

FIRST PRINT

**ENDANGERED AND OTHER THREATENED SPECIES  
CONSERVATION BILL 1993**

NEW SOUTH WALES



**EXPLANATORY NOTE**

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to maintain the biological diversity of animals and plants and their potential for evolutionary development in the wild; and
- (b) to prevent the extinction and promote the recovery of endangered and other threatened species of animals and plants; and
- (c) to protect the critical habitat of endangered species through the public process of environmental planning and assessment; and
- (d) to ensure that the impact of any development on endangered and other threatened species of animals and plants is properly assessed.

The Bill repeals the Endangered Fauna (Interim Protection) Act 1991 and also amends the National Parks and Wildlife Act 1974, the Environmental Planning and Assessment Act 1979 and certain other Acts.

The principal features of the Bill are as follows:

- (a) the listing by an independent Scientific Committee of endangered species of animals and plants and of other threatened species (such as vulnerable and rare species);
- (b) the specification of criteria to determine eligibility for listing;
- (c) the preparation of recovery plans by the Director of National Parks and Wildlife to prevent the extinction and promote the recovery of endangered and vulnerable species of animals and plants;
- (d) the implementation of recovery plans, once they are approved by the Minister, by all Ministers and Government agencies concerned;
- (e) the designation of critical habitat of endangered species in environmental planning instruments and the creation of an offence of damaging that designated habitat (maximum penalty \$100,000 or 2 years imprisonment, or both);

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- (f) the making by the Minister, on the recommendation of the Director of National Parks and Wildlife, of interim protection orders to protect habitat from damage pending action under the proposed Act;
- (g) amendments to the National Parks and Wildlife Act 1974 to make it clear that offences relating to the taking or killing of native fauna apply only where there is an intention to take or kill the fauna (and to increase penalties for those offences);
- (h) amendments to the Environmental Planning and Assessment Act 1979 to require environmental assessments during the planning process of the effects of developments on native animals and plants and, in particular, on endangered or other threatened species and their habitat.

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**PART 1—PRELIMINARY**

Clause 1 specifies 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 sets out the objects of the proposed Act.

Clause 4 defines terms used in the proposed Act. In particular, references to animals and plants cover all forms of animal and plant life native to Australia and established before European settlement.

Clause 5 repeals the Endangered Fauna (Interim Protection) Act 1991 and the amendments that were made by that Act. The National Parks and Wildlife Act 1974, the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979 are restored as if the amendments had not been made. The Bill contains other amendments to replace those enacted by the Endangered Fauna (Interim Protection) Act 1991. That Act originally provided for the repeal of significant amendments on 1 December 1992 or when provision is made by an Act to replace the proposed amendments. The Endangered Fauna (Interim Protection) Amendment Act 1992 (which is also being repealed) extended that date until 1 October 1993.

**PART 2—LISTING OF ENDANGERED AND OTHER THREATENED SPECIES**

**Division 1—Endangered species**

Clause 6 declares that Schedule 1 lists endangered species for the purposes of the proposed Act. Species will be listed after the commencement of the proposed Act on the recommendation of the Scientific Committee established under the proposed Act.

Clause 7 provides that Schedule 1 may be amended by the Governor by proclamation, but only on the recommendation of the Scientific Committee.

Clause 8 describes the species eligible for listing as endangered species, namely, species likely to become extinct in New South Wales within 20 years. Different periods, or specified probabilities of extinction, may be prescribed by the regulations for different species.



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### **Division 2—Other threatened species**

Clause 9 declares that Schedule 2 lists other threatened species for the purposes of the proposed Act. Species will be listed, after endangered species have been listed, on the recommendation of the Scientific Committee.

Clause 10 provides that Schedule 2 may be amended by the Governor by proclamation, but only on the recommendation of the Scientific Committee.

Clause 11 describes the species eligible for listing as other threatened species, namely:

- Vulnerable species—being species likely to become extinct in New South Wales within 100 years. Different periods or specified probabilities of extinction may be prescribed by the regulations for different species.
- Rare species—being species located in restricted geographical areas or thinly scattered.
- Indeterminate species—being species which are either endangered, vulnerable or rare but the appropriate category is not known.
- Insufficiently known species—being species which are only suspected of being endangered, vulnerable or rare.

### **Division 3—General provisions relating to listing**

Clause 12 deals with time and procedure for the making of recommendations by the Scientific Committee. The clause requires the Committee to keep listings under review.

Clause 13 enables regulations to be made which set out principles to be applied in determining the appropriate listing of species. The Scientific Committee may apply its own guidelines for the purposes of determining the matter in accordance with the proposed Act and any such principles.

Clause 14 deals with the discretion of the Scientific Committee in making recommendations about listing. In particular, the clause enables the Committee to act on information available to it about current causal factors and future trends and to act without the need for certainty.

Clause 15 requires the Scientific Committee to seek and consider public submissions on any proposed recommendation for the listing of endangered or other threatened species.

Clause 16 prevents the listing of organisms that cause human disease or of species which are endangered or otherwise threatened in other parts of Australia but have not been established in the wild in New South Wales since European settlement.

## **PART 3—RECOVERY PLANS**

Clause 17 requires the Director of National Parks and Wildlife to prepare recovery plans to prevent the extinction and promote the recovery of endangered species to a position of viability in the wild. Recovery plans for other threatened species which are vulnerable may also be prepared.

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Clause 18 provides that recovery plans may relate to more than one species. In particular, they may contain threat abatement measures dealing with key processes threatening the survival of more than one species.

Clause 19 provides, as guidelines for recovery plans, the efficient and effective conservation of the species, the minimising of adverse social and economic consequences and the conservation of biological diversity generally. The clause requires the Director, when preparing a recovery plan, to encourage community co-operation.

Clause 20 deals with priorities in the preparation of recovery plans and the timetable for their implementation.

Clause 21 provides for the Director to identify the habitat of the species and the factors which threaten the survival of the species.

Clause 22 deals with matters to be included in recovery plans (including the objectives of the plan, a timetable for implementation and the estimated cost of the measures included in the plan).

Clause 23 lists the types of measures that may be included in a recovery plan, including proposed conservation agreements with the landholder, the proposed dedication or reservation of the land under the National Parks and Wildlife Act 1974, the proposed acquisition of the land under that Act, proposed controls under environmental planning instruments, captive breeding programs or research.

Clause 24 provides for the establishment of a community advisory committee to advise on the preparation of recovery plans.

Clause 25 requires the Director, when preparing a plan, to consult government agencies affected by the plan and provides for resolution of disputes with those agencies.

Clause 26 provides that the approval of the Director of NSW Fisheries is required for a plan that relates to fish.

Clause 27 makes special provision for the approval of the Minister for Planning for proposed controls under environmental planning instruments and for the making of those instruments.

Clause 28 provides that the Minister must approve a recovery plan before it is implemented. The Premier's concurrence is required before a plan is approved.

Clause 29 requires the Director to publish approved recovery plans.

