



New South Wales

Threatened Species Conservation Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Threatened Species Conservation Act 1995*, and other legislation that has provisions relating to threatened species, for the following purposes:

- (a) to clarify listing criteria for endangered populations, endangered ecological communities, vulnerable species and species that are presumed extinct,
- (b) to make provision for the listing of vulnerable ecological communities,
- (c) to allow the Minister administering the *Threatened Species Conservation Act 1995* and the Minister administering the *Fisheries Management Act 1994* to jointly determine the question of whether certain semi-aquatic or semi-terrestrial species should be *prima facie* eligible for listing under the *Threatened Species Conservation Act 1995* or under the *Fisheries Management Act 1994*,

- (d) to make further provision with respect to the procedure for nomination and listing of species under the *Threatened Species Conservation Act 1995*,
- (e) to enable the Chairperson of the Scientific Committee, with the agreement of the Chairperson of the Fisheries Scientific Committee, to refer a nomination of a key threatening process that affects both terrestrial and aquatic environments to the Fisheries Scientific Committee for consideration (and vice versa),
- (f) to allow the Scientific Committee to make minor amendments to listings without going through the public participation procedure under the *Threatened Species Conservation Act 1995*,
- (g) to make less onerous the requirements relating to the periodic review of listings by the Scientific Committee,
- (h) to allow the Director-General of National Parks and Wildlife to make arrangements with the Director of Fisheries for the joint preparation of a recovery plan or threat abatement plan,
- (i) to make it clear that the interests of indigenous people are to be considered in the preparation of a recovery plan or threat abatement plan,
- (j) to enable the preparation of recovery plans and threat abatement plans relating to more than one species or key threatening process,
- (k) to update the *Threatened Species Conservation Act 1995* in light of changes to Commonwealth legislation,
- (l) to make further provision with respect to the licensing of activities that may harm threatened species or protected fauna or native plants,
- (m) to modify the test applied to determine whether an activity is likely to significantly affect threatened species, populations or ecological communities,
- (n) to make further provision with respect to the preparation, contents and sale of species impact statements,
- (o) to allow the Director-General of National Parks and Wildlife, and the Scientific Committee, to withhold certain information from the public, in circumstances where the public interest or concerns for the safety or welfare of an individual justify it,
- (p) to make further provision in respect of the composition and members of the Scientific Committee and the Biological Diversity Advisory Council,
- (q) to provide for the effect of a new listing of a vulnerable species on licence applications, development applications and environmental assessment,

- (r) to make further provision with respect to environmental assessment, including by providing for situations in which an environmental impact statement is not required under the *Environmental Planning and Assessment Act 1979*,
- (s) to make further provision in respect of certain offences relating to the harming or picking of animals and plants under the *National Parks and Wildlife Act 1974*,
- (t) to clarify the situations in which land used for the maintenance of threatened species, populations or ecological communities is exempt from land tax,
- (u) to make other miscellaneous amendments, including transitional, consequential and ancillary amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Threatened Species Conservation Act 1995* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979*, the *Fisheries Management Act 1994*, the *Freedom of Information Act 1989*, the *Land Tax Management Act 1956* and the *National Parks and Wildlife Act 1974* set out in Schedule 2.

Schedule 1 Amendment of Threatened Species Conservation Act 1995

Clarification of listing criteria

The criteria for listing a population as an endangered population are changed so that, among other things, it is made clear that the population must be of conservation value at the State or regional level. The intention is to exclude from listing isolated populations of limited conservation value. See **Schedule 1 [14]**.

The criteria for listing an ecological community as an endangered ecological community are changed so that the question of whether the evolutionary development of the community is threatened is no longer relevant to eligibility. See **Schedule 1 [15]**.

The criterion for listing a species as presumed extinct is changed so that it is no longer required that the species has not been definitely located in nature during the preceding 50 years. It is sufficient that it has not been recorded in its known or expected habitat, despite targeted surveys, over a time frame appropriate to its life cycle and form. See **Schedule 1 [16]**.

The criterion for listing a species as a vulnerable species is changed to make it clear that the species must be considered to be endangered in New South Wales. See **Schedule 1 [17]**.

Vulnerable ecological communities

It will now be possible to list an ecological community as a vulnerable ecological community. An ecological community will be eligible for listing as a vulnerable ecological community if it is likely to become endangered unless the circumstances and factors threatening its survival cease to operate. (See **Schedule 1 [10] and [18]**.) The Director-General of National Parks and Wildlife will be able to prepare a recovery plan for a vulnerable ecological community. (See **Schedule 1 [37]**.) However, the listing of an ecological community as a vulnerable ecological community (unlike the listing of a species as a vulnerable species) will not trigger the licensing provisions of the Act or the provisions relating to stop work orders. (See **Schedule 1 [5]**).

Consequential amendments are set out in **Schedule 1 [2]–[4], [7], [71] and [72]**.

A listing of a vulnerable ecological community will also not trigger certain offence provisions in the *National Parks and Wildlife Act 1974* and development and environmental assessment provisions in the *Environmental Planning and Assessment Act 1979*. Those provisions are explained further below.

Listing of semi-aquatic or semi-terrestrial species

At present, animals and plants, other than fish and marine vegetation, may be listed (in appropriate circumstances) as threatened species under the *Threatened Species Conservation Act 1995*. Fish and marine vegetation may be listed (in appropriate circumstances) as threatened species under Part 7A of the *Fisheries Management Act 1994*. However, in some cases where an invertebrate animal or fish, or a plant or marine vegetation, may inhabit both land and water, a question may arise as to whether that species is more appropriately dealt with under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*. The amendments allow the Ministers administering those Acts to resolve that question by making a joint order declaring the species concerned to be a species for the purpose of one or the other of the Acts. Any such declaration does not require the species concerned to be listed as a threatened species under either Act. See **Schedule 1 [6]**

and the mirroring amendments to the *Fisheries Management Act 1994* in **Schedule 2.2 [2]**. **Schedules 1 [1]** and **2.2 [1]** include consequential amendments. A consequential amendment is also made to the *Environmental Planning and Assessment Act 1979* in **Schedule 2.1 [5]** and the *National Parks and Wildlife Act 1974* in **Schedule 2.5 [34]**.

Procedure for listing

Nominations for listing of threatened species, populations or ecological communities will be required to be made in accordance with guidelines published by the Director-General of National Parks and Wildlife and the Scientific Committee. See **Schedule 1 [20]**.

The amendments also make it clear that a minimum of 30 days must be allowed for the making of submissions to the Scientific Committee concerning the Committee's preliminary determination, and that a final determination in respect of the nomination must be made within 6 months after the closing date for submissions in respect of the preliminary determination. See **Schedule 1 [25]** and **[27]**.

When publishing a notice of a determination, the Scientific Committee will no longer be required to publish the reasons for its determination. However, the Scientific Committee will be required to make those reasons available to the public, together with copies of the determination, at offices of the National Parks and Wildlife Service and in other ways. See **Schedule 1 [22]**, **[23]** and **[26]–[31]**.

Referral of nomination to Fisheries Scientific Committee

If a nomination of a key threatening process is made that has an impact on both terrestrial and aquatic environments, the Chairperson of the Scientific Committee will be able to consult the Chairperson of the Fisheries Scientific Committee for the purpose of determining whether the nomination should also be considered by the Fisheries Scientific Committee under Part 7A of the *Fisheries Management Act 1994*. If the Chairpersons agree it should also be considered by the Fisheries Scientific Committee, the nomination will be treated as both a nomination under the *Threatened Species Conservation Act 1995* and a nomination under Part 7A of the *Fisheries Management Act 1994*. This will facilitate the listing of such key threatening processes under both Acts. See **Schedule 1 [21]**. **Schedule 1 [2]** includes a consequential amendment.

There will be a reciprocal procedure in the *Fisheries Management Act 1994* for the referral of nominations made under that Act to the Scientific Committee for consideration under the *Threatened Species Conservation Act 1995*. See **Schedule 2.2 [3]**.

Minor amendments to listings

The amendments will allow the Scientific Committee to make amendments to the listings set out in Schedules 1, 2 and 3, without following the public participation procedure set out in the Act, if the amendment is made for any of the following purposes:

- (a) to reflect any change in the name of a species as a result of taxonomic revision,
- (b) to correct any minor error or omission,
- (c) to clarify a description of an ecological community (but not to change the area of an ecological community).

Notice of the Scientific Committee's decision to amend a listing under the new provisions must be published in the same manner as a final determination of the Scientific Committee under the Act.

See **Schedule 1 [32]**. **Schedule 1 [8]** is a consequential amendment.

Review of listings

The amendments require the Scientific Committee to review the Schedules to the Act at least every 2 years, rather than bi-annually as at present. See **Schedule 1 [19]**.

Joint preparation of recovery plans and threat abatement plans

The Director-General of National Parks and Wildlife will be able to make arrangements with the Director of NSW Fisheries for the joint preparation of a recovery plan or threat abatement plan under the *Threatened Species Conservation Act 1995* and Part 7A of the *Fisheries Management Act 1994*. If a joint plan is prepared the Minister administering the *Threatened Species Conservation Act 1995* will be able to exercise his or her functions relating to the approval of the plan only with the concurrence of the Minister administering the *Fisheries Management Act 1994*. See **Schedule 1 [38] and [44]**.

Corresponding provisions are inserted in the *Fisheries Management Act 1994* (see **Schedule 2.2 [4]**).

Interests of indigenous people

The amendments make it clear that the special knowledge and interests of indigenous people are to be taken account of in the preparation of a recovery plan or threat abatement plan. See **Schedule 1 [39] and [45]**.

Multi-species or multi-threat plans

The amendments will allow a recovery plan to be prepared in respect of more than one species, population or ecological community and a threat abatement plan to be prepared in respect of more than one key threatening process. See **Schedule 1 [37] and [43]**.

Consultation with respect to recovery and threat abatement plans

The amendments provide that consultation with a public authority that is to be responsible for the implementation of any measures to be included in a recovery plan or threat abatement plan is to take place at the Department head level rather than the Ministerial level. See **Schedule 1 [41], [42], [46] and [47]**.

Update of references to Commonwealth legislation

The *Endangered Species Protection Act 1992* of the Commonwealth has been replaced by the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth. Several provisions in the *Threatened Species Conservation Act 1995* are updated to reflect this change. The changes also reflect the fact that the categories of listed threatened species and listed threatened ecological communities under the Commonwealth legislation no longer directly correspond with the listing categories under the *Threatened Species Conservation Act 1995*. See **Schedule 1 [9]–[12] and [40]**.

The amendments will also require the list of threatened species, populations and ecological communities to be amended to show that a species or ecological community has subsequently been listed under the Commonwealth legislation. See **Schedule 1 [13]**.

The time limits for preparation of recovery plans and threat abatement plans are expressly specified, rather than directly linked to the time limits for the preparation of those plans under the Commonwealth legislation (as the listing categories under that legislation are different). See **Schedule 1 [37] and [43]**.

Licensing of activities that may harm threatened species, populations and ecological communities, and their habitats

At present, the licensing provisions of the *Threatened Species Conservation Act 1995* restrict the purposes for which a general licence may be issued under the *National Parks and Wildlife Act 1974* to authorise the harming or picking of threatened species. The amendments make it clear that the purposes for which a licence may be issued under the *Threatened Species Conservation Act 1995* are not so limited.

In relation to licensing, amendments are also made to the *National Parks and Wildlife Act 1974* to provide for the issue of a scientific licence that authorises the harming or picking of threatened species and the harming or picking of fauna or plants that are protected under that Act. The amendments relating to scientific licences are explained below in the matter relating to Schedule 2.

The amendments make further provision in respect of property management plans under the *Threatened Species Conservation Act 1995*. At present, the Director-General of National Parks and Wildlife may approve a property management plan for land prepared by a landholder. Actions identified in and carried out in accordance with the plan do not require a licence under the Act.

The amendments make it clear that property management plans may provide for the rights of third parties to take action on or in respect of land. For instance, if an approved property management plan contains provisions that authorise Aboriginal persons to harm animals or pick plants for cultural reasons, that action will not require a licence under the Act.

In addition, it is made clear that the Director-General is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when approving a property management plan.

See **Schedule 1 [49] and [56]** (proposed section 113B). (Proposed section 113A, as set out in Schedule 1 [56], is a restatement of section 91 (3), (4) and (6) of the Act.) **Schedule 1 [75]** includes a transitional provision.

