

BIODIVERSITY PROTECTION

The EPBC Act enables the Australian Government to list migratory species, threatened species and ecological communities to identify biodiversity specifically protected. The Act includes mechanisms to mitigate impacts on, protect and recover biodiversity, including recovery plans, conservation agreements and threat abatement plans.

The EPBC Act provides the legal basis for the Australian Government's involvement in protecting biodiversity. The provisions that relate directly to protecting biodiversity are in Chapter 5 of the Act. These primarily involve the identification of species and ecological communities in specific need of protection via listing and recovery processes, and specific protection for whales and other cetaceans in Commonwealth waters.

Many other provisions of the Act also promote the protection of biodiversity, for example through the environmental impact assessment process, the identification of heritage places with biodiversity values, and the protection of the environment on Commonwealth land and in Commonwealth marine areas.

BIODIVERSITY LISTINGS

Part 13 of the Act provides for several different lists, each with a different purpose. These lists are the main mechanism for identifying and protecting biodiversity.

Biodiversity lists under Part 13 of the Act include:

- Threatened species, threatened ecological communities and key threatening processes;
- Migratory species; and
- Marine species.

IDENTIFYING THREATENED SPECIES, THREATENED ECOLOGICAL COMMUNITIES AND KEY THREATENING PROCESSES

Amendments to the Act in 2006 established a process for prioritising nominations and selecting those of highest priority for assessment, as well as inviting nominations in accordance with an annual assessment cycle which commences on 1 October each year.

SELECTION OF NOMINATIONS FOR ASSESSMENT

The Minister may determine a conservation theme or themes for an assessment cycle. For example, the conservation theme for the assessment cycle that commenced on 1 October 2019 is 'Species and Ecological Communities that are severely affected by fire regimes'. The Minister may seek advice from the independent panel of experts, the Threatened Species Scientific Committee (TSSC), in establishing the theme.

A public invitation for nominations for assessment of at least 40 business days is then given, within which nominations can be made to the Minister. All nominations that meet the requirements of the Regulations are then

Independent review of the **EPBC Act**

forwarded to the TSSC, who prepare a proposed priority assessment list of nominations. The priority list is prepared, taking into account:

- the conservation theme (if any);
- the TSSC's views on which nominations are of high conservation priority; and
- the TSSC's capacity to undertake assessments.

The TSSC's views on those nominations of highest conservation priority, are based on considerations such as the likely conservation status, the role the species plays in ecosystem function and the benefit of listing the species, ecological community or key threatening process, for example in terms of legislative protection and threat abatement.

The Minister considers the proposed priority assessment list developed by the TSSC and may make changes. The finalised priority assessment list is then made publicly available.

ASSESSMENT OF NOMINATIONS

Nominations included on the finalised priority assessment list are assessed within the 12-month assessment cycle (or over a longer time frame if suggested by the TSSC and agreed by the Minister).

The TSSC invites public and expert comment on the nominations during the assessment period. At the end of the assessment period, the TSSC's advice is provided to the Minister for consideration when deciding whether the species, ecological community or key threatening process is eligible for listing under the Act.

LISTING DECISION

In deciding whether to list a species or ecological community, the Minister may only consider matters relating to the eligibility of the species or ecological community for listing, or the effect that including the species or ecological community could have in the survival of the species or ecological community.

A flowchart of the listing process for threatened species, ecological communities and key threatening processes can be found on the [Department's website](#).

CATEGORIES OF THREAT

For species, the categories of threat are:

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

Independent review of the **EPBC Act**

For ecological communities, the categories of threat are:

- critically endangered;
- endangered; and
- vulnerable (unlike the two other categories, this category is not a matter of national environmental significance).

KEY THREATENING PROCESSES (KTPS)

A 'threatening process' is a process that threatens or may threaten the survival, abundance or evolutionary development of a native species or ecological community.

A threatening process will be eligible for listing as a KTP if:

- it could cause a native species or ecological community to become eligible for listing in a category other than conservation dependent;
- it could cause a listed threatened species or listed threatened ecological community to become eligible to be listed in another category where that category represents a higher degree of endangerment; or
- it adversely affects two or more listed threatened species (other than conservation dependent species) or two or more listed threatened ecological communities.

Key threatening processes currently listed under the Act can be found on the [Department's website](#).