Clause 30 requires Ministers and government agencies to implement a recovery plan once it is approved.

Clause 31 requires the Director to keep recovery plans under review.

Clause 32 requires the Director, in respect of species that are not subject to recovery plans, to investigate the status of species that may be endangered, vulnerable or rare, and to monitor and take any practicable measures to conserve rare species.



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**PART 4—DAMAGE TO CRITICAL HABITAT OF ENDANGERED SPECIES**

Clause 33 provides that critical habitat of endangered species for the purposes of the Part are places or parts of places designated as such in a State, regional or local environmental planning instrument. Before the designation of any such place, it will be necessary for the Minister for Planning to certify (on the advice of the Director of National Parks and Wildlife) that the protection of the habitat is essential for the survival of the species.

Clause 34 makes it an offence to damage any such critical habitat. The maximum penalty is \$100,000 or 2 years imprisonment or both.

Clause 35 provides defences to that offence, namely, the accused was acting in compliance with relevant planning instruments and laws, the damage was unlikely to increase the threat to the survival of the species or the damage was authorised by law and was reasonably necessary to avoid a threat to life or property.

**PART 5—INTERIM PROTECTION ORDERS FOR CRITICAL HABITAT OF ENDANGERED SPECIES**

Clause 36 provides that the Director of National Parks and Wildlife may recommend to the Minister the making of an interim protection order to prevent damage to critical habitat of an endangered species pending action under the proposed Act.

Clause 37 authorises the Minister to make an interim protection order recommended by the Director. The order may prohibit or regulate the carrying out of the activity concerned by the owner or occupier.

Clause 38 requires the Minister to give affected parties notice of the making of an order.

Clause 39 provides that the Minister may request the designation of the habitat in an environmental planning instrument or take other available action to protect the habitat. The order is to be revoked if that action is taken or a decision is made not to take that action.

Clause 40 deals with the duration of an order and permits its renewal. The total period of an order (and any renewal) is not to exceed 12 months.

Clause 41 enables the Minister to revoke an order.

Clause 42 makes it an offence to contravene an order.

Clause 43 gives an owner or occupier of land a right to appeal to the Land and Environment Court against an order.

Clause 44 provides for a register to be kept of orders in force.

**PART 6—SCIENTIFIC COMMITTEE**

Clause 45 establishes the Scientific Committee for the purposes of the proposed Act.

Clause 46 sets out the functions of the Scientific Committee. The principal function is to make recommendations on the listing of endangered or other threatened species under the proposed Act. In addition, the Committee is to advise the Director on recovery plans and other matters.

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Clause 47 provides that the Scientific Committee is to consist of 8 members, being the Director or other officer of the National Parks and Wildlife Service, 2 Government scientists, 2 scientists employed by educational institutions and 3 non-Government scientists.

Clause 48 contains machinery provisions relating to the members of the Scientific Committee.

Clause 49 contains machinery provisions relating to the procedure of the Scientific Committee.

Clause 50 specifies that the Scientific Committee is not subject to Ministerial control.

PART 7—MISCELLANEOUS

Clause 51 provides that the proposed Act binds the Crown.

Clause 52 requires the Director of National Parks and Wildlife to report on the operation of the proposed Act in the annual report of the National Parks and Wildlife Service.

Clause 53 authorises the Director of National Parks and Wildlife to delegate his or her functions under the proposed Act.

Clause 54 preserves the operation of the National Parks and Wildlife Act 1974 with respect to animals and plants.

Clause 55 authorises a court that convicts a person for an offence against the proposed Act to order the offender to restore habitat that has been damaged or to mitigate the damage.

Clause 56 enables proceedings for offences committed by corporations to be brought against directors and others who authorised or permitted the offence.

Clause 57 provides that proceedings for offences against the proposed Act are to be dealt with summarily by a Local Court or the Land and Environment Court. The maximum penalty that may be imposed by a Local Court is limited to \$5,000.

Clause 58 empowers the making of regulations for the purposes of the proposed Act.

Clauses 59–62 are formal provisions that give effect to the Schedules that amend the National Parks and Wildlife Act 1974, Environmental Planning and Assessment Act 1979, the Fisheries and Oyster Farms Act 1935, and certain other Acts, and to the Schedule of savings and transitional provisions.

Clause 63 requires the Minister to review the operation of the proposed Act within 5 years of its enactment.

Schedule 1 will list the endangered species of animals and plants.

Schedule 2 will list the other threatened species of animals and plants.



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Schedule 3 amends the National Parks and Wildlife Act 1974 as follows:

- (a) to continue the amendment that provides that the Act binds the Crown;
- (b) to continue the amendment to extend the definition of "fauna" under the Act to include all amphibians (not just a limited class of protected amphibians);
- (c) to clarify the definition of "take" and the offence of taking or killing protected fauna outside national parks and other reserved land, by excluding the disturbance of fauna or their habitat and by including an intention to take or kill the fauna as an ingredient of the offence—offences relating to the habitat of endangered species of fauna and flora are to be dealt with in Part 4 of the proposed Act;
- (d) to increase penalties for certain offences relating to protected fauna (the penalty for taking or killing of endangered or other threatened fauna is to be increased from \$10,000 or 2 years imprisonment to \$100,000 or 2 years imprisonment and for taking or killing of other protected fauna from \$2,000 or 6 months imprisonment to \$10,000 or 12 months imprisonment);
- (e) to make minor, consequential and ancillary amendments.