Modification of test of significant effect on threatened species, populations or ecological communities, or their habitats

At present, if an application is made for a licence to harm or pick threatened species, populations or ecological communities or to damage their habitats, the Director-General of National Parks and Wildlife is required to make a determination as to whether the action is likely to significantly affect threatened species, populations or ecological communities or their habitats. If the Director-General determines that it is likely to have that effect, the applicant must prepare a species impact statement before the application can proceed.

The amendments substantially revise the factors that must be taken into account by the Director-General in applying that test. They also require the Director-General to take account of any assessment guidelines relating to the determination that are issued by the Minister (with the concurrence of the Minister for Planning). See **Schedule 1 [50] and [51]**.

A corresponding amendment is made to the test under Part 7A of the *Fisheries Management Act 1994*. See **Schedule 2.2 [5] and [6]**.

A similar test is applied for the purposes of certain development and environmental assessment provisions in the *Environmental Planning and Assessment Act 1979*. That test is amended in the same fashion. See **Schedule 2.1 [4]**.

Species impact statements

The amendments require a species impact statement to include the following:

- (a) an assessment of whether a species, population or ecological community is adequately represented in conservation reserves or other similar protected areas in the region,
- (b) an assessment of whether any of those species, populations or ecological communities is at the limit of its known distribution.

See **Schedule 1 [53] and [54]**.

The Director-General will be given power to require an applicant for a licence to provide additional copies of a species impact statement and to sell those copies to the public (with proceeds going to the applicant). See **Schedule 1 [52]**.

Provisions relating to the accreditation of persons to prepare assessments of species impact statements are removed. See **Schedule 1 [55]**.

Effect of new listing of vulnerable species on licence application

The amendments provide that a change to the list of vulnerable species does not apply in respect of an application for a licence under the Act, but only for a period of 12 months after the application is made. Accordingly, the application may be determined within that period as if the amendment had not been made. See **Schedule 1 [56]** (proposed section 113C).

Constitution and members of Scientific Committee

The number of members of the Scientific Committee is increased from 10 to 11. The new member is to be a scientist who is employed by a public authority that has land management responsibilities and is selected by the Minister. See **Schedule 1 [58] and [59]**.

The amendments make expertise in aquatic biology, rather than marine ecology, a relevant qualification for the office of member. See **Schedule 1 [60]**.

In a case where a person or body responsible for nominating a member of the Scientific Committee fails to do so, the Minister will be able to seek nominations from any other person or body that the Minister considers to be a suitable substitute. See **Schedule 1 [61]**.

The amendments also prevent members of the Scientific Committee from serving more than 2 consecutive periods of office on the Committee (current members excluded) and require the Minister to have regard to the desirability of maintaining some continuity in the membership of the Committee when determining the terms for which individual members will be appointed to office. See **Schedule 1 [62] and [75]**.

Constitution and members of Biological Diversity Advisory Council

The number of members of the Biological Diversity Advisory Council is increased from 14 to 15. The new member is to be a nominee of the Royal Botanic Gardens and Domain Trust. See **Schedule 1 [63] and [64]**.

In a case where a person or body responsible for nominating a member of the Council fails to do so, the Minister will be able to seek nominations from any other person or body that the Minister considers to be a suitable substitute. See **Schedule 1 [65]**.

Decision not to disclose certain information

At present, the Act allows the Director-General of National Parks and Wildlife to withhold information about the location of critical habitat from the public in certain circumstances where the public interest requires it. The amendments will allow such information to be protected from disclosure under the *Freedom of Information Act 1989*. See **Schedule 1 [67]–[69] and Schedule 2.3**.

The amendments will also allow the Scientific Committee to determine that the following matter should not be disclosed to the public:

- (a) information provided to the Scientific Committee relating to the location of threatened species, populations or ecological communities, if the Committee is of the opinion that the public interest requires that the information not be disclosed to the public,
- (b) information provided to the Committee that may identify an individual who made a nomination of a listing or made a submission in respect of a nomination, if the Committee is of the opinion that the safety or welfare of the individual concerned requires that the information not be disclosed to the public.

See **Schedule 1 [70]**.

Such information will also be protected from disclosure under the *Freedom of Information Act 1989*. See **Schedule 2.3**.

Miscellaneous

The annual report of the Director-General in respect of the operation of the *Threatened Species Conservation Act 1995* is required to include a report on the implementation of Parts 3, 4 and 5 of the Act. See **Schedule 1 [66]**.

An incorrect reference to the Director-General is corrected. See **Schedule 1 [24]**.

Amendments are made for the purpose of clarifying that provisions relating to critical habitat apply only in respect of endangered species, populations and ecological communities. See **Schedule 1 [34] and [35]**.

A provision is inserted to make it clear that the Valuer-General is to be given notice of the declaration of critical habitat. See **Schedule 1 [36]**.

A consequential amendment is made to an introductory note set out in the Act. See **Schedule 1 [48]**.

Schedule 1 [73] and [74] allow savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 2 Amendment of other Acts

Vulnerable ecological communities

Amendments to the *Environmental Planning and Assessment Act 1979* make it clear that references in that Act to threatened species, populations and ecological communities do not include vulnerable ecological communities. The purpose of the amendments is to ensure that the listing of a vulnerable ecological community does not trigger the various provisions in that Act relating to development or activities that are likely to have a significant impact on threatened species, populations and ecological communities (for instance, provisions that require an environmental impact statement to be prepared in respect of any such activity). See **Schedule 2.1 [1]–[3] and [6]**. Those provisions will still apply in respect of any threatened species or endangered population that happens to be a part of a vulnerable ecological community.

The listing of a vulnerable ecological community may be taken into account for the purposes of the preparation of an environmental planning instrument. However, any such instrument may not include provisions (similar to those provisions of the Act that apply in respect of other threatened species, endangered populations and endangered ecological communities) requiring consultation with or the concurrence of the Director-General of National Parks and Wildlife or the Minister

administering the *Threatened Species Conservation Act 1995* in respect of development that may impact on a vulnerable ecological community. See **Schedule 2.1 [7]**.

Amendments are made to the *National Parks and Wildlife Act 1974* to make it clear that the listing of a vulnerable ecological community does not trigger various offences in that Act relating to the harming of an animal or the picking of plant that is of or part of a threatened species, population or ecological community. Those offences will only apply in respect of endangered species, vulnerable species, endangered populations and endangered ecological communities. See **Schedule 2.5 [6], [18]–[20], [24], [29], [32] and [33]**.

New listings of vulnerable species

Amendments to the *Environmental Planning and Assessment Act 1979* provide that a change to the list of vulnerable species does not apply in respect of:

- (a) a development application made before the change to the list was made, or
- (b) an activity that is the subject of an environmental assessment under Divisions 2 and 3 of Part 5 of that Act if an environmental impact statement was obtained in respect of the activity and publicly exhibited before the change to the list was made, or
- (c) a request for the Minister's approval under Division 4 of that Part if the request was made before the change to the list was made, or
- (d) a designated fishing activity that is the subject of an environmental assessment under Part 5 of that Act if an environmental impact statement was obtained in respect of the activity and publicly exhibited before the change to the list was made.

The provisions cease to apply in respect of a development or activity at the end of the period of 12 months after the application was made, approval sought or environmental impact statement publicly exhibited (as the case requires). See **Schedule 2.1 [10], [11] and [14]**.

Modification of concurrence to carrying out of activity

Under the *Environmental Planning and Assessment Act 1979*, the carrying out by a Minister or a public authority of certain activities that affect threatened species, populations or ecological communities, or their habitats, requires the concurrence of the Director-General or the Minister administering the *Threatened Species Conservation Act 1995*. Amendments to those provisions will make it clear that the Director-General or the Minister (as the case requires) may revoke, vary or modify the terms of his or her concurrence. See **Schedule 2.1 [13]**.

Requirement to submit an environmental impact statement

At present, under the *Environmental Planning and Assessment Act 1979*, if a Minister or a public authority proposes to carry out or grant approval in respect of an activity that is likely to significantly affect the environment, the Minister or public authority must examine and consider an environmental impact statement in relation to the activity.

The amendments provide that if an activity is on land that is, or is part of, critical habitat, or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, and the activity is not likely to otherwise significantly affect the environment, an environmental impact statement is not required if a species impact statement, prepared in accordance with the *Threatened Species Conservation Act 1995*, is submitted instead. The provisions of Part 5 of the *Environmental Planning and Assessment Act 1979* relating to environmental impact statements (including provisions relating to publicity and examination of the statement) will apply in respect of the species impact statement. See **Schedule 2.1 [12]**.

Consequential amendments to Fisheries Management Act 1994

The amendments to the *Fisheries Management Act 1994* mirror various amendments to the *Threatened Species Conservation Act 1995* described above. See **Schedule 2.2**.

Freedom of information

The *Freedom of Information Act 1989* is amended to provide that a document containing matter that the Director-General or the Scientific Committee has decided should not be disclosed to the public (as described above) is an exempt document for the purposes of that Act. See **Schedule 2.3**.

Land tax amendments

The amendments to the *Land Tax Management Act 1956* make it clear that land that is the subject of a conservation agreement under the *National Parks and Wildlife Act 1974* is exempt from land tax if the primary purpose of the agreement is the maintenance of threatened species, populations or ecological communities to assist their preservation. See **Schedule 2.4**.

Defence—conservation agreements and joint agreements

It is made a defence to certain offences under the *National Parks and Wildlife Act 1974* relating to the harming and picking of animals and plants if the action was authorised by a conservation agreement under that Act or a joint management

agreement under the *Threatened Species Conservation Act 1995*. See **Schedule 2.5** [8], [15], [23], [26], [28] and [31]. **Schedule 2.5** [42] includes a transitional provision.

The amendment to the *Threatened Species Conservation Act 1995* set out in **Schedule 1** [57] is consequential on the above changes.

Defence—actions the subject of an environmental assessment

At present, it is a defence to various offences under the *National Parks and Wildlife Act 1974* that the action was carried out or approved by a determining authority (that is, a Minister or a public authority) if the determining authority complied with Part 5 of the *Environmental Planning and Assessment Act 1979* (which relates to environmental assessment). The amendments make it clear that, in the case of an activity approved by a determining authority, it also must be carried out in accordance with that approval. See **Schedule 2.5** [5], [9], [22], [27] and [30].

Defence—offence of selling protected native plants

Amendments to the offence relating to the selling of protected native plants in *National Parks and Wildlife Act 1974* provide a defence in certain circumstances to domestic hobbyists. See **Schedule 2.5** [17].

Licences under the National Parks and Wildlife Act

A new category of licence is provided for under the *National Parks and Wildlife Act 1974*. The licence will authorise the harming or picking of threatened species, populations and ecological communities, and other species of fauna or plants protected under that Act, for scientific, educational or conservation purposes. See **Schedule 2.5** [39]. It will no longer be possible to issue a general licence or a licence to pick native plants solely for those purposes (**Schedule 2.5** [36], [37] and [38]). Consequential amendments are made to various offence provisions and other provisions. See **Schedule 2.5** [2]–[4], [7], [10], [12]–[14], [16], [21] and [25]. Transitional provisions are included in **Schedule 2.5** [42].

An amendment is made to a provision that requires licence holders to comply with conditions of their licence to clarify that it extends to licences under the *Threatened Species Conservation Act 1995* as well as licences under the *National Parks and Wildlife Act 1974*. See **Schedule 2.5** [40].

Miscellaneous

Minor amendments to the *Environmental Planning and Assessment Act 1979* are made to direct the reader's attention, in connection with references to the *Threatened Species Conservation Act 1995*, to the mirroring provisions of Part 7A of the *Fisheries Management Act 1994*. See **Schedule 2.1 [8] and [9]**.

An amendment is made to the offence of buying, selling or possessing protected fauna under the *National Parks and Wildlife Act 1974* to make it clear that the offence does not apply in respect of threatened species or endangered populations. Section 118B provides for the offence in that regard. See **Schedule 2.5 [11]**.

Amendments to the *Environmental Planning and Assessment Act 1979*, the *Fisheries Management Act 1994* and the *National Parks and Wildlife Act 1974* provide for the making of savings and transitional regulations as a consequence of the other amendments to those Acts. See **Schedule 2.1 [15], 2.2 [7] and 2.5 [41]**.