MIGRATORY SPECIES

Under the Act, the Minister is required to maintain a list of [migratory species](#). This list includes native species named in appendices to the Bonn Convention, and those included in annexes under the Japan-Australia Migratory Bird Agreement (JAMBA), the China-Australia Migratory Bird Agreement (CAMBA) and the Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA).

MARINE SPECIES

Under the Act, the Minister is required to maintain a list of marine species. The purpose of listing is directed at the long-term conservation of species occurring naturally in Commonwealth marine areas. Species on the list are those described in section 248, and include sea snakes, seals, crocodiles, dugongs, marine turtles, leatherback turtles, seahorses, sea dragons, pipefish, ghost pipefish and birds.

WHALES AND OTHER CETACEANS

Cetaceans (whales, dolphins, porpoises) are afforded special protection under provisions governing the Commonwealth marine waters and the [Australian Whale Sanctuary](#). Within the Sanctuary, it is an offence to kill, injure or interfere with a cetacean. Permits are also required to take, trade, keep, move, harass, chase, herd, tag, mark or brand a cetacean in the Australian Whale Sanctuary.

STATE AND TERRITORY BIODIVERSITY PROTECTION PROCESSES

State and territory governments maintain legislative and/or administrative lists of threatened species, threatened ecological communities and KTPs, and may also identify marine species that are protected in state waters. Since 2015, states and territories have been working with the Australian Government to implement a common assessment method for the listing of threatened species and ecological communities. Further background of this process is available on the [Department's website](#).

PLANS AND AGREEMENTS

The Act provides a planning framework to guide the long-term recovery of listed species and ecological communities and to ameliorate the key threats to Australia's biodiversity and to migratory species to Australia's shores.

Key elements of this regime are the provisions for the development of:

- conservation advice;
- recovery plans;
- threat abatements plans; and
- wildlife conservation plans.

CONSERVATION ADVICE

For each listed threatened species (except extinct and conservation dependent) and each listed threatened ecological community, the Minister is required to provide conservation advice to the public, after consultation with the TSSC. [Conservation advice](#) sets out the justification for the listing and what can be done to stop the decline or support the recovery of the species or ecological community. When approving decisions relating to listed threatened species or ecological communities, the Minister must have regard to an approved conservation advice for a species or ecological community.

RECOVERY PLANS

[Recovery plans](#) describe key threats and identify the research and management actions to stop the decline of, and support the recovery of, listed threatened species or ecological communities. When approving decisions relating to listed threatened species or ecological communities, the Minister must not act inconsistently with a recovery plan for that species or community.

Prior to the amendments in 2006, the Act required a recovery plan for every listed threatened species and ecological community. Amendments removed this requirement, replacing it with a requirement for the provision of conservation advice (as described above) and the option for the Minister to develop a recovery plan, having regard to the advice of the TSSC. The amendments also allowed for greater flexibility regarding the type of plan that could be prepared.

THREAT ABATEMENT PLANS

[Threat abatement plans](#) are developed when they are deemed by the Minister to be a feasible, efficient and effective way of abating a listed KTP, having regard to the advice of the TSSC and other nominated persons or bodies. Threat abatement plans provide for the research, management and any other actions necessary to reduce the impact of a listed key threatening process on native species and ecological communities. The Minister can make these plans alone or jointly with states and territories or the Minister can adopt a state or territory plan. When approving decisions relating to listed threatened species or ecological communities, the Minister must not act inconsistently with a threat abatement plan.

WILDLIFE CONSERVATION PLANS

Wildlife conservation plans provide for research and management actions necessary to support the survival of listed migratory species, listed marine species, species of cetaceans and conservation dependent species that are not also listed as threatened. There is currently one Wildlife Conservation Plan in force for [migratory shorebirds](#).

CONSERVATION AGREEMENTS

The Minister may seek to protect, conserve and manage listed species, ecological communities or their habitats by entering into conservation agreements. The aim of a conservation agreement is to provide a legally binding basis for the conservation and protection of the biodiversity of a particular place. Conservation agreements can be used for the protection and conservation of all matters of national environmental significance, the Commonwealth Heritage values of a Commonwealth Heritage place and the environment on Commonwealth land under the Act, and are not limited to threatened species, ecological communities or migratory species.

[Conservation agreements](#) have been used for broad-ranging purposes, including:

- to facilitate voluntary efforts by landholders to protect threatened species on their land, via the provision of financial, technical or other assistance from the Commonwealth;
- as a means of providing greater certainty for approval conditions for development proposals;
- for the remediation of environmental damage caused by possible contraventions to the Act; and
- for the protection and conservation of the heritage values of a National Heritage place, thereby allowing specified actions to proceed without needing further approval under the Act.