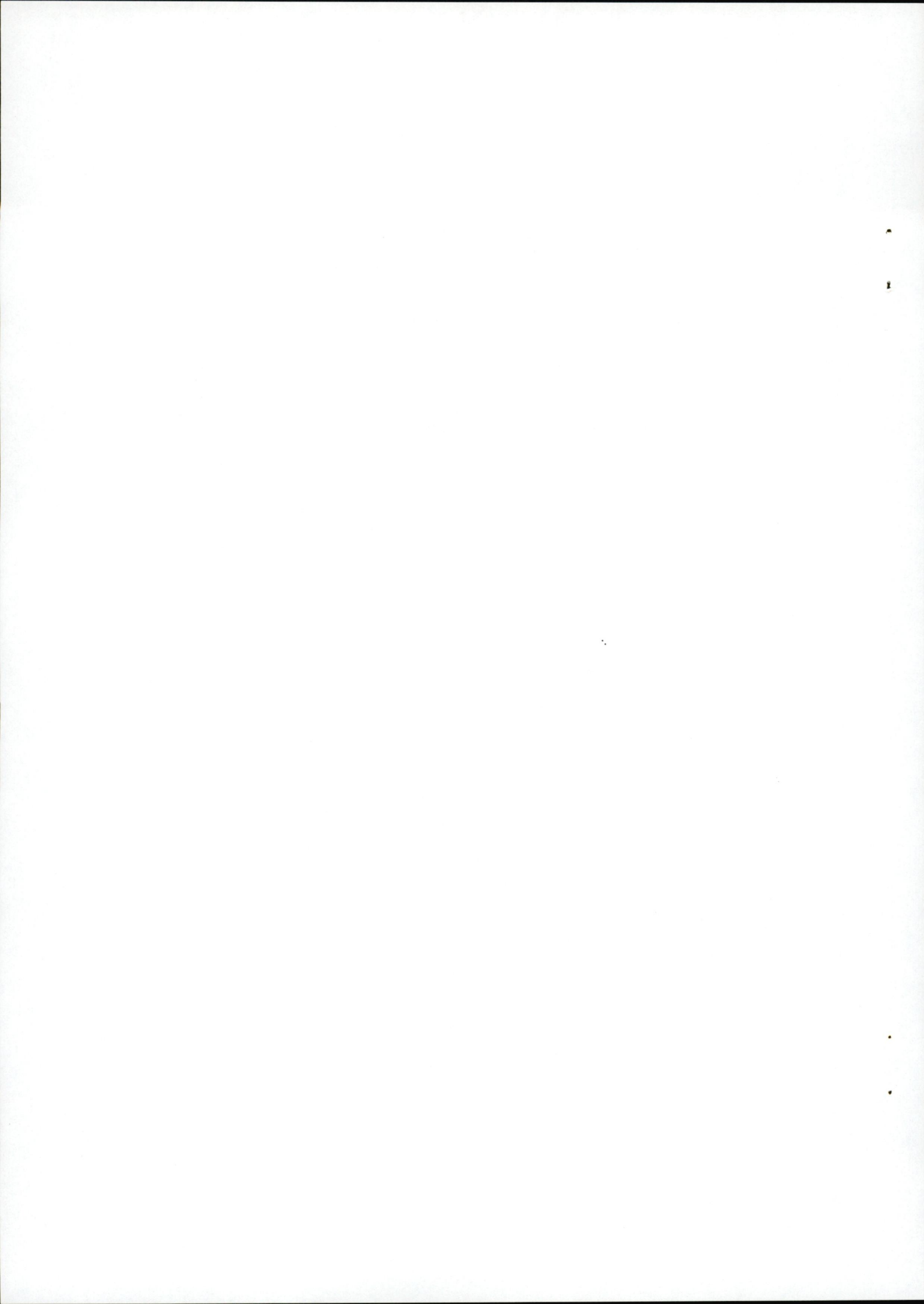
Schedule 4 amends the Environmental Planning and Assessment Act 1979 as follows:

- (a) to make it clear that environmental planning instruments may provide for the conservation of endangered species and their habitat and of other native animals and plants;
- (b) to require consent authorities to take into account the effect of any proposed development on endangered or other threatened species (and their habitat) and on other protected fauna and flora when considering whether to consent to the development;
- (c) to require environmental assessment under Part 5 (including any environmental impact statement) to address the effect on endangered or other threatened species (and their habitat) and other protected fauna or flora before a determining authority carries out an activity, or approves of the carrying out of an activity.

Schedule 5 amends other Acts, including the Fisheries and Oyster Farms Act 1935. The amendments to the Fisheries and Oyster Farms Act 1935 make it an offence to take endangered or other vulnerable and rare species of fish. The amendments to the other Acts are consequential.

Schedule 6 contains savings and transitional provisions.

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SCHEDULE 2—OTHER THREATENED SPECIES

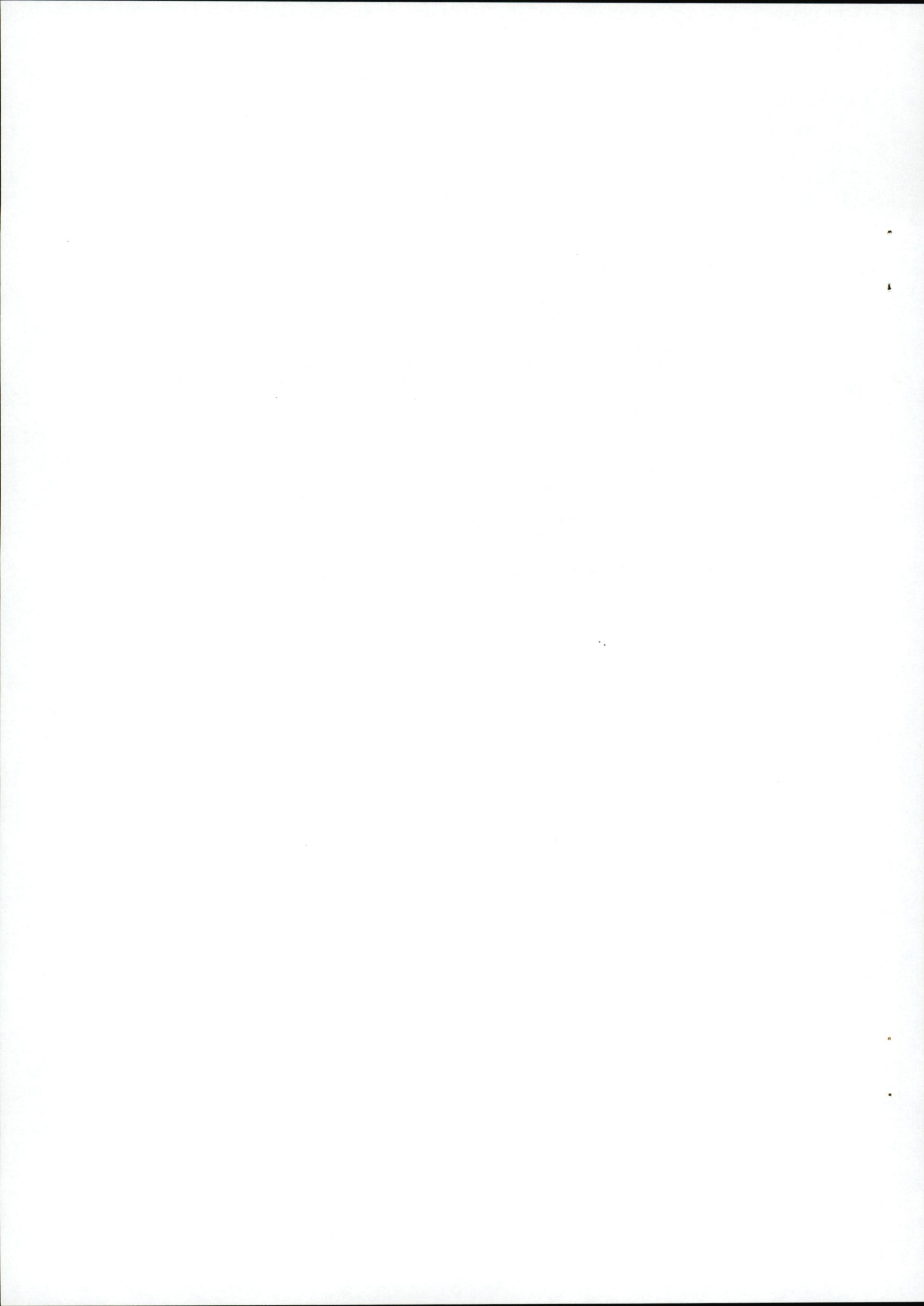
SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND WILDLIFE ACT  
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**ENDANGERED AND OTHER THREATENED SPECIES  
CONSERVATION BILL 1993**

NEW SOUTH WALES



No. , 1993

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**A BILL FOR**

An Act to conserve endangered and other threatened species of animals and plants; to repeal the Endangered Fauna (Interim Protection) Act 1991; to amend the National Parks and Wildlife Act 1974, the Environmental Planning and Assessment Act 1979 and certain other Acts; and for other purposes.