New South Wales

Threatened Species Conservation Amendment Bill 2002

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New South Wales

Threatened Species Conservation Amendment Bill 2002

No , 2002

A Bill for

An Act to amend the *Threatened Species Conservation Act 1995* to make further provision with respect to the conservation of threatened species, populations and ecological communities of animals and plants; to make related amendments to other Acts; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Threatened Species Conservation Amendment Act 2002</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Threatened Species Conservation Act 1995 No 101	8
The <i>Threatened Species Conservation Act 1995</i> is amended as set out in Schedule 1.	9 10
4 Amendment of other Acts	11
The Acts specified in Schedule 2 are amended as set out in that Schedule.	12 13

Schedule 1	Amendment of Threatened Species Conservation Act 1995	1
		2
	(Section 3)	3
[1]	Section 4 Definitions	4
	Omit the definitions of <i>animal</i> and <i>plant</i> from section 4 (1). Insert instead:	5
	<i>animal</i> means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, whether vertebrate or invertebrate and in any stage of biological development, but does not include:	6
		7
		8
		9
	(a) humans, or	10
	(b) fish within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i> .	11
		12
	Note. Some types of fish may be included in the definition of <i>animal</i> . See section 5A.	13
		14
	<i>plant</i> means any plant-life that is indigenous to New South Wales, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i> .	15
		16
		17
		18
		19
	Note. Some types of marine vegetation may be included in the definition of <i>plant</i> . See Section 5A.	20
		21
[2]	Section 4 (1)	22
	Insert in alphabetical order:	23
	<i>Fisheries Scientific Committee</i> means the Fisheries Scientific Committee constituted under Part 7A of the <i>Fisheries Management Act 1994</i> .	24
		25
		26
	<i>threatened ecological community</i> means an ecological community specified in Part 3 of Schedule 1 or Part 2 of Schedule 2.	27
		28
		29
	<i>vulnerable ecological community</i> means an ecological community specified in Part 2 of Schedule 2.	30
		31

[3] Section 4 (1), definition of “threatened species, populations and ecological communities”, note	1 2
Insert at the end of the definition:	3
Note. In some cases vulnerable ecological communities are excluded from this expression. See subsection (5).	4 5
[4] Section 4 (1), definition of “vulnerable species”	6
Insert “Part 1 of” before “Schedule 2”.	7
[5] Section 4 (5)	8
Insert after section 4 (4):	9
(5) In Parts 6 and 7, a reference to <i>threatened species, populations and ecological communities</i> or <i>threatened species, population or ecological community</i> (however expressed) does not include a reference to any vulnerable ecological community. However, this subsection does not affect the application of those Parts to any threatened species or endangered populations that may form part of a vulnerable ecological community.	10 11 12 13 14 15 16
Note. Vulnerable ecological communities are excluded from the licensing provisions of this Act and from related offences under the <i>National Parks and Wildlife Act 1974</i> . However, the Director-General may prepare a recovery plan in respect of a vulnerable ecological community and that plan and the provisions of Division 2 of Part 4 of this Act apply in respect of the implementation of that plan.	17 18 19 20 21 22
[6] Section 5A	23
Insert after section 5:	24
5A Relationship between this Act and Part 7A of the Fisheries Management Act 1994	25 26
(1) The Minister may, by order made with the concurrence of the Minister administering the <i>Fisheries Management Act 1994</i> :	27 28
(a) declare a species of fish to be a species of animal for the purposes of this Act if it is an invertebrate and it is a species that may inhabit a terrestrial environment at some stage of its biological development, or	29 30 31 32

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- | | |
|--|----------------------------|
| (b) declare a species of marine vegetation to be a species of plant for the purposes of this Act if it is a species that may inhabit freshwater or a terrestrial environment at some stage of its biological development. | 1
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3
4 |
| (2) Any species of fish or marine vegetation that is the subject of an order in force under this section is taken to be a species of an animal or plant for the purposes of this Act, in accordance with the terms of the order. | 5
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| (3) The Minister and the Minister administering the <i>Fisheries Management Act 1994</i> may at any time consult with each other for the purpose of determining whether an order under this section should be made and the terms of the order. | 9
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| (4) The Ministers may also consult with the Chairperson of the Scientific Committee, the Chairperson of the Fisheries Scientific Committee and any other person or body before making an order under this section. | 13
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| (5) If the Ministers are unable to resolve any dispute between them as to the making or the terms of an order under this section, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers. | 17
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| (6) An order under this section is to be published in the Gazette. | 22 |
| (7) For avoidance of doubt, an order under this section does not require the species concerned to be listed under Part 2 of this Act. | 23
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| (8) In this section: | 26 |
| fish means any fish (within the meaning of the <i>Fisheries Management Act 1994</i>) that is indigenous to New South Wales. | 27
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| freshwater has the same meaning as in the <i>Fisheries Management Act 1994</i> . | 30
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| marine vegetation means any marine vegetation (within the meaning of the <i>Fisheries Management Act 1994</i>) that is indigenous to New South Wales. | 32
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[7] Part 2, Introductory note	1
Insert “and vulnerable ecological communities” after “Schedule 2, of vulnerable species”.	2 3
[8] Part 2, Introductory note	4
Insert after the paragraph relating to Division 4:	5
Division 5 describes the process by which certain minor amendments may be made to Schedules 1–3.	6 7
[9] Section 6 Schedule 1 list of endangered species, populations and ecological communities	8 9
Omit section 6 (5) and (6). Insert instead:	10
(5) Any endangered species or species presumed extinct that is a listed threatened species under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth is marked with an asterisk to show that the species is considered to be a threatened species nationally.	11 12 13 14 15
(6) Any endangered ecological community that is a listed threatened ecological community under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth is marked with an asterisk to show that it is considered to be a threatened ecological community nationally.	16 17 18 19 20
[10] Sections 7 and 7A	21
Omit section 7. Insert instead:	22
7 Schedule 2 list of vulnerable species	23
(1) Part 1 of Schedule 2 contains a list of vulnerable species for the purposes of this Act.	24 25
(2) Any vulnerable species that is a listed threatened species under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth is marked with an asterisk to show that it is considered to be a threatened species nationally.	26 27 28 29
7A Schedule 2 list of vulnerable ecological communities	30
(1) Part 2 of Schedule 2 contains a list of vulnerable ecological communities for the purposes of this Act.	31 32

	(2) Any vulnerable ecological community that is a listed threatened ecological community under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth is marked with an asterisk to show that it is considered to be a threatened ecological community nationally.	1 2 3 4 5
[11]	Section 9 Listing of nationally threatened species and ecological communities	6 7
	Omit section 9 (1). Insert instead:	8
	(1) As soon as practicable after a species or ecological community that is or was indigenous to New South Wales becomes a listed threatened species or a listed threatened ecological community under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth, the Scientific Committee is to consider whether, in accordance with Divisions 2 and 3, the species or ecological community should be listed as a threatened species or threatened ecological community in Schedule 1 or 2 to this Act.	9 10 11 12 13 14 15 16 17
[12]	Section 9 (3)	18
	Omit “If a threatened species or endangered ecological community is omitted from Schedule 1 or 2 to the <i>Endangered Species Protection Act 1992</i> ”.	19 20 21
	Insert instead “If a threatened species or threatened ecological community ceases to be a listed threatened species or a listed threatened ecological community under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> ”.	22 23 24 25
[13]	Section 9 (4)	26
	Insert after section 9 (3):	27
	(4) If a threatened species or threatened ecological community becomes a listed threatened species or a listed threatened ecological community under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth subsequent to its being listed in Schedule 1 or 2 to this Act, the Minister is, by order published in the Gazette, to amend Schedule 1 or 2 to this Act to insert an asterisk showing its national status.	28 29 30 31 32 33 34 35

[14] Section 11	1
Omit the section. Insert instead:	2
11 Populations eligible for listing as endangered populations	3
(1) A population is eligible to be listed as an endangered population if, in the opinion of the Scientific Committee, it is facing a high risk of becoming extinct in nature in New South Wales and it is of conservation value at the State or regional level for one or more of the following reasons:	4 5 6 7 8
(a) it is disjunct or near the limit of its geographic range,	9
(b) it is or is likely to be genetically, morphologically or ecologically distinct,	10 11
(c) it is otherwise of significant conservation value.	12
Note. The intention of the criteria is to exclude from listing isolated populations of limited conservation value.	13 14
(2) A population is not eligible to be listed as an endangered population if it is a population of a species already listed in Schedule 1.	15 16 17
[15] Section 12 Ecological communities eligible for listing as endangered ecological communities	18 19
Omit “or evolutionary development” from section 12 (a).	20
[16] Section 13	21
Omit the section. Insert instead:	22
13 Species eligible for listing as species presumed extinct	23
A species is eligible to be listed as a species that is presumed extinct at a particular time if, in the opinion of the Scientific Committee, it has not been recorded in its known or expected habitat in New South Wales, despite targeted surveys, over a time frame appropriate, in the opinion of the Scientific Committee, to its life cycle and form.	24 25 26 27 28 29
[17] Section 14 Species eligible for listing as vulnerable species	30
Insert “in New South Wales” after “endangered”.	31

[18] Section 14A	1
Insert after section 14:	2
14A Ecological communities eligible for listing as vulnerable ecological communities	3
An ecological community is eligible to be listed as a vulnerable ecological community if, in the opinion of the Scientific Committee, the ecological community is likely to become endangered in New South Wales unless the circumstances and factors threatening its survival cease to operate.	4
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[19] Section 17 Scientific Committee responsible for lists	10
Omit “at least bi-annually” from section 17 (2).	11
Insert instead “at least every 2 years”.	12
[20] Section 19 Making nomination for inclusion on, omission from or amendment of list	13
Omit section 19 (5). Insert instead:	14
(5) A nomination must:	15
(a) be made in writing addressed to the Chairperson of the Scientific Committee, and	16
(b) include any information prescribed by the regulations, and	17
(c) be made in accordance with any guidelines for the making of nominations published from time to time by the Director-General and the Scientific Committee.	18
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[21] Section 19A	24
Insert after section 19:	25
19A Referral of nomination to Fisheries Scientific Committee	26
(1) If, in the opinion of the Chairperson of the Scientific Committee, a nomination of a key threatening process relates to a threatening process that is likely to have an impact on both terrestrial and aquatic environments, the Chairperson may consult with the Chairperson of the Fisheries Scientific	27
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Committee for the purpose of determining whether the nomination should also be considered by the Fisheries Scientific Committee under Part 7A of the <i>Fisheries Management Act 1994</i> .	1 2 3 4
(2) If the Chairpersons agree that the nomination should also be considered by the Fisheries Scientific Committee under Part 7A of the <i>Fisheries Management Act 1994</i> , the nomination is to be referred to the Fisheries Scientific Committee for consideration.	5 6 7 8 9
(3) In such a case:	10
(a) the nomination is taken to also be a nomination for amendment of Schedule 6 to that Act, made to the Fisheries Scientific Committee in accordance with Part 7A of that Act on the date the Chairpersons agree that it should also be considered by the Fisheries Scientific Committee under Part 7A of the <i>Fisheries Management Act 1994</i> , and	11 12 13 14 15 16 17
(b) Part 7A of that Act applies in relation to the nomination (in addition to this Division).	18 19
(4) For the purposes of this section, a <i>nomination of a key threatening process</i> means:	20 21
(a) the nomination of any matter to be inserted in or omitted from Schedule 3, or	22 23
(b) the nomination of any matter in Schedule 3 for amendment.	24 25
Note. There is a reciprocal process in Part 7A of the <i>Fisheries Management Act 1994</i> for the referral of nominations made under that Part to the Scientific Committee in appropriate cases.	26 27 28
[22] Section 22 Scientific Committee’s preliminary determination	29
Omit “and the reasons for it” from section 22 (2) (c).	30
[23] Section 22 (3) (b)	31
Omit the paragraph. Insert instead:	32
(b) specify the manner in which members of the public may obtain a copy of the determination and the reasons for it, and	33 34 35

