



Bird Observation & Conservation Australia

Incorporating Bird Observers Club of Australia

Helping today's birds survive tomorrow

17th December 2008

Secretariat to the Independent Review of the EPBC Act
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Canberra ACT 2601

Bird Observation & Conservation Australia (BOCA) is a national non-government organisation with more than 3000 members throughout Australia. BOCA's objectives may be summarised as appreciation, education and conservation relating to Australian birds and their habitat. As an organisation that regularly comments on actions referred under the EPBC Act, BOCA is well placed to provide constructive comments on the scope and operation of the Act.

As the cornerstone of the Australian Government's environmental legislation, the EPBC Act is failing to adequately define and protect matters of national environmental significance. Many of Australia's plants and animals continue to decline and many face the threat of extinction. Much of this is attributable to the actions of the past. Broadscale vegetation clearance has resulted in the loss, degradation and fragmentation of many of Australia's unique ecosystems. The impacts of these actions are ongoing, with high levels of 'extinction debt' present in our landscapes.

Australia must move on from assets-based national environmental legislation towards legislation with the explicit aim of reversing habitat loss, degradation and fragmentation; legislation that recognizes the value of healthy, functional ecosystems and landscapes in maintaining biodiversity. Only then will we begin to meet the objects of the current EPBC Act.

BOCA provides the following comments as they relate to issues raised in the '*Independent review of the Environment Protection and Biodiversity Conservation Act 1999: Discussion Paper*'.

Scope of the Act

The present definition and usage of the concept of matters of national environmental significance (NES) is limiting the ability of the Commonwealth to address environmental issues at an appropriate scale. As species and ecological communities are only protected under the Act once they have become listed as threatened, the role of the Commonwealth is limited to ecological 'triage' and actions which will mostly be a case of 'too little, too late'. Climate change and over extraction of water increase the imperative for the Commonwealth to take a more wholistic, landscape scale view of biodiversity conservation.

The impacts of climate change, habitat loss and fragmentation, and over extraction of water on biodiversity require action coordinated at a national level. The scope of the EPBC Act must be broadened to include triggers addressing greenhouse gas emissions, habitat fragmentation, habitat connectivity and over extraction of water.

To achieve landscape scale conservation, the scope of the Act must be broadened to allow the Minister to assess and act on cumulative impacts on species or ecological communities. This is particularly important for dispersive species, such as many species of migratory shorebirds, experiencing incremental habitat loss across their range. Individual developments examined in isolation may not have a significant impact on a species or ecological community but when the impacts of a series of unrelated developments are assessed together, the cumulative impact may be highly significant.

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The scope of the EPBC Act must be expanded to allow a more thorough assessment of the cumulative impacts of actions on a species or ecological community.

The exclusion of areas covered by Regional Forest Agreements (RFAs) from the EPBC Act seriously undermines the capacity of the Act to protect threatened species and communities within RFAs. For example, loss of breeding habitat is a major threat to the nationally endangered, EPBC listed, Swift Parrot. However, critical areas of Swift Parrot breeding habitat in southern Tasmania lie within the Tasmanian RFA and are earmarked for logging. This is a clear case where the existence of an RFA has diminished the protection that would otherwise be afforded to a matter of NES under the EPBC Act.

RFAs must be removed from exemption under the EPBC Act.

Assessments and Approvals

Assessment

The present system whereby proponents self-assess the need to refer projects and are responsible for providing much of the evidence on which the likely impacts of projects are assessed is flawed. Proponents, and consultants engaged by proponents, have a vested interest in proposals and the information they provide is likely to underestimate potential impacts on matters of NES. This is exacerbated by the narrow definition of matters of NES and the ambiguous, subjective definition of 'significant impact'.

An example of the failure of existing assessment protocols is a recent proposal for a residential development on the Powling Street wetland in Port Fairy, Victoria. The wetland is well recognized as very important bird habitat supporting a number of species, such as Latham's Snipe and Eastern Great Egret, which are listed under the Act. This information was not included in the proponent's referral and the accuracy of the referral was not questioned by DEWHA. On the basis of the proponent's documentation, DEWHA determined that the development was not a controlled action. The matter has subsequently been returned to DEWHA for reconsideration.

As noted in the discussion paper, a high proportion of referred actions which are deemed to be controlled actions are assessed using preliminary documentation only, most of which is provided by the proponent. Only 29 actions have been subjected to a full environmental impact assessment. There is little opportunity for independent assessment of information supplied by proponents and a narrow time period for public comment.

The process of assessing and approving referrals lacks both rigour and transparency. In many cases the public is not adequately informed of the basis for DEWHA's decisions. The EPBC Act must be accompanied by the development of clear and transparent protocols for assessing and approving projects.

Public participation

In BOCA's experience, the ten day period for public comment on matters referred to the Minister severely limits the capacity for individuals and organisations to review, assess and provide critical comment on lengthy technical documents. The short period for public comment skews the referral system in favour of proponents. Proponents have both the time and resources to engage consultants to support their proposal.

For large areas of Australia, baseline information on species distribution and habitat requirements is lacking. In many instances BOCA must rely on local knowledge and records to support or refute a proponent's claims. The collation and analysis of relevant information (both published and local) is time consuming, often requiring much longer than the ten day period for adequate analysis and submission preparation.

The period for public comment on referred matters needs to be increased to a minimum of 30 working days.

Local knowledge is often viewed as being subjective and less 'trustworthy' than data collected by consultants which some may view as objective and independent. However, it is BOCA's experience that surveys conducted by ecological consultants vary in their quality and accuracy and therefore in their reliability. Consultant's 'fee for service' reports are usually limited in scope by financial constraints and could be skewed to favour the proponent's viewpoint.