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Endangered and Other Threatened  
5 Species Conservation Act 1993.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Objects of Act**

3. The objects of this Act are as follows:
- (a) to maintain the biological diversity of animals and plants and their potential for evolutionary development in the wild; and
  - (b) to prevent the extinction and promote the recovery of endangered and other threatened species of animals and plants; and
  - 15 (c) to protect the critical habitat of endangered species through the public process of environmental planning and assessment; and
  - (d) to ensure that the impact of any development on endangered and other threatened species of animals and plants is properly assessed.

**Definitions**

4. (1) In this Act:
- “**animal**” means any animal-life which is native to Australia (or which periodically migrates to Australia), whether vertebrate or invertebrate and in any stage of biological development, but does not include humans;
  - 25 “**Director of National Parks and Wildlife**” means the Director of National Parks and Wildlife appointed under the National Parks and Wildlife Act 1974;
  - “**Director of Planning**” means the Director of Planning appointed under the Environmental Planning and Assessment Act 1979;
  - 30 “**endangered species**” means a species of animal or plant specified in Schedule 1;
  - “**environmental planning instrument**” has the same meaning it has in the Environmental Planning and Assessment Act 1979;

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- “government agency”** means any public or local authority, and includes:
- (a) a government department and a State owned corporation; and
  - (b) the head of a government agency;
- “other threatened species”** means a species of animal or plant specified in Schedule 2; 5
- “plant”** means any plant-life which is native to Australia, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens;
- “recovery plans”** means plans prepared and approved under Part 3; 10
- “Scientific Committee”** means the Scientific Committee constituted under Part 6;
- “species”** has its generally accepted scientific meaning.
- (2) A reference in this Act to animal-life or plant-life native to Australia is a reference to animal-life or plant-life of a species that was established in Australia before European settlement. 15
- (3) A reference in this Act to Australia includes a reference to the territorial sea of Australia.
- (4) In this Act:
- (a) a reference to a function includes a reference to a power, authority and duty; and 20
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- Repeal of Endangered Fauna (Interim Protection) Act 1991 No. 66 and amending Act** 25
5. (1) The Endangered Fauna (Interim Protection) Act 1991 (“the 1991 Act”) is repealed.
- (2) The repeal of the 1991 Act has the effect of restoring the Acts amended by the 1991 Act as they were immediately before they were so amended. 30
- (3) The restoration of those Acts does not affect any other amendments made to those Acts after the enactment of the 1991 Act (other than amendments made to the provisions inserted in those Acts by the 1991 Act).
- (4) The Endangered Fauna (Interim Protection) Amendment Act 1992 is also repealed. 35



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**PART 2—LISTING OF ENDANGERED AND OTHER  
THREATENED SPECIES**

**Division 1—Endangered species**

**Schedule 1—list of endangered species**

- 5     **6.** Schedule 1 lists endangered species of animals and plants for the purposes of this Act.

**Listing of endangered species on recommendation of Scientific Committee**

7. (1) The Governor may, by proclamation, amend Schedule 1:
- 10     (a) by inserting the name of any species of animal or plant that the Scientific Committee recommends should be listed as an endangered species; or
- (b) by omitting the name of any species of animal or plant that the Scientific Committee recommends should no longer be listed as an
- 15     endangered species.

(2) The Governor may, by proclamation, amend this Act by omitting Schedule 1 and by inserting instead a Schedule containing the species of animals and plants that the Scientific Committee recommends should be listed as endangered species.

20     **Species eligible for listing as endangered species**

8. (1) A species of animal or plant is eligible to be listed as an endangered species if it is likely to become extinct in New South Wales within 20 years.
- (2) However, the regulations may prescribe a different period than 20
- 25     years for all or any one or more species. The regulations may also declare that a species is likely to become extinct within the relevant period if there is a specified probability of extinction.

**Division 2—Other threatened species**

**Schedule 2—list of other threatened species**

- 30     **9.** Schedule 2 lists threatened species of animals and plants (other than endangered species) for the purposes of this Act.

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**Listing of other threatened species on recommendation of Scientific Committee**

10. (1) The Governor may, by proclamation, amend Schedule 2:
- (a) by inserting in Part 1 (Vulnerable species), Part 2 (Rare species), Part 3 (Indeterminate species) or Part 4 (Insufficiently known species) the name of any species of animal or plant that the Scientific Committee recommends should be listed as such a species; or 5
  - (b) by omitting the name of any species of animal or plant that the Scientific Committee recommends should no longer be listed as such a species. 10

(2) The Governor may, by proclamation, amend this Act by omitting Schedule 2 and by inserting instead a Schedule containing the species of animals and plants that the Scientific Committee recommends should be listed as other threatened species. 15

**Species eligible for listing as other threatened species**

11. (1) A species of animal or plant is eligible to be listed in Part 1 of Schedule 2 (Vulnerable species) if it is likely to become extinct in New South Wales within 100 years.

(2) However, the regulations may prescribe a different period than 100 years for all or any one or more species. The regulations may also declare that a species is likely to become extinct within the relevant period if there is a specified probability of extinction. 20

(3) A species of animal or plant is eligible to be listed in Part 2 of Schedule 2 (Rare species) if members of the species are located in restricted geographical areas in New South Wales or are thinly scattered over a more extensive range in New South Wales. 25

(4) A species of animal or plant is eligible to be listed in Part 3 of Schedule 2 (Indeterminate species) if the species is endangered, vulnerable or rare but there is insufficient information available to determine which category is appropriate. 30

(5) A species of animal or plant is eligible to be listed in Part 4 of Schedule 2 (Insufficiently known species) if the species is reasonably suspected to be, but because of a lack of information cannot be determined to be, endangered, vulnerable or rare. 35



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**Division 3—General provisions relating to listing**

**Recommendations of Scientific Committee for listing**

5 12. (1) The Scientific Committee is required to make recommendations for the listing of endangered species in Schedule 1 as soon as practicable after the commencement of this Act.

(2) The Scientific Committee is required to make recommendations for the listing of other threatened species in Schedule 2 as soon as practicable after it has recommended the initial listing of endangered species.

10 (3) The Scientific Committee is to keep those listings under review and recommend any necessary changes.

(4) The Scientific Committee may make recommendations at any time on its own initiative or following a request by the Minister or any other person or body.