[24] Section 22 (3) (c)	1
Omit “Director-General”. Insert instead “Scientific Committee”.	2
[25] Section 22 (5)	3
Insert “not less than 30 days and” after “being a date occurring”.	4
[26] Section 22 (6)	5
Insert after section 22 (5):	6
(6) Copies of a preliminary determination and the reasons for it are to be made available to members of the public (free of charge) as follows:	7
(a) by publication on the internet site of the National Parks and Wildlife Service,	8
(b) in response to a request made by contacting an office of the National Parks and Wildlife Service in a manner specified in the notice of the determination,	9
(c) in response to a request made in person at an office of the National Parks and Wildlife Service at an address specified in the notice of the determination.	10
[27] Section 23 Scientific Committee’s final determination	11
Omit section 23 (2). Insert instead:	12
(2) In a case involving a nomination, the Scientific Committee must make a determination within 6 months after the closing date for making submissions to the Scientific Committee about its preliminary determination on the matter (as specified in the notice under section 22).	13
[28] Section 24 Publication of final determination	14
Omit “and the reasons for it” from section 24 (c).	15

[29] Section 24 (2) and (3)	1
Insert at the end of section 24:	2
(2) The notice must specify the manner in which members of the public may obtain a copy of the determination and the reasons for it.	3 4 5
(3) Copies of the final determination and the reasons for it are to be made available to members of the public (free of charge) as follows:	6 7 8
(a) by publication on the internet site of the National Parks and Wildlife Service,	9 10
(b) in response to a request made by contacting an office of the National Parks and Wildlife Service in a manner specified in the notice of the determination,	11 12 13
(c) in response to a request made in person at an office of the National Parks and Wildlife Service at an address specified in the notice of the determination.	14 15 16
[30] Section 33 Publication of determination for provisional listing	17
Omit “and the reasons for it” from section 33 (c).	18
[31] Section 33 (2) and (3)	19
Insert at the end of section 33:	20
(2) The notice must specify the manner in which members of the public may obtain a copy of the determination and the reasons for it.	21 22 23
(3) Copies of the determination and the reasons for it are to be made available to members of the public (free of charge) as follows:	24 25 26
(a) by publication on the internet site of the National Parks and Wildlife Service,	27 28
(b) in response to a request made by contacting an office of the National Parks and Wildlife Service in a manner specified in the notice of the determination,	29 30 31
(c) in response to a request made in person at an office of the National Parks and Wildlife Service at an address specified in the notice of the determination.	32 33 34

[32] Part 2, Division 5	1
Insert after Division 4:	2
Division 5	3
Minor changes to listings	3
36A Minor amendments to Schedules	4
(1) The Scientific Committee may determine to amend the description of any species, population, ecological community or threatening process in Schedule 1, 2 or 3, without following the procedure set out in Division 3 or 4, if, in the opinion of the Scientific Committee, the amendment is necessary or desirable for any of the following purposes:	5
(a) to reflect any change in the name of a species as a result of taxonomic revision,	6
(b) to correct any minor error or omission,	7
(c) to clarify a description of an ecological community (including to reflect new surveys or research information).	8
(2) A determination under this Division must not alter the listing status of a particular species or ecological community by:	9
(a) moving the description of the species or ecological community from one Schedule to the Act to another Schedule, or	10
(b) moving the description of a species from Part 1 of Schedule 1 to Part 4 of Schedule 1 (or vice versa).	11
(3) A determination under this Division must not alter the particular area of any ecological community.	12
(4) The procedures for inserting matters in Schedule 1, 2 or 3 set out in Divisions 3 and 4 do not apply to a determination made under this Division.	13
36B Publication of determination	14
(1) On making a determination under this Division, the Scientific Committee must, as soon as practicable:	15
(a) notify the Minister and the Director-General of the determination, and	16

(b)	publish notice of the determination in a newspaper circulating generally throughout the State, and	1 2
(c)	if the original determination was considered likely to affect a particular area or areas (other than the State as a whole), publish notice of the determination under this Division in a newspaper circulating generally in that area or areas, and	3 4 5 6 7
(d)	publish notice of the making of the determination in the Gazette.	8 9
(2)	The notice must specify the manner in which members of the public may obtain a copy of the determination and the reasons for it.	10 11 12
(3)	Copies of the determination and the reasons for it are to be made available to members of the public (free of charge) as follows:	13 14 15
(a)	by publication on the internet site of the National Parks and Wildlife Service,	16 17
(b)	in response to a request made by contacting an office of the National Parks and Wildlife Service in a manner specified in the notice of the determination,	18 19 20
(c)	in response to a request made in person at an office of the National Parks and Wildlife Service at an address specified in the notice of the determination.	21 22 23
(4)	In this section:	24
	<i>original determination</i> means the final determination of the Scientific Committee that resulted in a description of a species, population, ecological community or threatening process being inserted in Schedule 1, 2 or 3.	25 26 27 28
36C	Revision of Schedule on publication of determination	29
	On the publication of a determination in the Gazette that the description of a species, population, ecological community or threatening process listed in Schedule 1, 2 or 3 be amended under this Division, the relevant Schedule is amended:	30 31 32 33
(a)	by omitting the description of the species, population, ecological community or threatening process that is set out in the Schedule, and	34 35 36

	(b) by inserting instead a description of the species, population, ecological community or threatening process in the manner required by the determination.	1 2 3
[33]	Section 39	4
	Omit the section. Insert instead:	5
	39 Director-General to consult with Scientific Committee	6
	The Director-General must:	7
	(a) consult with the Scientific Committee before preparing a recommendation for the identification of an area or areas of land comprising critical habitat for the purposes of this Act, and	8 9 10 11
	(b) have regard to its advice in preparing any recommendation for that purpose.	12 13
[34]	Sections 40 (1) and 41 (1)	14
	Omit “a species, population or ecological community” wherever occurring.	15
	Insert instead “an endangered species, population or ecological community”.	16
[35]	Section 43 Director-General to refer recommendation to Minister	17
	Omit “the species, population or ecological community” from section 43 (a).	18
	Insert instead “the endangered species, population or ecological community”.	19 20
[36]	Section 48 Publication of declaration of critical habitat	21
	Insert “, in particular, the Valuer-General” after “land” in section 48 (a) (ii).	22
[37]	Section 56 Director-General to prepare recovery plans	23
	Omit section 56 (3). Insert instead:	24
	(3) The Director-General may also prepare recovery plans for vulnerable ecological communities.	25 26
	(4) A recovery plan under this Act may contain provisions for more than one species, population or ecological community.	27 28

- (5) A recovery plan must be prepared as follows:
 - (a) in the case of a recovery plan for an endangered species, endangered population or endangered ecological community—within 3 years after the description of the species, population or ecological community is first inserted in Schedule 1,
 - (b) in the case of a recovery plan for a vulnerable species—within 5 years after the description of the species is first inserted in Schedule 2,
 - (c) in the case of a recovery plan that contains provisions relevant to more than one species, population or ecological community—within the time limit that would apply under paragraph (a) or (b) if the plan related solely to whichever species, population or ecological community to which the plan relates was most recently inserted in Schedule 1 or 2.
- Note.** The time limits for the making of recovery plans under this Act correspond to the time limits for making recovery plans under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth for endangered and vulnerable categories of listed threatened species and listed threatened ecological communities that occur in and outside a Commonwealth area.
- (6) There is no time limit for the preparation of a recovery plan for a vulnerable ecological community, but subsection (5) applies if the plan is also to contain provisions relevant to an endangered species, population or ecological community, or a vulnerable species.

[38] Section 56A

Insert after section 56:

56A Joint preparation of recovery plans

- (1) The Director-General may, with the prior approval of the Minister and the Minister administering the *Fisheries Management Act 1994*, make arrangements with the Director of NSW Fisheries for the joint preparation of a recovery plan under this Act and Part 7A of the *Fisheries Management Act 1994*.

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- (2) In such a case, any function of the Director-General or the Minister under this Part in respect of the plan may be exercised in conjunction with any corresponding function of the Director of NSW Fisheries or the Minister administering the *Fisheries Management Act 1994* in respect of the plan under the *Fisheries Management Act 1994*.
- Note.** For example, the Director-General and the Director of NSW Fisheries may jointly publish a notice of the preparation of the plan under section 61 of this Act and section 220ZO of the *Fisheries Management Act 1994*.
- (3) The Minister may exercise his or her functions under sections 64 and 65 of this Act in respect of any such plan only with the concurrence of the Minister administering the *Fisheries Management Act 1994*.
- (4) If the Minister administering this Act and the Minister administering the *Fisheries Management Act 1994* are unable, following consultation, to resolve any dispute as to the exercise of any function under sections 64 and 65 of this Act in respect of any such plan, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers.
- (5) Except as otherwise provided by this section, this Part applies in respect of a recovery plan jointly prepared as provided for by this section in the same way as it applies in respect of any other recovery plan.
- [39] Section 57 Guidelines for recovery plans**
- Insert after section 57 (2):
- (3) The Director-General is also to consider, when preparing a recovery plan, any special knowledge or interest that indigenous people may have in the species, population or ecological community concerned and in the measures to be contained in the plan (including the likely social, cultural and economic consequences of the making of the plan).

[40] Section 58 Priorities for recovery plans	1
Omit section 58 (2). Insert instead:	2
(2) The highest priority is to be given to the preparation of recovery plans for species and ecological communities that are identified by asterisks in Schedule 1 as being threatened nationally.	3 4 5 6
[41] Section 60 Consultation between chief executive officers	7
Omit section 60 (1). Insert instead:	8
(1) The Director-General must, if the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a recovery plan, consult with the chief executive officer of the public authority before completing the preparation of the draft recovery plan.	9 10 11 12 13
[42] Section 60 (2)	14
Omit “Minister responsible for”.	15
Insert instead “chief executive officer of”.	16
[43] Section 74	17
Omit the section. Insert instead:	18
74 Director-General may prepare threat abatement plans	19
(1) The Director-General may prepare a threat abatement plan for each key threatening process to manage the threatening process:	20 21
(a) so as to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities, or	22 23 24
(b) in the case of a key threatening process that could cause species, populations or ecological communities that are not threatened to become threatened, so as to prevent those species, populations or ecological communities from becoming threatened.	25 26 27 28 29
(2) A threat abatement plan may contain provisions relevant to more than one key threatening process.	30 31

(3) A threat abatement plan for any key threatening process that adversely affects a threatened species, population or ecological community must be prepared:	1 2 3
(a) within 3 years after the description of the key threatening process is first inserted in Schedule 3, or	4 5
(b) in the case of a threat abatement plan that contains provisions relevant to more than one key threatening process—within the time limit that would apply under paragraph (a) if the plan related solely to whichever threatening process to which the plan relates was most recently inserted in Schedule 3.	6 7 8 9 10 11
Note. The time limit for the preparation of a threat abatement plan corresponds with the time limit for the preparation of a threat abatement plan under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth, if the Minister under that Act has made a decision to have a threat abatement plan.	12 13 14 15 16
(4) There is no time limit for the preparation of a threat abatement plan for any key threatening process that could cause species, populations or ecological communities to become threatened, but subsection (3) applies if the plan is also to contain provisions relevant to a key threatening process of a kind referred to in that subsection.	17 18 19 20 21 22
[44] Section 74A	23
Insert after section 74:	24
74A Joint preparation of threat abatement plans	25
(1) The Director-General may, with the prior approval of the Minister and the Minister administering the <i>Fisheries Management Act 1994</i> , make arrangements with the Director of NSW Fisheries for the joint preparation of a threat abatement plan under this Act and Part 7A of the <i>Fisheries Management Act 1994</i> .	26 27 28 29 30 31
(2) In such a case, any function of the Director-General or the Minister under this Part in respect of the plan may be exercised in conjunction with any corresponding function of the Director	32 33 34

of NSW Fisheries or the Minister administering the <i>Fisheries Management Act 1994</i> in respect of the plan under the <i>Fisheries Management Act 1994</i> .	1 2 3
Note. For example, the Director-General and the Director of NSW Fisheries may jointly publish a notice of the preparation of the plan under section 79 of this Act and section 220ZO of the <i>Fisheries Management Act 1994</i> .	4 5 6 7
(3) The Minister may exercise his or her functions under sections 82 and 83 of this Act in respect of any such plan only with the concurrence of the Minister administering the <i>Fisheries Management Act 1994</i> .	8 9 10 11
(4) If the Minister administering this Act and the Minister administering the <i>Fisheries Management Act 1994</i> are unable, following consultation, to resolve any dispute as to the exercise of any function under sections 82 and 83 of this Act in respect of any such plan, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers.	12 13 14 15 16 17 18
(5) Except as otherwise provided by this section, this Part applies in respect of a threat abatement plan that is jointly prepared as provided for by this section in the same way as it applies in respect of any other threat abatement plan.	19 20 21 22
[45] Section 75 Guidelines for threat abatement plans	23
Insert after section 75 (2):	24
(3) The Director-General is also to consider, when preparing a threat abatement plan, any special knowledge or interest that indigenous people may have in the species, population or ecological community concerned and in the measures to be contained in the plan (including the likely social, cultural and economic consequences of the making of the plan).	25 26 27 28 29 30
[46] Section 78 Consultation between chief executive officers	31
Omit section 78 (1). Insert instead:	32
(1) The Director-General must, if the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a threat	33 34 35