REQUIREMENTS ON COMMONWEALTH LAND AND IN COMMONWEALTH WATERS

Australian Government agencies are required to comply with recovery plans, threat abatement plans and wildlife conservation plans. In addition, Commonwealth areas may contain habitat which is identified as critical to the survival of listed threatened species or ecological communities through inclusion on the Register of Critical Habitat. If so, it is an offence to significantly damage that habitat. Any contract for the sale or lease of that Commonwealth land requires a covenant to ensure the protection of that critical habitat.

BIOREGIONAL PLANNING

The Act provides for the establishment of a bioregional plan for terrestrial and marine Commonwealth areas. The aim of such plans is to identify key conservation and heritage priorities (including current and emerging pressures)

and the appropriate actions to manage biodiversity and other values within that bioregion. The Minister may decide that actions taken in accordance with a bioregional plan will not require separate approval.

REGULATION OF ACTIONS IMPACTING ON THREATENED SPECIES, THREATENED ECOLOGICAL COMMUNITIES AND KEY THREATENING PROCESSES

With some exceptions, threatened species and threatened ecological communities and all species on the list of migratory species are considered matters of NES. Any action which has, may have or is likely to have a significant impact on such species or ecological communities is prohibited under Part 3 of the Act unless it has been assessed and approved under Parts 7 to 9 of the Act. Exceptions to this are species included in the extinct and conservation dependent (commercially harvested marine fish species only) categories and ecological communities in the vulnerable category.

PERMITS FOR ACTIONS, OFFENCES AND CIVIL PENALTIES

Under Part 13 of the Act, permits are required for actions on Commonwealth land and in Commonwealth waters that may result in killing, injuring, taking, trading, keeping or moving a member of a listed threatened species or ecological community, a listed migratory species, a listed marine species or a cetacean.

Permits are not required in some circumstances, including where the action is:

- taken in accordance with an accredited management arrangement (such as a fishery management plan), or accredited authorisation or a bioregional plan;
- provided for and done in accordance with a conservation agreement;
- Involves traditional use by indigenous people of areas within Commonwealth reserves; or
- the Minister deems it in the national interest to take this action.

In such cases, the Secretary of the Department must be notified within seven days of the person who takes the action becoming aware of the results of the activity.

The requirement for a permit does not obviate the requirement to refer actions that are likely to have a significant impact on a matter of NES for assessment under the Act.

Part 13 of the Act also provides protection for threatened species, ecological communities and migratory species is also provided in the form of criminal offences.

OTHER PROTECTION MECHANISMS AND FUNDING

In addition to the provisions described, Australia's biodiversity is also protected through:

- Regulations on importing and exporting species under Part 13A - the wildlife trade provisions of the Act.
- Heritage listing including on the World Heritage List, National Heritage List or Commonwealth Heritage List.
- The reservation of land as Commonwealth Reserves and Conservation Zones for the purpose of nature conservation or other matters.

ACCESS TO BIOLOGICAL RESOURCES

In accordance with section 301 of the Act, Part 8A of the EPBC Regulations provides for the control of access to biological resources in a Commonwealth area. The Regulations relate only to the taking of biological resources of native species for research and development on any genetic resources, or biochemical compounds, comprising or contained in the biological resource. Part 8A of the Regulations does not apply to the taking of resources for any other purpose, including fishing for commerce or recreation or taking wild animals or plants for food.

Under the Regulations, a party seeking access to biological resources in a Commonwealth area must apply for an access permit to be issued by the Minister.

FUNDING

There are Australian Government programs that target funding to support biodiversity protection outcomes under the EPBC Act. For example, major investments have been made through programs such as the National Landcare Program, Australian Heritage Grants program, Reef Trust and National Environmental Science Program. These programs support owners and managers, community groups, and the not-for-profit sector to undertake activities that manage and improve the environment. Other Australian Government programs such as the Climate Solutions Fund and Commonwealth Environmental Water licences also provide benefits to biodiversity matters protected and managed under the Act.

The review acknowledges the Traditional Owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

Contact EPBC Act Review at: GPO Box 787 Canberra ACT 2601 | Telephone 1800 803 772 | Web
www.epbcactreview.environment.gov.au