**Principles and guidelines for assessing eligibility for listing**

15 13. (1) The regulations may set out principles to be used by the Scientific Committee for determining whether a species is eligible for listing as an endangered or other threatened species in accordance with this Part. Different principles may be prescribed for different species.

20 (2) The Scientific Committee may decide on its own guidelines for determining whether a species is, in accordance with this Part and any such principles, eligible to be so listed.

**Discretion of Scientific Committee in deciding on listings**

25 14. (1) The Scientific Committee may recommend that a species of animal or plant be listed as an endangered or other threatened species if it considers, on the information available to it, that the species is eligible to be so listed.

(2) In particular, any assessment of the likelihood of a species becoming extinct is to be made on the available information about current causal factors and future trends.

30 (3) The Scientific Committee may make a recommendation even though it is not certain that its assessment of the eligibility of the species for the listing is correct.



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**Public submissions on proposed listings**

15. (1) Before making a recommendation that a species of animal or plant should be listed (or no longer listed) as an endangered or other threatened species, the Scientific Committee is to publish its proposed recommendation and invite public comment. 5

(2) The Scientific Committee is to take into account any relevant submission it receives on its proposed recommendation.

**Species not to be listed**

16. (1) Any species of animal or plant which causes human disease is not eligible for listing as an endangered or other threatened species. 10

(2) A species of animal or plant which is an endangered or other threatened species in Australia is not eligible for listing under this Act if the Scientific Committee is satisfied (on the information available to it) that the species has not been established in the wild in New South Wales since European settlement. 15

**PART 3—RECOVERY PLANS**

**Director of National Parks and Wildlife to prepare recovery plans**

17. (1) The Director of National Parks and Wildlife is required to prepare plans under this Part to conserve endangered species and, in particular, to prevent the extinction and promote the recovery of endangered species to a position of viability in the wild. 20

(2) The Director may also prepare such plans for other threatened species listed in Part 1 of Schedule 2 (Vulnerable species).

**Threat abatement measures for key threatening processes etc.**

18. (1) A recovery plan may contain provisions relevant to more than one species. 25

(2) In particular, a recovery plan may contain threat abatement measures dealing with key processes threatening the survival of more than one species.

(3) Examples of key threatening processes are: 30

(a) predation by the European red fox and feral cats; and

(b) competition and land degradation by feral rabbits, feral goats and feral pigs; and

(c) die back caused by the root-rot fungus.

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**Guidelines for recovery plans**

19. (1) The Director of National Parks and Wildlife should seek, in preparing recovery plans and in deciding which measures to include in those plans:

- 5 (a) to make the most efficient and effective use of available resources for the conservation of endangered or other threatened species; and
  - (b) to minimise adverse social or economic consequences, consistent with the principles of ecologically sustainable development; and
  - (c) to conserve biological diversity generally.
- 10 (2) The Director of National Parks and Wildlife is to consider, when preparing a recovery plan any measures by which the community may co-operate in the conservation of endangered or other threatened species.

**Priorities for recovery plans**

20. The Director of National Parks and Wildlife is to determine priorities in the preparation of recovery plans (and in the timetable for their implementation) in accordance with the following criteria and any other criteria the Director considers relevant:

- 15 (a) Likelihood of extinction—whether the species has a greater likelihood of extinction than other species;
- 20 (b) Likelihood of recovery—whether the species is more likely to recover than other species;
- (c) Taxonomic status—whether the species has fewer close genetic relatives than other species;
- 25 (d) Keystone species—whether many other species are dependent for survival on the species;
- (e) Indicator species—whether the relative abundance of the species is a measure of the overall health of its ecosystem;
- (f) National conservation status—whether the survival of the species is also threatened throughout Australia.

30 **Identification of habitat and threats to survival of species**

21. The Director of National Parks and Wildlife may, for the purposes of preparing recovery plans:

- (a) identify the habitat of endangered or other threatened species; and
- 35 (b) ascertain the population distribution and abundance of those species; and



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- (c) identify the factors that are contributing to the decline of those species (for example, loss of a particular type of habitat; changes in the habitat caused by erosion, drainage, salinisation, the fire regime or other cause; introduced animals or plants that are predators of or displace the species). 5

**Matters to be included in recovery plans**

22. The following are to be included in a recovery plan:
- (a) the objective of the plan and the criteria for assessing the achievement of the objective;
  - (b) the information collected under section 21 that is relevant to the plan; 10
  - (c) where practicable, a proposed timetable for the implementation of the plan;
  - (d) the estimated cost of the measures included in the plan;
  - (e) any other matter relating to the impact of the plan as the Director of National Parks and Wildlife considers appropriate. 15

**Types of measures for inclusion in recovery plans**

23. A recovery plan may provide for the conservation of an endangered or other threatened species by any one or more of the following means or by any other available means: 20
- (a) the proposed restriction or prohibition, by an environmental planning instrument, on development of land that is or includes the habitat of the species;
  - (b) a proposed conservation agreement under the National Parks and Wildlife Act 1974 with the owner of that land; 25
  - (c) the proposed dedication or reservation of that land under the National Parks and Wildlife Act 1974, the Crown Lands Act 1989 or any other Act;
  - (d) the proposed acquisition of that land under Part 11 of the National Parks and Wildlife Act 1974 or any other Act; 30
  - (e) the proposed identification of the land as protected land under the Soil Conservation Act 1938;
  - (f) captive breeding programs;
  - (g) the collection and incubation of eggs of a species;
  - (h) educational activities; 35
  - (i) proposals for the enactment of legislation or the making of regulatory instruments;
  - (j) the conduct of research or field studies into the species.



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**Community advisory committee to consider draft plans**

24. (1) The Minister may constitute a community advisory committee to advise the Director of National Parks and Wildlife on a draft recovery plan before it is finalised.

5 (2) A community advisory committee is to consist of members representing:

(a) non-government conservation organisations; and

(b) the scientific community; and

(c) the rural community; and

10 (d) the business community; and

(e) the State.

(3) The Minister is to ensure that a majority of the members are not officials or employees of the State or authorities of the State.

15 (4) The Minister may constitute different community advisory committees to advise on different plans.

(5) A community advisory committee may determine its own procedure, subject to any requirements of the regulations.

(6) The Director of National Parks and Wildlife may also seek advice about a draft recovery plan from the Scientific Committee.

20 **Consultation by Director with government agencies**

25 (1) The Director of National Parks and Wildlife is required to consult any government agency affected by a draft recovery plan before it is finalised.

(2) The Director is to take any submission made by any such agency into account before finalising the plan.

(3) If a dispute arises between the Director of National Parks and Wildlife and any such agency about the plan, the matter is to be referred to the Minister administering this Act and the Minister responsible for the agency.

30 (4) If those Ministers are unable to settle the matter, it is to be referred to the Premier for settlement.