abatement plan, consult with the chief executive officer of the public authority before completing the preparation of the draft threat abatement plan.	1 2 3
[47] Section 78 (2)	4
Omit “Minister responsible for”.	5
Insert instead “chief executive officer of”.	6
[48] Part 6, Introductory note	7
Omit the introductory note. Insert instead:	8
Introductory note	9
This Part deals with the licensing by the Director-General of actions that are likely to result in:	10 11
(a) the harming of an animal that is of, or part of, a threatened species, population or ecological community, or	12 13
(b) the picking of a plant that is of, or part of, a threatened species, population or ecological community, or	14 15
(c) damage to critical habitat, or	16
(d) damage to habitat of a threatened species, population or ecological community.	17 18
The offences relating to the above actions are set out in the <i>National Parks and Wildlife Act 1974</i> .	19 20
This Part also contains provisions about species impact statements. These statements are employed to measure the significance of the effect of actions on threatened species, populations or ecological communities, or their habitats. A species impact statement must be lodged with an application for a licence under this Part if the Director-General determines that the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats.	21 22 23 24 25 26 27
Division 1 deals with the grant of licences, including the making of applications, fees, determinations as to whether actions proposed will significantly affect threatened species, populations or ecological communities, publication of applications and the making of submissions concerning them, and matters that the Director-General must take into account before granting licences and appeals.	28 29 30 31 32 33
Division 2 deals with the form and content of species impact statements and the notification of the Director-General's requirements as to their preparation.	34 35 36
Division 3 sets out exceptions to licensing requirements.	37
Division 4 sets out miscellaneous provisions.	38

[49] Section 91	1
Omit the section. Insert instead:	2
91 Licence to harm or pick threatened species, populations or ecological communities or damage habitat	3 4
(1) The Director-General may grant a licence authorising a person to take action likely to result in one or more of the following:	5 6
(a) harm to any animal that is of, or is part of, a threatened species, population or ecological community,	7 8
(b) the picking of any plant that is of, or is part of, a threatened species, population or ecological community,	9 10
(c) damage to critical habitat,	11
(d) damage to habitat of a threatened species, population or ecological community.	12 13
(2) A general licence may be issued under section 120 of the <i>National Parks and Wildlife Act 1974</i> to authorise an action referred to in subsection (1) only:	14 15 16
(a) for the welfare of an animal, or	17
(b) if there is a threat to life or property.	18
(3) Subsection (2) does not limit the purposes for which a licence may be issued under this section.	19 20
Note. For example, a licence may be issued under this section to authorise an Aboriginal person or persons to harm animals or pick plants for cultural purposes.	21 22 23
[50] Section 94 Significant effect on threatened species, populations or ecological communities, or their habitats	24 25
Omit section 94 (2). Insert instead:	26
(2) For that purpose, the Director-General must take into account the following:	27 28
(a) each of the factors listed in subsection (3),	29
(b) any assessment guidelines issued and in force under section 94A.	30 31

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| (3) The following factors must be taken into account in making a determination under this section: | 1
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| (a) in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction, | 3
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| (b) in the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction, | 7
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| (c) in the case of an endangered ecological community, whether the action proposed: | 13
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| (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or | 15
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| (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction, | 19
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| (d) in relation to the habitat of a threatened species, population or ecological community: | 23
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| (i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and | 25
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| (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and | 28
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| (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality, | 31
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| (e) whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly), | 35
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| (f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan, | 37
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(g)	whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.	1 2 3 4
[51]	Section 94A	5
	Insert after section 94:	6
	94A Assessment guidelines	7
(1)	The Minister may, by order published in the Gazette, issue guidelines (<i>assessment guidelines</i>) relating to the determination of whether an action is likely to significantly affect threatened species, populations or ecological communities, or their habitats.	8 9 10 11 12
(2)	An order under this section (including any order that amends, revokes or replaces such an order) may be made only with the concurrence of the Minister for Planning.	13 14 15
[52]	Section 96A	16
	Insert after section 96:	17
	96A Sale of copies of species impact statement	18
(1)	The Director-General may require an applicant for a licence to provide additional copies of a species impact statement that accompanied the application or was provided in response to a notification from the Director-General that a statement is required.	19 20 21 22 23
(2)	The Director-General may refuse to grant an application if that direction is not complied with.	24 25
(3)	Copies of the species impact statement may be sold by the Director-General to any member of the public for not more than \$25 a copy (or such other amount as may be prescribed by the regulations).	26 27 28 29
(4)	The Director-General must:	30
(a)	pay the proceeds of sale of copies of the species impact statement to the applicant, and	31 32

(b)	return to the applicant any unsold copies of the species impact statement.	1 2
[53]	Section 110 Content of species impact statement	3
	Insert after section 110 (2) (d):	4
(e)	an assessment of whether those species or populations are adequately represented in conservation reserves (or other similar protected areas) in the region,	5 6 7
(e1)	an assessment of whether any of those species or populations is at the limit of its known distribution,	8 9
[54]	Section 110 (3) (b1) and (b2)	10
	Insert after section 110 (3) (b):	11
(b1)	an assessment of whether those ecological communities are adequately represented in conservation reserves (or other similar protected areas) in the region,	12 13 14
(b2)	an assessment of whether any of those ecological communities is at the limit of its known distribution,	15 16
[55]	Section 113 Director-General may accredit persons to prepare assessment of species impact statements	17 18
	Omit the section.	19
[56]	Part 6, Division 3	20
	Insert after Division 2:	21
	Division 3 Exceptions to licensing requirements	22
113A	Routine agricultural activities	23
(1)	A licence under this Part is not required for the carrying out of routine agricultural activities unless the actions are actions, or are of a class of actions, that the regulations prescribe may be carried out only under the authority of a licence under this Part.	24 25 26 27

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| (2) | The Minister must not recommend the making of a regulation that identifies actions, or of a class of actions, that may be carried out only under the authority of a licence under this Part unless the Minister certifies that the Director-General has consulted with the Director-General of the Department of Agriculture concerning the making of the regulation. | 1
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| (3) | It is a defence to a prosecution for an offence under Part 8A of the <i>National Parks and Wildlife Act 1974</i> if the accused proves that the action constituting the alleged offence was a routine agricultural activity. | 7
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| 113B | Property management plans | 11 |
| (1) | The Director-General may, for the purposes of this Act, approve of a property management plan for land prepared by a landholder. | 12
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| (2) | Any action identified in, and carried out in accordance with, a property management plan so approved by the Director-General does not require a licence under this Part even if the action is an action, or of a class of actions, that may, in accordance with the regulations, be carried out only under the authority of a licence under this Part. | 15
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| (3) | Without limiting subsection (2), a property management plan may include provisions that authorise persons other than the landholder to take any action on or in respect of land. For example, provisions that authorise Aboriginal persons to harm animals or pick plants on the land that is the subject of the property management plan may be included. | 21
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| (4) | It is a defence to a prosecution for an offence under Part 8A of the <i>National Parks and Wildlife Act 1974</i> if the accused proves that the action constituting the alleged offence was identified in, and carried out in accordance with, a property management plan approved by the Director-General for the purposes of this Act. | 27
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| (5) | Nothing in this section prevents the Director-General from granting a licence under this Part to a landholder or to any other person to authorise the person to take any action referred to in section 91 (1). | 33
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(6) For the avoidance of doubt, it is declared that the Director-General is not a determining authority for the purposes of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> when approving a property management plan.	1 2 3 4
Division 4 Miscellaneous	5
113C Transitional—effect of changes to list of vulnerable species	6
(1) An amendment to the list of vulnerable species does not apply in respect of an application for a licence duly made under section 92 before the amendment took effect.	7 8 9
(2) This section ceases to apply in respect of an application for a licence at the end of the period of 12 months after the application is made.	10 11 12
[57] Section 121 Joint management agreements	13
Insert at the end of the section the following note:	14
Note. It is a defence to certain offences under the <i>National Parks and Wildlife Act 1974</i> if the act constituting the offence was authorised by and done in accordance with a joint management agreement.	15 16 17
[58] Section 129 Members of Scientific Committee	18
Omit “10 members” from section 129 (1).	19
Insert instead “11 members”.	20
[59] Section 129 (2) (b1)	21
Insert after section 129 (2) (b):	22
(b1) one is to be a scientist who is employed by a public authority that has land management responsibilities and who is selected by the Minister,	23 24 25
[60] Section 129 (3) (g)	26
Omit the paragraph. Insert instead:	27
(g) aquatic biology,	28

[61] Section 129 (4)	1
Insert after section 129 (3):	2
(4) If the person or body responsible for nominating a member of the Scientific Committee under this section (<i>the nominating body</i>) fails to submit a nomination to the Minister, within such time and in such manner as may be specified by the Minister by notice in writing to the nominating body, the Minister:	3
(a) may seek a nomination from any other person or body that the Minister considers to be a suitable substitute for the nominating body, and	4
(b) may appoint any scientist nominated, or employed and nominated, by that other person or body as a member of the Scientific Committee, in place of a scientist nominated, or employed and nominated, by the nominating body.	5
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[62] Section 130 Provisions relating to members of Scientific Committee	16
Insert after section 130 (1):	17
(1A) A person who serves as a member of the Scientific Committee for 2 consecutive periods is not eligible to be a member of the Scientific Committee for 3 years after the end of those consecutive periods.	18
(1B) In determining the term of office to be provided for by a member's instrument of appointment, the Minister is to have regard to the desirability of maintaining some continuity of membership of the Committee. That is, the Minister is to endeavour to ensure that the terms of office of all members do not expire at or about the same time.	19
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[63] Section 137 Biological Diversity Advisory Council	28
Omit "14 members" from section 137 (2).	29
Insert instead "15 members".	30

[64] Section 137 (2) (c)	1
Omit the paragraph. Insert instead:	2
(c) 4 scientists, one each to be selected by the Minister from	3
3 nominees of the Ecological Society of Australia, 3	4
nominees of the Australian Museum, 3 nominees of the	5
National Biodiversity Council and 3 nominees of the	6
Royal Botanic Gardens and Domain Trust,	7
[65] Section 137 (3)	8
Insert after section 137 (2):	9
(3) If the person or body responsible for nominating members of	10
the Advisory Council under this section (<i>the nominating body</i>)	11
fails to submit a nominee or the required number of nominees	12
to the Minister, within such time and in such manner as may be	13
specified by the Minister by notice in writing to the nominating	14
body, the Minister:	15
(a) may seek a nominee or additional nominees from any	16
other person or body that the Minister considers to be a	17
suitable substitute for the nominating body, and	18
(b) may appoint any person nominated by that other person	19
or body as a member of the Advisory Council, in place	20
of a nominee of the nominating body.	21
[66] Section 143 Annual report by Director-General on operation of Act	22
Insert at the end of section 143:	23
(2) The report is to include a report on the implementation of	24
Parts 3, 4 and 5 of this Act.	25
[67] Section 146 Decision not to disclose location of critical habitat	26
Re-number section 146 (1) as section 146 (1A) and insert before	27
section 146 (1A) (as so re-numbered):	28
(1) The Director-General may, by notice in writing, determine that	29
any matter in any document in the possession of the National	30
Parks and Wildlife Service that may identify the location of	31

critical habitat or any area or areas of land proposed to be identified as critical habitat should not be disclosed to the public.	1 2 3
[68] Section 146 (2)	4
Omit “may exercise the function under subsection (1)”.	5
Insert instead “may exercise a function under subsection (1) or (1A)”.	6
[69] Section 146, note	7
Insert at the end of the section:	8
Note. A document that contains matter that is the subject of a determination referred to in subsection (1) is an exempt document for the purposes of the <i>Freedom of Information Act 1989</i> .	9 10 11
[70] Section 146A	12
Insert after section 146:	13
146A Decision not to disclose other information	14
(1) The Scientific Committee may, by notice in writing, determine that the following matter should not be disclosed to the public:	15 16
(a) information provided to the Scientific Committee relating to the location of threatened species, populations or ecological communities,	17 18 19
(b) information provided to the Scientific Committee that may identify any individual who made a nomination under Part 2 or made a submission in respect of a nomination.	20 21 22 23
(2) The Scientific Committee may exercise the function under subsection (1) (a) only if the Scientific Committee is of the opinion that the public interest requires the function to be exercised.	24 25 26 27
(3) The Scientific Committee may exercise the function under subsection (1) (b) only if the Scientific Committee is of the opinion that the function should be exercised in the interests of the safety or welfare of the individual who might otherwise be identified or to protect that individual against intimidation, harassment or other unwarranted reprisals in connection with the nomination or submission.	28 29 30 31 32 33 34

