWF, HSI and TCT believe the Australian Government must also:

- identify and list all species that meet the criteria for national protection;
- identify and register habitat critical to the survival of all listed species;
- identify, list and manage sites of cultural and environmental significance;
- aggressively pursue and fully fund recovery and threat abatement plan goals;
- incorporate provisions into EPBC to account for cumulative impacts of project approvals on MNES as proposed by the Auditor-General; and
- encourage Australian businesses to go above and beyond regulatory requirements for by providing proponents with opportunities to contribute to recovery planning, education and land management as part of a voluntary program to improve public perception of business enterprise.

In Summary

WWF, HSI and TCT do not support the formalised introduction of offsets into EPBC approvals due to the very real risks of delaying recovery of threatened biodiversity, and we believe significant questions exist surrounding the actual environmental benefits of the majority of current biodiversity offset programs.

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