**Special provision relating to fish**

35 (1) If a draft recovery plan contains measures to conserve a species of fish, the Director of National Parks and Wildlife is to consult the Director of NSW Fisheries.

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(2) Such a plan is not to be finalised until the Director of NSW Fisheries approves the plan.

(3) In this section, "fish" includes all marine, estuarine and freshwater animal life, other than marine mammals or other fauna within the meaning of the National Parks and Wildlife Act 1974. 5

**Special provision relating to planning proposals**

27. (1) Before finalising a draft recovery plan, the Director of National Parks and Wildlife is to consult with the Director of Planning about any proposal to designate critical habitat in an environmental planning instrument or to make other provision in any such instrument. 10

(2) Any such proposal is not to be included in a recovery plan unless it is approved or recommended by the Minister for Planning.

(3) The Director of National Parks and Wildlife is also to consult with any owner or occupier affected by any such proposal if the Minister for Planning, having regard to the number of owners or occupiers affected, so directs. 15

(4) The Minister for Planning may, under and in accordance with the Environmental Planning and Assessment Act 1979, direct the council of a local government area to prepare a draft local environmental plan to give effect to any such proposal that is contained in an approved recovery plan. 20

(5) Any such proposal that is contained in an approved recovery plan is taken to be of significance for environmental planning for the State and any region concerned. Accordingly, a draft State environmental planning policy or regional environmental plan may be prepared under and in accordance with the Environmental Planning and Assessment Act 1979 to give effect to the proposal. 25

**Approval of recovery plan by Minister**

28. (1) The Director of National Parks and Wildlife is to submit a draft recovery plan to the Minister for approval. 30

(2) The Minister may approve or refuse to approve the plan or may request the Director to revise the plan with respect to any matter.

(3) The Minister is required to obtain the concurrence of the Premier before approving a recovery plan.



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**Recovery plans to be published**

29. (1) As soon as a recovery plan is approved, the Director of National Parks and Wildlife is to make the plan public and to ensure that the plan is brought to the attention of all government agencies affected by it.

(2) If the Director of National Parks and Wildlife is of the opinion that the disclosure of the location of the habitat of a particular species may result in damage to the habitat or other threat to the species, the Director is not required to publish the location of that habitat.

10 **Implementation of recovery plans**

30. (1) Ministers and government agencies (including the Director of National Parks and Wildlife) are to take appropriate action available to them to implement any measures in an approved recovery plan for which they are responsible.

15 (2) If the implementation of the recovery plan affects a statutory discretion of a Minister or government agency, this section does not operate to exclude the discretion, but the Minister or agency must take the plan into account.

20 (3) This section does not operate to require or authorise any action by a Minister or government agency that is inconsistent with any statutory or other legal obligation of the Minister or government agency.

**Review of recovery plans**

25 31. (1) The Director of National Parks and Wildlife is required to keep each recovery plan under review and to consider any submissions from government agencies affected by the plan or the public.

(2) If the Director considers that any change should be made to a recovery plan, the Director is to prepare a new plan in accordance with this Part.

30 **Obligations relating to other threatened species not subject to recovery plans**

32. (1) The Director of National Parks and Wildlife and the Scientific Committee are to take steps to clarify the status of species listed in Part 3 (Indeterminate species) and Part 4 (Insufficiently known species) of Schedule 2, but only to the extent that it is practicable to do so.

35 (2) The Director of National Parks and Wildlife is to monitor species listed in Part 2 of Schedule 2 (Rare species) and may take any practicable measures available to protect those species.



**PART 4—DAMAGE TO CRITICAL HABITAT OF  
ENDANGERED SPECIES**

**Critical habitat**

33. (1) For the purposes of this Part, critical habitat of an endangered species is habitat designated as critical habitat of that species in an environmental planning instrument. 5

(2) Any such instrument is not to designate critical habitat unless the Minister for Planning certifies, on the advice of the Director of National Parks and Wildlife, that the protection of the habitat is essential for the survival of the species concerned. The certificate is conclusive as to the matter it certifies in any proceedings which question the validity of the instrument. 10

(3) Any such instrument is to designate critical habitat by a description of the place concerned (including by means of a map). The designation may be limited to particular features of the place. 15

**Offence to damage critical habitat**

34. (1) A person must not damage any critical habitat of an endangered species.

Maximum penalty: 1,000 penalty units or 2 years imprisonment or both. 20

(2) It is not necessary for the prosecution to prove that the person knew that the habitat concerned was designated as critical habitat or that the person knew that it was the habitat of the species concerned.

(3) In this section, a reference to **damaging** the critical habitat of a species includes a reference to destroying that habitat and, in the case of a species of plant, includes a reference to damaging or destroying members of that species. 25

**Defence**

35. (1) It is a defence to any prosecution for an offence against section 34 if the accused proves that the act constituting the alleged offence: 30

- (a) was authorised to be done by or under the environmental planning instrument that designated the habitat as critical habitat or by or under any other environmental planning instrument that applies to any such critical habitat; or 35
- (b) was unlikely to increase the threat to the survival of the endangered species concerned; or

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(c) was authorised to be done by or under any Act or law (such as the Bush Fires Act 1949 or the State Emergency and Rescue Management Act 1989) and was reasonably necessary in order to avoid a threat to life or property.

5 (2) It is not a defence to any such prosecution for the accused to prove that the act constituting the offence was authorised under Division 2 of Part 4 of the Environmental Planning and Assessment Act 1979 (Existing use).

10 **PART 5—INTERIM PROTECTION ORDERS FOR CRITICAL HABITAT OF ENDANGERED SPECIES**

**Director of National Parks and Wildlife may recommend interim protection of areas of critical habitat**

15 36. (1) The Director of National Parks and Wildlife may recommend to the Minister the making of an interim protection order in respect of a place:

- (a) which the Director considers is critical habitat of an endangered species, that is, habitat that could be designated as critical habitat of that species in an environmental planning instrument; and
- 20 (b) on which any activity is being or proposed to be carried out that the Director has reason to believe will damage or destroy that habitat and will threaten the survival of that species,

in order that action may be taken to designate that habitat as critical habitat or that other action may be taken for the permanent protection of that habitat.

25 (2) This section does not apply to any place that has already been designated as critical habitat in an environmental planning instrument.

**Making of interim protection orders**

30 37. (1) The Minister may, after considering the recommendation made by the Director of National Parks and Wildlife, make an interim protection order in respect of the place the subject of the recommendation.

(2) An interim protection order may contain such terms relating to the prohibition or regulation of the carrying out of the activity concerned by the owner or occupier of the place as the Minister considers necessary to prevent the damage to the habitat and the threat to the survival of the species.

35

(3) An interim protection order takes effect on the date of its publication in the Gazette or on a later date specified in the order.



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(4) The Minister is not required, before making an interim protection order, to notify any person who will be affected by the order of the intention to make the order.