(4) If the Scientific Committee makes a determination under this section in respect of any information, the Scientific Committee may, despite any other provisions of this Act, decline to disclose that information in providing reasons for a determination made by it under this Act.	1 2 3 4 5
(5) The Scientific Committee must advise the Director-General of any determination it makes under this section.	6 7
Note. A document that contains matter that is the subject of a determination referred to in subsection (1) is an exempt document for the purposes of the <i>Freedom of Information Act 1989</i> .	8 9 10
[71] Schedule 2	11
Omit the heading. Insert instead:	12
Schedule 2 Vulnerable species and ecological communities	13
(Sections 7 and 7A)	14 15
Part 1 Vulnerable species	16
[72] Schedule 2, Part 2	17
Insert at the end of the Schedule:	18
Part 2 Vulnerable ecological communities	19
[73] Schedule 7 Savings, transitional and other provisions	20
Omit clause 1 (1). Insert instead:	21
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of:	22 23
this Act	24
<i>Threatened Species Conservation Amendment Act 2002</i>	25

[74] Schedule 7, clause 1 (2)	1
Omit “this Act”. Insert instead “the Act concerned”.	2
[75] Schedule 7, Part 4	3
Insert after Part 3:	4
 Part 4 Provisions consequent on Threatened Species Conservation Amendment Act 2002	 5 6
 8 Licences under Part 6	 7
Section 91, as substituted by the <i>Threatened Species Conservation Amendment Act 2002</i> , does not apply in respect of a licence issued under Part 6 before that substitution.	8 9 10
 9 Re-appointment of members of Scientific Committee	 11
Section 130 (1A), as inserted by the <i>Threatened Species Conservation Amendment Act 2002</i> , does not apply in respect of 2 consecutive periods of office served by a member of the Scientific Committee if any part of the 2 consecutive periods was served by the member before that subsection commenced.	12 13 14 15 16

Schedule 2	Amendment of other Acts	1
	(Section 4)	2
2.1	Environmental Planning and Assessment Act 1979 No 203	3
[1]	Section 4 Definitions	4
	Insert “, except as provided by section 5D” after “ <i>Fisheries Management Act 1994</i> ” at the end of the definition of <i>threatened species, populations and ecological communities</i> in section 4 (1).	5 6 7
[2]	Section 4 (1), definition of “threatened species, populations and ecological communities”, note	8 9
	Insert at the end of the definition:	10
	Note. Section 5D excludes vulnerable ecological communities from this expression.	11 12
[3]	Section 4 (1)	13
	Insert in alphabetical order:	14
	<i>threatened species</i> has the same meaning as in the <i>Threatened Species Conservation Act 1995</i> or (subject to section 5C) Part 7A of the <i>Fisheries Management Act 1994</i> .	15 16 17
	<i>vulnerable ecological community</i> has the same meaning as in the <i>Threatened Species Conservation Act 1995</i> .	18 19
[4]	Section 5A	20
	Omit the section. Insert instead:	21
	5A Significant effect on threatened species, populations or ecological communities, or their habitats	22 23
	(1) For the purposes of this Act and, in particular, in the administration of sections 78A, 79B, 79C, 111 and 112, the following must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats:	24 25 26 27 28

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- (a) each of the factors listed in subsection (2), 1
 - (b) any assessment guidelines. 2
 - (2) The following factors must be taken into account in making a 3
determination under this section: 4
 - (a) in the case of a threatened species, whether the action 5
proposed is likely to have an adverse effect on the life 6
cycle of the species such that a viable local population 7
of the species is likely to be placed at risk of extinction, 8
 - (b) in the case of an endangered population, whether the 9
action proposed is likely to have an adverse effect on 10
the life cycle of the species that constitutes the 11
endangered population such that a viable local 12
population of the species is likely to be placed at risk of 13
extinction, 14
 - (c) in the case of an endangered ecological community, 15
whether the action proposed: 16
 - (i) is likely to have an adverse effect on the extent 17
of the ecological community such that its local 18
occurrence is likely to be placed at risk of 19
extinction, or 20
 - (ii) is likely to substantially and adversely modify 21
the composition of the ecological community 22
such that its local occurrence is likely to be 23
placed at risk of extinction, 24
 - (d) in relation to the habitat of a threatened species, 25
population or ecological community: 26
 - (i) the extent to which habitat is likely to be 27
removed or modified as a result of the action 28
proposed, and 29
 - (ii) whether an area of habitat is likely to become 30
fragmented or isolated from other areas of 31
habitat as a result of the proposed action, and 32
 - (iii) the importance of the habitat to be removed, 33
modified, fragmented or isolated to the long- 34
term survival of the species, population or 35
ecological community in the locality, 36
 - (e) whether the action proposed is likely to have an adverse 37
effect on critical habitat (either directly or indirectly), 38

(f)	whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,	1 2 3
(g)	whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.	4 5 6 7
(3)	In this section:	8
	<i>assessment guidelines</i> means assessment guidelines issued and in force under section 94A of the <i>Threatened Species Conservation Act 1995</i> or, subject to section 5C, section 220ZZA of the <i>Fisheries Management Act 1994</i> .	9 10 11 12
	<i>key threatening process</i> has the same meaning as in the <i>Threatened Species Conservation Act 1995</i> or, subject to section 5C, Part 7A of the <i>Fisheries Management Act 1994</i> .	13 14 15
[5]	Section 5C Application of Act with respect to threatened species conservation—fish and marine vegetation	16 17
	Insert after section 5C (2):	18 19
(3)	In this section:	20
	<i>fish</i> has the same meaning as in Part 7A of the <i>Fisheries Management Act 1994</i> .	21 22
	<i>marine vegetation</i> has the same meaning as in Part 7A of the <i>Fisheries Management Act 1994</i> .	23 24
[6]	Section 5D	25
	Insert after section 5C:	26
	5D Application of Act to vulnerable ecological communities	27
(1)	In this Act, a reference to <i>threatened species, populations and ecological communities</i> or <i>threatened species, population or ecological community</i> (however expressed) does not include a reference to any vulnerable ecological community.	28 29 30 31

(2)	However, this section does not affect the application of this Act to any threatened species or endangered population that forms part of a vulnerable ecological community.	1 2 3
	Note. Vulnerable ecological communities are generally excluded from the provisions of this Act relating to threatened species, populations and ecological communities, including provisions that require the concurrence of the Director-General of National Parks and Wildlife or the Minister administering the <i>Threatened Species Conservation Act 1995</i> , or the preparation of a species impact statement, in respect of development or an activity that is likely to have a significant effect on threatened species, populations or ecological communities (subject to subsection (2) above). However, vulnerable ecological communities are relevant to the preparation of environmental planning instruments under section 26.	4 5 6 7 8 9 10 11 12 13
[7]	Section 26 Contents of environmental planning instruments	14
	Insert after section 26 (1):	15
(1A)	An environmental planning instrument may also make provision for or with respect to protecting and conserving vulnerable ecological communities.	16 17 18
(1B)	Despite subsection (1A), an environmental planning instrument must not contain any provision that requires a consent authority, before determining a development application relating to development that may affect a vulnerable ecological community:	19 20 21 22 23
(a)	to consult with the Director-General of National Parks and Wildlife or the Minister administering the <i>Threatened Species Conservation Act 1995</i> about the effect of the development on the vulnerable ecological community, or	24 25 26 27 28
(b)	to obtain the concurrence of the Director-General of National Parks and Wildlife or the Minister administering the <i>Threatened Species Conservation Act 1995</i> in respect of the development because of its possible effect on the vulnerable ecological community.	29 30 31 32 33
[8]	Section 26, note	34
	Insert at the end of the section:	35
	Note. Section 5C provides that a reference to the <i>Threatened Species Conservation Act 1995</i> , in relation to the critical habitat of fish or marine vegetation, is taken to be a reference to Part 7A of the <i>Fisheries Management Act 1994</i> .	36 37 38 39

[9] Section 34A Consultation with Director-General of National Parks and Wildlife about preparation of studies or instruments	1 2
Insert at the end of the section the following note:	3
Note. Section 5C provides that a reference to the Director-General of National Parks and Wildlife, in connection with the <i>Threatened Species Conservation Act 1995</i> , is taken, in the case of threatened species, populations or ecological communities of fish or marine vegetation, to be a reference to the Director of NSW Fisheries.	4 5 6 7 8
[10] Section 105A	9
Insert after section 105:	10
105A Transitional—amendment to list of vulnerable species	11
(1) An amendment to the list of vulnerable species does not apply in respect of any development application made under section 78A before the amendment was made.	12 13 14
(2) This section ceases to apply in respect of a development application if the application has not been determined by the consent authority at the end of the period of 12 months after the date the application was made under section 78A.	15 16 17 18
(3) In this section:	19
<i>list of vulnerable species</i> means Part 1 of Schedule 2 to the <i>Threatened Species Conservation Act 1995</i> or, subject to section 5C, Schedule 5 to the <i>Fisheries Management Act 1994</i> .	20 21 22
[11] Section 110D	23
Insert after section 110C:	24
110D Transitional—amendment to list of vulnerable species	25
(1) For the purposes of Divisions 2 and 3 of this Part, an amendment to the list of vulnerable species does not apply in respect of an activity if:	26 27 28
(a) an environmental impact statement was obtained in relation to that activity in accordance with this Part before the amendment was made, and	29 30 31
(b) notice of the environmental impact statement has been given as provided for by section 113 (1).	32 33

(2)	Subsection (1) ceases to apply in respect of an activity if the activity has not commenced to be carried out, or an approval in relation to the activity has not been granted, by a determining authority at the end of the period of 12 months after the date the notice of the environmental impact statement was given under section 113 (1).	1 2 3 4 5 6
(3)	For the purposes of Division 4 of this Part, an amendment to the list of vulnerable species does not apply in respect of an activity to which that Division applies if the proponent sought the Minister's approval under that Division in respect of the activity before the amendment was made.	7 8 9 10 11
(4)	Subsection (3) ceases to apply in respect of an activity if the Minister has not approved the activity being carried out by the end of the period of 12 months after the date the proponent sought the Minister's approval under that Division.	12 13 14 15
(5)	In this section: <i>list of vulnerable species</i> means Part 1 of Schedule 2 to the <i>Threatened Species Conservation Act 1995</i> or, subject to section 5C, Schedule 5 to the <i>Fisheries Management Act 1994</i> .	16 17 18 19
[12]	Section 112 Decision of determining authority in relation to certain activities	20 21
	Insert after section 112 (1B):	22
	(1C) An environmental impact statement is not required (despite subsection (1) (a)) in respect of an activity that:	23 24
	(a) is on land that is, or is part of, critical habitat, or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, and	25 26 27
	(b) is not likely to significantly affect the environment except as described in paragraph (a),	28 29
	if the determining authority has obtained or been furnished with a species impact statement in respect of the activity, prepared in accordance with Division 2 of Part 6 of the <i>Threatened Species Conservation Act 1995</i> . However, the provisions of this Part relating to environmental impact statements (other than	30 31 32 33 34

	subsection (1) (a) (i) apply to the species impact statement as if references to an environmental impact statement included a reference to the species impact statement.	1 2 3
[13]	Section 112C Concurrence of or consultation with Director-General of National Parks and Wildlife if Minister is not determining authority	4 5
	Insert after section 112C (3):	6
	(4) The Director-General of National Parks and Wildlife or, in a case where the Minister administering the <i>Threatened Species Conservation Act 1995</i> has elected to act in the place of the Director-General, the Minister may, on the request of a determining authority that proposes to carry out or grant an approval to carry out an activity referred to in subsection (1), modify a concurrence granted under this section by:	7 8 9 10 11 12 13
	(a) revoking or varying a condition of the concurrence, or	14
	(b) imposing an additional condition on the concurrence.	15
[14]	Section 115S	16
	Insert after section 115R:	17
115S	Transitional—amendment to list of vulnerable species	18
	(1) An amendment to the list of vulnerable species does not apply in respect of a designated fishing activity if:	19 20
	(a) an environmental impact statement was prepared in relation to that activity in accordance with this Part before the amendment was made, and	21 22 23
	(b) notice of the environmental impact statement has been given as provided for by section 115L.	24 25
	(2) Subsection (1) ceases to apply in respect of a designated fishing activity if a determination under section 115O has not been made in respect of the activity at the end of the period of 12 months after the date the notice of the environmental impact statement was given under section 115L.	26 27 28 29 30
	(3) In this section:	31
	<i>list of vulnerable species</i> means Part 1 of Schedule 2 to the <i>Threatened Species Conservation Act 1995</i> or, subject to section 5C, Schedule 5 to the <i>Fisheries Management Act 1994</i> .	32 33 34