To improve survey quality, consistency and reliability DEWHA must develop survey standards supported by an accreditation system for ecological consultants.

Under this system, accredited ecologists would be required to undertake ongoing professional development. An independent system of peer review, survey audits and 'spot checks' of survey accuracy would provide the public with greater confidence in the quality and credibility of information provided by consultants.

Approval

Many projects are approved under the Act subject to off-setting and mitigation measures. In many instances these measures will be ineffective because decision makers are not in a position to fully understand the complexity of particular ecological systems and the time scales required for measures to become effective.

For example, mature Buloke trees are an important food source for endangered Red-tailed Black-Cockatoos in south-western Victoria. These trees may take over 100 years to become high quality feed trees. Today's Red-tailed Black-Cockatoo population cannot wait 100 years to feed on trees planted as an off-set. The effects of projects which remove mature Buloke trees cannot be off-set in any biologically meaningful way. Similarly, the impacts of removing hollow bearing trees in a wide variety of habitats can never be off-set by planting seedlings. No matter how many seedlings are planted, they are useless to species reliant on hollows as nesting sites.

The impacts of many actions can never be off-set in a biologically meaningful way.

Similarly, revegetation or restoration schemes designed to off-set or mitigate the removal of complex ecological communities will take decades (or in some cases, centuries) before they will truly mimic or off-set the community that has been removed.

The Act must put a greater emphasis on avoiding rather than mitigating or off-setting project impacts.

For projects approved subject to mitigation measures, there is little or no requirement for assessment of the effectiveness of these mitigation strategies. There is an imperative for DEWHA to develop 'feedback' mechanisms, whereby the effectiveness of mitigation measures are assessed or audited and information obtained from these assessments is then used to further refine and improve mitigation measures.

Biodiversity

The process for listing species, ecological communities and key threatening processes is ad hoc. In the absence of a comprehensive, national system of biological monitoring, the listing process is largely dependent on piecemeal data collection, reporting and nomination.

The annual 'thematic' approach to listing is inappropriate; it detracts from the urgency underlying the listing of threatened species and ecological communities.

The recovery of threatened species and ecological communities is severely hampered by a lack of adequate resources to develop and implement strategic recovery plans. Inadequate funding results in large time lags between nomination, listing and the development and implementation of recovery plans. Recovery plans are only as effective as the capacity to implement them. Any changes to the EPBC Act must be accompanied by a commitment to fund the implementation of recovery plans. Similarly, the listing of key threatening processes must be accompanied by strategic, adequately resourced threat abatement plans.

Coordination of State and Commonwealth listing processes

The EPBC Act must be amended to provide greater coordination between State and Commonwealth listing processes. Range contractions that result in species listing at the state level should be viewed as an early warning sign for the status of the species at the national level. State-listed species must be afforded a greater level of protection under the Act than species that are considered secure throughout their range. An example is the Grey-crowned Babbler which is listed as threatened in Victoria and New South Wales, but considered secure in other states. Without action at the national level to recognise and combat the processes of habitat loss and degradation that led to state-level listing, further range contractions in the future may lead to Commonwealth listing of the species.

The EPBC Act must be strengthened to provide greater protection for species known to be declining across large areas of their range.

Similarly, for species with geographically isolated populations, state-level listing should act as a trigger for investigations to determine whether the populations constitute distinct species or sub-species. For example, the Hooded Plover population consists of two discrete populations distributed along the south-western and south-eastern coastlines of Australia. The Hooded Plover has disappeared from QLD and northern NSW and is listed as threatened in NSW, Vic and SA. Based on morphology and many aspects of their biology, the two populations are currently classed as one species. However the populations have been isolated for a long period of time and show differences in aspects of their breeding biology. If genetic analysis determined that the two populations are distinct species or sub-species, the south-eastern population would undoubtedly be eligible for Commonwealth listing and would attract greater funding to support measures to reverse declining population trends.

Protected areas

BOCA believes the provisions for Ramsar wetlands are completely ineffective in protecting the important habitat values of these sites. The Act only recognises the *ecological character* of a Ramsar wetland as a matter of NES and the use of this vague and ambiguous term allows a range of inappropriate activities (such as shooting of native waterfowl) and developments to impact on wetlands considered to be of international importance.

All species that inhabit Ramsar wetlands are integral to the maintenance of healthy ecological processes within the wetland and must be given the highest level of protection under the Act.

Over extraction of water is a major threat to many Ramsar wetlands across Australia. The Coorong in South Australia is a prime example. The Act must be strengthened to include appropriate triggers for the release of environmental flows to maintain the ecological health of Ramsar wetlands.

Republic of Korea-Australia Bilateral Migratory Bird Agreement (ROKAMBA)

While migratory birds listed under the Japan-Australia and China-Australia Migratory Bird Agreement (JAMBA and CAMBA) are automatically listed under the Act, those listed under ROKAMBA are not.

BOCA has grave concerns over the Republic of Korea's ongoing reclamation of tens of thousands of hectares of tidal flats in the Yellow Sea; areas that are crucially important staging areas for migratory shorebirds. The advocacy efforts of BOCA and other environmental groups would be given greater weight if the Australian Government demonstrated its commitment to ROKAMBA by including it under the Act.

Australia must show its commitment to ROKAMBA and migratory bird species by acknowledging this agreement within the Act and by automatic inclusion of all species listed under ROKAMBA.

BOCA appreciates the opportunity to participate in the review of the EPBC Act. If you require further information please contact BOCA's Conservation Officer, Jenny Lau on 9877 5342 or conservationprojects@birdobservers.org.au

Yours sincerely,



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Chief Executive Officer

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