**Notice of making of interim protection order**

38. (1) The Minister must cause notice of an interim protection order and its terms to be given, as soon as practicable after its publication in the Gazette, to:

- (a) any person who appears to the Minister to be an owner or occupier of the place the subject of the order; and
- (b) the Minister for Planning; and
- (c) the council of the local government area in which the place is situated; and
- (d) and any other person the Minister thinks fit.

(2) The Minister is required to consider any advice or submission made by any such person or council concerning the order.

**Minister to seek designation of critical habitat etc. after making order**

39. (1) When the Minister notifies the Minister for Planning of the making of an interim protection order, the Minister may request the Minister for Planning to designate the place as critical habitat, or to take other appropriate action, by or under an environmental planning instrument for the protection of the habitat concerned.

(2) The Minister may, in addition or as an alternative to any such request, take any other available action to protect the habitat.

(3) The Minister is to revoke an interim protection order if the Minister for Planning notifies the Minister that no action is to be taken under an environmental planning instrument with respect to the habitat and if no other action is proposed by the Minister to protect the habitat.

(4) The Minister is to revoke an interim protection order if the Minister for Planning notifies the Minister that action has been taken under an environmental planning instrument to protect the habitat.

**Duration of interim protection order**

40. (1) An interim protection order has effect for such period as is specified in the order, unless it is sooner revoked by the Minister.

(2) An interim protection order may be renewed by the making of a further order or orders.



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(3) However, an order may not be made for a period exceeding 12 months and may not be renewed if the total period of the order and any renewal would exceed 12 months.

5 (4) Only one order may be made (whether or not renewed) in respect of any particular activity or proposed activity on the place concerned.

(5) Before renewing an order, the Minister must consult the owner or occupier of the place the subject of the order, unless the owner or occupier has previously been consulted about the order.

10 (6) An interim protection order may not be made under this Part in respect of a particular activity or proposed activity if the activity is or was the subject of restrictions imposed by an interim protection order under the National Parks and Wildlife Act 1974. Similarly, an interim protection order may not be made under Part 6A of the National Parks and Wildlife Act 1974 for the purpose of restricting a particular activity or proposed activity if the activity is or was the subject of an interim protection order under this Part.

**Revocation of interim protection order**

41. (1) The Minister may revoke an interim protection order by notice of revocation.

20 (2) A notice of revocation takes effect on the date of its publication in the Gazette or on a later date specified in the notice.

(3) The Minister must cause notice of the revocation to be given to the same persons to whom the Minister gave notice of the making of the order.

25 **Offence**

42. (1) An owner or occupier of any place subject to an interim protection order who contravenes the order is guilty of an offence.

Maximum penalty: 1,000 penalty units or 2 years imprisonment, or both.

30 (2) It is a defence to any prosecution for an offence against this section if the accused proves that the act constituting the alleged offence:

(a) was unlikely to increase the threat to the survival of the endangered species concerned; or

35 (b) was authorised to be done by or under any Act or law (such as the Bush Fires Act 1949 or the State Emergency and Rescue Management Act 1989) and was reasonably necessary in order to avoid a threat to life or property.

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**Appeal against order**

43. (1) An owner or occupier of the whole or any part of any place subject to an interim protection order may appeal to the Land and Environment Court against the making of the order or any of its terms.
- (2) Such an appeal must be made within the time and in the manner provided by the rules of the Court. 5
- (3) In deciding an appeal, the Court may have regard to:
- (a) any hardship caused to the owner or occupier by the making of the order or any of its terms; and
- (b) the purposes of the order. 10
- (4) In deciding such an appeal, the Court has all the functions and discretions of the Minister under this Part and may make such order as it thinks fit.
- (5) A decision of the Court on an appeal is final and is to be given effect to as if it were the decision of the Minister. 15

**Register of orders**

44. (1) The Director of National Parks and Wildlife must keep a register containing copies of interim protection orders under this Part, as in force from time to time.
- (2) The register must be open for public inspection during ordinary business hours, and copies of or extracts from the register are to be available on payment of the fee fixed by the Director. 20

**PART 6—SCIENTIFIC COMMITTEE**

**Establishment of Scientific Committee**

45. There is established by this Act a Scientific Committee. 25

**Functions of Scientific Committee**

46. The functions of the Scientific Committee are as follows:
- (a) to recommend species of animals or plants for listing under this Act as endangered or other threatened species;
- (b) to advise the Director of National Parks and Wildlife on recovery plans under Part 3; 30
- (c) to advise the Director of National Parks and Wildlife on the exercise of the Director's functions under the National Parks and Wildlife Act 1974 in relation to animals and plants;



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- (d) to advise the Minister on any matter relating to the conservation of animals and plants that is referred to the Committee by the Minister or that the Committee considers appropriate.

**Members of Scientific Committee**

- 5    **47. (1)** The Scientific Committee is to consist of 8 members appointed by the Minister.
- (2)** Of the members of the Scientific Committee:
- (a) 1 is to be the Director of National Parks and Wildlife, or an officer of the National Parks and Wildlife Service; and
- 10   (b) 2 are to be scientists employed by the Government; and
- (c) 2 are to be scientists employed by educational institutions; and
- (d) 3 are to be scientists not employed by the Government.
- (3)** A member who is a scientist not employed by the Government is to be appointed by the Minister as Chairperson of the Committee.
- 15   **(4)** A person appointed as a member of the Scientific Committee (other than the Chairperson) is to have expertise in one or more of the following areas of study (and between them those members are to have expertise in all those areas):
- (a) vertebrate biology or ecology;
- 20   (b) invertebrate biology or ecology;
- (c) plant biology or ecology;
- (d) marine ecology;
- (e) limnology;
- (f) conservation genetics;
- 25   (g) population dynamics (including population viability analysis).

**Provisions relating to members of Scientific Committee**

- 30   **48. (1)** Subject to this Act, a member of the Scientific Committee holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2)** A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (3)** The office of a member becomes vacant if the member:
- 35   (a) dies; or
- (b) completes a term of office and is not re-appointed; or



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- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this section or by the Governor under Part 8 of the Public Sector Management Act 1988; or 5
- (e) is absent from 4 consecutive meetings of the Scientific Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Scientific Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Scientific Committee for having been absent from those meetings; or 10
- (f) becomes a mentally incapacitated person.
- (4) The Minister may remove a member from office.
- (5) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member. 15
- (6) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office, 20
- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.
- Procedure of the Scientific Committee** 25
49. (1) The procedure for the calling of meetings of the Scientific Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Scientific Committee.
- (2) The quorum for a meeting of the Scientific Committee is 5 members. 30
- (3) The Chairperson of the Scientific Committee or, in the absence of the Chairperson, another member elected to chair the meeting is to preside at a meeting of the Scientific Committee. The person presiding at a meeting has a deliberative vote but not a casting vote. 35
- (4) A decision supported by a majority of the votes cast at a meeting of the Scientific Committee at which a quorum is present is the decision of the Scientific Committee.

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(5) The Scientific Committee may invite suitably qualified persons to attend meetings to advise or inform the Scientific Committee on any matter.