[15] Schedule 6 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Threatened Species Conservation Amendment Act 2002</i>	3
2.2 Fisheries Management Act 1994 No 38	4
[1] Section 220B Definitions	5
Omit the definitions of <i>fish</i> and <i>marine vegetation</i> from section 220B (1).	6
Insert instead in alphabetical order:	7
<i>fish</i> means any fish (as defined in section 5) that is indigenous to New South Wales, but does not include any fish declared to be a species of animal for the purposes of the <i>Threatened Species Conservation Act 1995</i> by order in force under section 5A of that Act.	8
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Note. Animals may be listed under the <i>Threatened Species Conservation Act 1995</i> .	13
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<i>marine vegetation</i> means any marine vegetation (as defined in section 4) that is indigenous to New South Wales, but does not include any marine vegetation declared to be a species of plant for the purposes of the <i>Threatened Species Conservation Act 1995</i> by order in force under section 5A of that Act.	15
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Note. Plants may be listed under the <i>Threatened Species Conservation Act 1995</i> .	20
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<i>Threatened Species Scientific Committee</i> means the Scientific Committee constituted under the <i>Threatened Species Conservation Act 1995</i> .	22
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[2] Section 220BA	25
Insert after section 220B:	26
220BA Relationship of Part to Threatened Species Conservation Act 1995	27
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(1) The Minister may, by order made with the concurrence of the Minister administering the <i>Threatened Species Conservation Act 1995</i> :	29
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| (a) | declare a species of animal to be a species of fish for the purposes of this Act if it is an invertebrate and it is a species that may inhabit water at some stage of its biological development, or | 1
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| (b) | declare a species of plant to be a species of marine vegetation for the purposes of this Act if it is a species that may inhabit water (other than freshwater) at some stage of its biological development. | 5
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| (2) | Any species of animal or plant that is the subject of an order in force under this section is taken to be a species of fish or marine vegetation for the purposes of this Part, in accordance with the terms of the order. | 9
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| (3) | The Minister and the Minister administering the <i>Threatened Species Conservation Act 1995</i> may at any time consult with each other for the purpose of determining whether an order under this section should be made and the terms of the order. | 13
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| (4) | The Ministers may also consult with the Chairperson of the Fisheries Scientific Committee, the Chairperson of the Threatened Species Scientific Committee and any other person or body before making an order under this section. | 17
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| (5) | If the Ministers are unable to resolve any dispute between them as to the making or the terms of an order under this section, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers. | 21
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| (6) | An order under this section is to be published in the Gazette. | 26 |
| (7) | For avoidance of doubt, an order under this section does not require the species concerned to be listed under this Part. | 27
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| (8) | In this section: | 29 |
| | <i>animal</i> means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, in any stage of biological development, but does not include humans. | 30
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| | <i>plant</i> means any plant-life that is indigenous to New South Wales, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens. | 34
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[3] Section 220IA	1
Insert after section 220I:	2
220IA Referral of nomination to Threatened Species Scientific Committee	3
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(1) If, in the opinion of the Chairperson of the Fisheries Scientific Committee, a nomination of a key threatening process relates to a threatening process that is likely to have an impact on both terrestrial and aquatic environments, the Chairperson may consult with the Chairperson of the Threatened Species Scientific Committee for the purpose of determining whether the nomination should also be considered by that Committee under the <i>Threatened Species Conservation Act 1995</i> .	5 6 7 8 9 10 11 12
(2) If the Chairpersons agree that the nomination should also be considered by the Threatened Species Scientific Committee under the <i>Threatened Species Conservation Act 1995</i> , the nomination is to be referred to the Threatened Species Scientific Committee for consideration.	13 14 15 16 17
(3) In such a case:	18
(a) the nomination is taken also to be a nomination for the amendment of Schedule 3 to that Act, made to the Threatened Species Scientific Committee in accordance with Division 3 of Part 2 of that Act on the date the Chairpersons agree that the nomination should be referred to that Committee for consideration, and	19 20 21 22 23 24
(b) Division 3 of Part 2 of that Act applies in relation to the nomination (in addition to this Part).	25 26
(4) For the purposes of this section, a <i>nomination of a key threatening process</i> means a nomination of an amendment to Schedule 6.	27 28 29
Note. There is a reciprocal process in the <i>Threatened Species Conservation Act 1995</i> for the referral of nominations made under that Act to the Fisheries Scientific Committee in appropriate cases.	30 31 32

[4] Section 220ZJA	1
Insert after section 220ZJ:	2
220ZJA Joint preparation of recovery and threat abatement plans	3
(1) The Director may, with the prior approval of the Minister and the Minister administering the <i>Threatened Species Conservation Act 1995</i> , make arrangements with the Director-General of National Parks and Wildlife for the joint preparation of a recovery plan or threat abatement plan under this Act and the <i>Threatened Species Conservation Act 1995</i> .	4 5 6 7 8 9
(2) In such a case, any function of the Director or the Minister under this Part in respect of the plan may be exercised in conjunction with any corresponding function of the Director-General of National Parks and Wildlife or the Minister administering the <i>Threatened Species Conservation Act 1995</i> in respect of the plan under that Act.	10 11 12 13 14 15
Note. For example, the Director and the Director-General of National Parks and Wildlife may jointly publish a notice of the preparation of the plan under section 220ZO of this Act and section 61 or 79 of the <i>Threatened Species Conservation Act 1995</i> .	16 17 18 19
(3) The Minister may exercise his or her functions under section 220ZP of this Act in respect of any such plan only with the concurrence of the Minister administering the <i>Threatened Species Conservation Act 1995</i> .	20 21 22 23
(4) If the Minister administering this Act and the Minister administering the <i>Threatened Species Conservation Act 1995</i> are unable, following consultation, to resolve any dispute as to the exercise of any function under section 220ZP of this Act in respect of any such plan, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers.	24 25 26 27 28 29 30
(5) Except as otherwise provided by this section, this Part applies in respect of a recovery plan or threat abatement plan that is jointly prepared as provided for by this section in the same way as it applies in respect of any other recovery plan or threat abatement plan.	31 32 33 34 35

[5] Section 220ZZ Significant effect on threatened species, populations or ecological communities, or their habitats	1
	2
Omit section 220ZZ (2). Insert instead:	3
(2) For that purpose, the Director must take into account the following:	4
	5
(a) each of the factors listed in subsection (2A),	6
(b) any assessment guidelines issued and in force under section 220ZZA.	7
	8
(2A) The following factors must be taken into account in making a determination under this section:	9
	10
(a) in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,	11
	12
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	14
(b) in the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,	15
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(c) in the case of an endangered ecological community, whether the action proposed:	21
	22
(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or	23
	24
	25
	26
(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,	27
	28
	29
	30
(d) in relation to the habitat of a threatened species, population or ecological community:	31
	32
(i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and	33
	34
	35
(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and	36
	37
	38

(iii)	the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality,	1 2 3 4
(e)	whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly),	5 6
(f)	whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,	7 8 9
(g)	whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.	10 11 12 13
[6]	Section 220ZZA	14
	Insert after section 220ZZ:	15
220ZZA	Assessment guidelines	16
(1)	The Minister may, by order published in the Gazette, issue guidelines (<i>assessment guidelines</i>) relating to the determination of whether an action is likely to significantly affect threatened species, populations or ecological communities, or their habitats.	17 18 19 20 21
(2)	An order under this section (including any order that amends, revokes or replaces such an order) may be made only with the concurrence of the Minister for Planning.	22 23 24
[7]	Schedule 7 Savings, transitional and other provisions	25
	Insert at the end of clause 2 (1):	26
	<i>Threatened Species Conservation Amendment Act 2002</i>	27

2.3 Freedom of Information Act 1989 No 5	1
Schedule 1 Exempt documents	2
Insert as clause 24:	3
24 Documents relating to threatened species conservation	4
(1) A document is an exempt document if it contains matter that the Director-General under the <i>Threatened Species Conservation Act 1995</i> has determined should not be disclosed to the public under section 146 of that Act.	5 6 7 8
(2) A document is an exempt document if it contains matter that the Scientific Committee under the <i>Threatened Species Conservation Act 1995</i> has determined should not be disclosed to the public under section 146A of that Act.	9 10 11 12
2.4 Land Tax Management Act 1956 No 26	13
Section 10 Land exempted from tax	14
Omit section 10 (1) (p2). Insert instead:	15
(p2) land that is the subject of a conservation agreement entered into under the <i>National Parks and Wildlife Act 1974</i> , if the primary purpose of the agreement is the maintenance of threatened species, populations or ecological communities (within the meaning of that Act) to assist their preservation,	16 17 18 19 20 21
2.5 National Parks and Wildlife Act 1974 No 80	22
[1] Section 5 Definitions	23
Insert in alphabetical order in section 5 (1):	24
<i>threatened species</i> has the same meaning as in the <i>Threatened Species Conservation Act 1995</i> .	25 26

[2] Section 45 Provisions respecting animals in parks and sites	1
Omit “or a trapper’s licence under section 123” from section 45 (3) (a).	2
Insert instead “, a trapper’s licence under section 123 or a scientific licence under section 132C”.	3
	4
[3] Section 56 Provisions respecting animals in nature reserves	5
Omit “or a trapper’s licence under section 123” from section 56 (3) (a).	6
Insert instead “, a trapper’s licence under section 123 or a scientific licence under section 132C”.	7
	8
[4] Section 70 Fauna in wildlife districts, wildlife refuges and other areas	9
Insert “, a scientific licence under section 132C” before “or a licence under Part 6” in section 70 (3) (a).	10
	11
[5] Section 91AA Director-General may make stop work order	12
Omit section 91AA (4) (b). Insert instead:	13
(b) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or	14
	15
	16
(c) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part.	17
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[6] Section 98 Harming protected fauna, other than threatened species, endangered populations or endangered ecological communities	21
	22
Omit “threatened species, populations or ecological communities” from section 98 (1).	23
	24
Insert instead “threatened species, endangered populations, endangered ecological communities”.	25
	26
[7] Section 98 (3) (a)	27
Omit “or an emu licence under section 125A”.	28
Insert instead “, an emu licence under section 125A, a scientific licence under section 132C”.	29
	30

[8] Section 98 (4)	1
Insert after section 98 (3):	2
(4) A person is not to be convicted of an offence arising under subsection (2) if the person proves that:	3
(a) the act constituting the offence was authorised by, and done in accordance with, a conservation agreement, or	4
(b) the act constituting the offence was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the <i>Threatened Species Conservation Act 1995</i> .	5 6 7 8 9 10
[9] Section 98 (5) (b) and (c)	11
Omit section 98 (5) (b). Insert instead:	12
(b) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or	13 14 15
(c) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part.	16 17 18 19
[10] Section 99 Harming threatened interstate fauna	20
Insert “or a scientific licence under section 132C” after “section 120” in section 99 (2).	21 22
[11] Section 101 Buying, selling or possessing protected fauna	23
Insert after section 101 (6):	24
(7) In this section, <i>protected fauna</i> does not include any threatened species or endangered population.	25 26
Note. See section 118B in relation to buying, selling or possessing an animal or plant that is of, or is part of, a threatened species or endangered population.	27 28 29

[12] Section 112F Restriction on issue of licences to take marine mammals for exhibition etc	1 2
Omit “A general licence shall not be issued under section 120”.	3
Insert instead “A licence is not to be issued under section 120 or section 132C”.	4 5
[13] Section 112G Approaching marine mammal	6
Insert “, a scientific licence under section 132C” after “a general licence under section 120” in section 112G (3).	7 8
[14] Section 112G (5)	9
Insert “, 132C, 132D” after “129”.	10
[15] Section 117 Restriction on picking or possession of native plant	11
Insert after section 117 (3) (a):	12
(a1) the act constituting the offence was authorised by, and done in accordance with, a conservation agreement, or	13 14
(a2) the act constituting the offence was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the <i>Threatened Species Conservation Act 1995</i> , or	15 16 17 18
[16] Section 117 (3) (b) (i)	19
Insert “or 132C” after “section 131”.	20
[17] Section 118 Restriction on selling of native plant	21
Insert after section 118 (2):	22
(3) A person is not to be convicted of an offence arising under subsection (1) in respect of the supply of a protected native plant to another person if the person proves that the act constituting the alleged offence was not done for commercial purposes and:	23 24 25 26 27
(a) was done in relation to a plant that was cultivated by a person as a hobby, and	28 29

	(b) both the person who supplied the plant, and the person to whom it was supplied, are persons who cultivate plants as a hobby.	1 2 3
[18]	Section 118A Harming or picking threatened species, endangered populations or endangered ecological communities	4 5
	Omit section 118A (1) (a). Insert instead:	6
	(a) harm any animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community, or	7 8 9
[19]	Section 118A (1) (b)	10
	Omit “species, population or ecological community, being an”.	11
[20]	Section 118A (2)	12
	Omit the subsection (but not the penalty). Insert instead:	13
	(2) A person must not pick any plant that is of, or is part of, a threatened species, an endangered population or an endangered ecological community.	14 15 16
[21]	Section 118A (3) (a)	17
	Insert “, a scientific licence under section 132C” before “or a licence granted under Part 6”.	18 19
[22]	Section 118A (3) (b) (ii)	20
	Omit the sub-paragraph. Insert instead:	21
	(ii) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or	22 23 24
	(iii) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or	25 26 27 28

[23] Section 118A (3) (b1) and (b2)	1
Insert after section 118A (3) (b):	2
(b1) was authorised by, and done in accordance with, a conservation agreement, or	3 4
(b2) was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the <i>Threatened Species Conservation Act 1995</i> , or	5 6 7
[24] Section 118B Buying, selling or possessing threatened species or endangered population	8 9
Omit section 118B (1) (but not the penalty). Insert instead:	10
(1) A person must not buy, sell or have in possession or control any animal or plant that is of, or is part of, a threatened species or an endangered population.	11 12 13
[25] Section 118B (4)	14
Insert “, or a scientific licence under section 132C” before “or a licence granted under Part 6”.	15 16
[26] Section 118B (5) (a1) and (a2)	17
Insert after section 118B (5) (a):	18
(a1) the act constituting the offence was authorised by, and done in accordance with, a conservation agreement, or	19 20
(a2) the act constituting the offence was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the <i>Threatened Species Conservation Act 1995</i> , or	21 22 23 24
[27] Section 118C Damage critical habitat	25
Omit section 118C (5) (b) (ii). Insert instead:	26
(ii) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or	27 28 29

(iii)	an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or	1 2 3 4
[28]	Section 118C (5) (d) and (e)	5
	Insert at the end of section 118C (5) (c):	6
	, or	7
	(d) was authorised by, and done in accordance with, a conservation agreement, or	8 9
	(e) was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the <i>Threatened Species Conservation Act 1995</i> .	10 11 12
[29]	Section 118D Damage habitat of threatened species, endangered population or endangered ecological community	13 14
	Omit “a threatened species, population or ecological community” from section 118D (1).	15 16
	Insert instead “a threatened species, an endangered population or an endangered ecological community”.	17 18
[30]	Section 118D (2) (b) (ii)	19
	Omit the sub-paragraph. Insert instead:	20
	(ii) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or	21 22 23
	(iii) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or	24 25 26 27
[31]	Section 118D (2) (d) and (e)	28
	Insert at the end of section 118D (2) (c):	29
	, or	30
	(d) was authorised by, and done in accordance with, a conservation agreement, or	31 32

	(e) was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the <i>Threatened Species Conservation Act 1995</i> .	1 2 3
[32]	Section 118E Court may order offender to restore habitat	4
	Omit “a threatened species, population or ecological community,” from section 118E (1).	5 6
	Insert instead “a threatened species, an endangered population or an endangered ecological community,”.	7 8
[33]	Section 118E (1)	9
	Omit “that critical habitat or habitat of a threatened species, population or ecological community”.	10 11
	Insert instead “that critical habitat or habitat”.	12
[34]	Section 118F	13
	Insert after section 118E:	14
	118F Definitions	15
	In this Part:	16
	<i>animal</i> has the same meaning as in the <i>Threatened Species Conservation Act 1995</i> .	17 18
	Note. The definition of <i>animal</i> in the <i>Threatened Species Conservation Act 1995</i> may include some types of fish.	19 20
	<i>plant</i> has the same meaning as in the <i>Threatened Species Conservation Act 1995</i> .	21 22
[35]	Part 9, heading	23
	Omit the heading. Insert instead:	24
	Part 9 Licensing in respect of fauna, native plants and threatened species	25 26

[36] Section 120 General licence	1
Omit section 120 (1) (a) and (a1). Insert instead:	2
(a) to harm or obtain any protected fauna for any specified purpose,	3 4
(a1) to hold or keep in possession or under control any protected fauna for any specified purpose,	5 6
[37] Section 120 (2B)	7
Insert after section 120 (2A):	8
(2B) A general licence is not to be issued to authorise the harming of protected fauna solely for scientific, educational or conservation purposes. A licence may be issued under section 132C for those purposes.	9 10 11 12
Note. Section 91 of the <i>Threatened Species Conservation Act 1995</i> further provides that a general licence is not to be issued to authorise a person to harm any animal that is of, or part of, a threatened species, population or ecological community except:	13 14 15 16
(a) for the welfare of an animal, or	17
(b) if there is a threat to life or property.	18
[38] Section 131 Licence to pick protected native plants	19
Insert at the end of section 131:	20
(2A) A licence is not to be issued under this section to authorise the picking of native plants solely for scientific, educational or conservation purposes. A licence may be issued under section 132C for those purposes.	21 22 23 24
[39] Part 9, Division 3A	25
Insert after Division 3:	26
Division 3A Scientific licences	27
132C Scientific licences	28
(1) An authorised officer may issue a licence (in this Act referred to as a <i>scientific licence</i>) authorising a person to take action, for scientific, educational or conservation purposes, that is likely to result in one or more of the following:	29 30 31 32

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- | | | |
|-----|---|----------------------------------|
| (a) | harm to any protected fauna, or to an animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community, | 1
2
3 |
| (b) | the picking of any protected native plant or of any plant that is of, or is part of, a threatened species, an endangered population or an endangered ecological community, | 4
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6
7 |
| (c) | damage to critical habitat, | 8 |
| (d) | damage to a habitat of a threatened species, an endangered population or an endangered ecological community. | 9
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11 |
| (2) | A scientific licence does not, except in so far as the terms of the licence otherwise expressly provide, authorise the harming of fauna in a national park, historic site, state conservation area, regional park, karst conservation reserve, nature reserve, Aboriginal area, wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement. | 12
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| (3) | A scientific licence may be issued without conditions or limitations or may be issued subject to specified conditions or limitations. | 18
19
20 |
| (4) | In particular: | 21 |
| (a) | a scientific licence may but need not specify the animal or plant that may be harmed or picked under its authority, and | 22
23
24 |
| (b) | a scientific licence may but need not be limited to specified areas. | 25
26 |
| (5) | A scientific licence may authorise any specified persons, or class of persons, in addition to the person to whom the licence is issued to do the things authorised by the licence. In such a case, the specified persons or class of persons are taken to be holders of the licence for the purposes of this Act. | 27
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| (6) | To avoid doubt, the Director-General is not a determining authority for the purposes of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> when issuing a scientific licence. | 32
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132D	Licence authorises certain actions	1
	Except in so far as any conditions or restrictions attached to a scientific licence otherwise provide:	2
		3
	(a) a scientific licence that authorises a person to harm any animal in a national park, historic site, state conservation area, regional park, karst conservation reserve, nature reserve or Aboriginal area also authorises that person to do, in connection with the harming of any such animal, any act referred to in section 45 (1) or 56 (1), and	4
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	(b) a scientific licence that authorises a person to harm any fauna in a wildlife refuge, conservation area or area subject to a wilderness protection agreement also authorises that person to do, in connection with the harming of any such fauna, any act referred to in section 70 (1) or (2), and	10
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		15
	(c) a scientific licence that authorises a person to harm any animal or pick any plant also authorises the person to keep and have the animal or plant in the person's possession.	16
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132E	Definitions	20
	In this Division:	21
	<i>animal</i> has the same meaning as in the <i>Threatened Species Conservation Act 1995</i> .	22
		23
	Note. The definition of <i>animal</i> in the <i>Threatened Species Conservation Act 1995</i> may include some types of fish.	24
		25
	<i>plant</i> has the same meaning as in the <i>Threatened Species Conservation Act 1995</i> .	26
		27
[40]	Section 133 Conditions and restrictions attaching to licences and certificates and variation of licences and certificates	28
		29
	Insert "(whether issued under this Act or under Part 6 of the <i>Threatened Species Conservation Act 1995</i>)" after "The holder of a licence or certificate" in section 133 (4).	30
		31
		32

[41] Schedule 3 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Threatened Species Conservation Amendment Act 2002</i>	3
[42] Schedule 3, Part 4	4
Insert as Part 4:	5
Part 4 Provisions consequent on enactment of Threatened Species Conservation Amendment Act 2002	6 7 8
41 Conservation agreement and joint management agreements	9
A reference, in an amendment made to Parts 7, 7A, 8 or 8A by the <i>Threatened Species Conservation Amendment Act 2002</i> , to a conservation agreement, or a joint management agreement entered into under Part 7 of the <i>Threatened Species Conservation Act 1995</i> , does not extend to any agreement entered into before the commencement of the amendment concerned.	10 11 12 13 14 15 16
42 Changes consequent on introduction of scientific licences	17
The amendments made to Divisions 2 and 3 of Part 9 by the <i>Threatened Species Conservation Amendment Act 2002</i> do not apply in respect of any licence issued before the commencement of those amendments.	18 19 20 21
43 Commencement of National Parks and Wildlife Amendment Act 2001	22 23
(1) Sections 132C (2) and 132D, as inserted by the <i>Threatened Species Conservation Amendment Act 2002</i> , do not apply in respect of state conservation areas or Aboriginal areas until the commencement of Schedule 1 [26] to the <i>National Parks and Wildlife Amendment Act 2001</i> .	24 25 26 27 28
(2) Until the commencement of Schedule 1 [28] to the <i>National Parks and Wildlife Amendment Act 2001</i> , the provisions of sections 132C (2) and 132D (a), as inserted by the <i>Threatened</i>	29 30 31

Species Conservation Amendment Act 2002, are taken to apply 1
in respect of state recreation areas in the same way as they 2
apply to the other areas mentioned in those provisions. 3

(3) Until the commencement of Schedule 1 [33] to the *National 4
Parks and Wildlife Amendment Act 2001*, the provisions of 5
sections 132C (2) and 132D (a), as inserted by the *Threatened 6
Species Conservation Amendment Act 2002*, are taken to apply 7
in respect of state game reserves in the same way as they apply 8
to the other areas mentioned in those provisions. 9

(4) Until the commencement of Schedule 1 [44] to the *National 10
Parks and Wildlife Amendment Act 2001*, the provisions of 11
sections 132C (2) and 132D (b), as inserted by the *Threatened 12
Species Conservation Amendment Act 2002*, are taken to apply 13
in respect of wildlife districts in the same way as they apply to 14
the other areas mentioned in those provisions. 15

(5) Until the commencement of Schedule 1 [45] to the *National 16
Parks and Wildlife Amendment Act 2001*, the provisions of 17
sections 132C (2) and 132D (b), as inserted by the *Threatened 18
Species Conservation Amendment Act 2002*, are taken to apply 19
in respect of wildlife management areas in the same way as 20
they apply to the other areas mentioned in those provisions. 21