**Scientific Committee not subject to Ministerial control**

- 5    **50.** The Scientific Committee is not subject to the control or direction of the Minister.

**PART 7—MISCELLANEOUS**

**Act binds Crown**

- 10   **51.** This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Annual report by Director on operation of Act**

- 15   **52.** In preparing the annual report of the National Parks and Wildlife Service, the Director of National Parks and Wildlife is to report on the operation of this Act.

**Delegation**

**53.** The Director of National Parks and Wildlife may delegate to an officer of the National Parks and Wildlife Service any of the Director's functions under this Act, other than this power of delegation.

20   **Relationship of Act to National Parks and Wildlife Act 1974**

**54.** Except as otherwise provided by this Act, nothing in this Act affects the operation of the National Parks and Wildlife Act 1974 in relation to animals and plants.

**Court may order offender to restore damage to habitat**

- 25   **55.** If a court convicts a person of an offence under this Act involving damage to any habitat, the court may, in addition to or substitution for any pecuniary penalty for the offence, direct the person:
- 30    (a) to plant new trees or other vegetation and maintain them to a mature growth; and
- (b) to take any other action to mitigate the damage or to restore that habitat; and
- (c) to provide security for the performance of any obligation imposed under paragraph (a) or (b).



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**Offences by corporations**

56. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. 5

(2) A person may be proceeded against and convicted under such a provision whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations. 10

**Proceedings for offences**

57. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before: 15

(a) a Local Court constituted by a Magistrate sitting alone; or

(b) the Land and Environment Court in its summary jurisdiction.

(2) If proceedings for an offence against this Act or the regulations are taken before a Local Court, the maximum penalty that the Local Court may impose in respect of the offence is, despite any other provision of this Act, 50 penalty units or the maximum penalty provided by this Act or the regulations for the offence, whichever is the lesser. 20

(3) Proceedings for an offence against this Act or the regulations may be commenced not later than 12 months after the act or omission alleged to constitute the offence, despite the Justices Act 1902 or any other Act. 25

**Regulations**

58. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 30

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

**Amendment of National Parks and Wildlife Act 1974 No. 80**

59. The National Parks and Wildlife Act 1974 is amended as set out in Schedule 3. 35



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**Amendment of Environmental Planning and Assessment Act 1979  
No. 203**

60. The Environmental Planning and Assessment Act 1979 is amended as set out in Schedule 4.

**5 Amendment of other Acts**

61. The Acts specified in Schedule 5 are amended as set out in that Schedule.

**Savings, transitional and other provisions**

62. Schedule 6 has effect.

**10 Review of Act**

63. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

15 (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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**SCHEDULE 1—ENDANGERED SPECIES**

(Sec. 6)

**SCHEDULE 2—OTHER THREATENED SPECIES**

(Sec. 9)

**Part 1—Vulnerable species**

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**Part 2—Rare species**

**Part 3—Indeterminate species**

**Part 4—Insufficiently known species**

**SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND  
WILDLIFE ACT 1974 No. 80**

10

(Sec. 59)

(1) Section 3:

After section 2, insert:

**Act binds Crown**

3. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

15

(2) Section 5 (**Definitions**):

(a) Insert in section 5 (1) in alphabetical order the following definition:

20

**“endangered or other threatened species”** means a species of animal or plant that is an endangered or other threatened species within the meaning of the Endangered and Other Threatened Species Conservation Act 1993;

25

(b) Omit the definition of “endangered fauna” in section 5 (1).

(c) Omit the definition of “fauna” in section 5 (1), insert instead:

**“fauna”** means any mammal, bird, reptile or amphibian;

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SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND  
WILDLIFE ACT 1974 No. 80—*continued*

- (d) Omit the definition of “marine mammal” in section 5 (1),  
insert instead:
- 5           “**marine mammal**” means any mammal of a species  
              within the following orders:
- Cetacea* ..... Whales, dolphins etc.  
*Pinnipedia* ..... Seals, sea lions etc.  
*Sirenia* ..... Dugongs etc.
- 10       (e) Omit the definition of “protected amphibian” in section 5  
          (1).
- (f) At the end of the definition of “protected native plant” in  
          section 5 (1), insert “, and includes any endangered or other  
15           threatened species of plant whether or not named in Schedule  
          13”.
- (g) Omit the definition of “take” in section 5 (1), insert instead:
- “take”** any fauna or other animal includes hunt, shoot,  
          poison, net, snare, spear, capture, lure or wound the  
          fauna or other animal;
- 20       (3) Section 6 (**The Service**):
- In section 6 (b), after “this Act”, insert “or the Endangered  
          and Other Threatened Species Conservation Act 1993”.
- (4) Section 10 (**Officers and employees**):
- 25           After “this Act”, insert “, the Endangered and Other  
          Threatened Species Conservation Act 1993”.
- (5) Section 11 (**Use of services of officers etc. of Departments etc.**):
- In section 11 (5), after “this Act”, insert “, the Endangered  
          and Other Threatened Species Conservation Act 1993”.
- 30       (6) Section 69C (**Purpose and content of conservation  
          agreements**):
- In section 69C (1) (e), after “flora”, insert “(including the  
          conservation of endangered or other threatened species)”.



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SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND  
WILDLIFE ACT 1974 No. 80—*continued*

- (7) Section 93 (**Amendment of Schedule 11 (unprotected fauna)**):  
After section 93 (2), insert:  
(3) An endangered or other threatened species of fauna may not be included in Schedule 11 and, if such a species is named in that Schedule, its inclusion in that Schedule is to be disregarded. 5
- (8) Section 94 (**Amendment of Schedule 12 (endangered fauna)**):  
Omit the section. 10
- (9) Section 94A (**Amendment of Schedule 12A (protected amphibians)**):  
Omit the section.
- (10) Section 95 (**Open seasons**):  
From section 95 (3) (a), omit “endangered fauna”, insert instead “fauna of an endangered or other threatened species”. 15
- (11) Section 96 (**Locally unprotected fauna**):  
After section 96 (3), insert:  
(4) This section does not apply to fauna of an endangered or other threatened species. 20
- (12) Section 97 (**Certain protected fauna to be property of the Crown**):
- (a) Omit section 97 (1) (b1).
- (b) From section 97 (1) (c), omit “(not being a protected amphibian)”. 25
- (c) After section 97 (5), insert:  
(6) Subsection (1) (c) applies in respect of fauna that is an amphibian as if the reference in that subsection to the commencement day were a reference to:  
(a) the date of assent to the National Parks and Wildlife (Amendment) Act 1983 in the case of an amphibian that was a protected amphibian immediately before the date of assent to the Endangered Fauna (Interim Protection) Act 1991; or 30  
35

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SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND  
WILDLIFE ACT 1974 No. 80—*continued*

- 5 (b) the date of assent to the Endangered Fauna (Interim  
Protection) Act 1991 in the case of any other  
amphibian.

(13) Section 98:

Omit section 98, insert instead:

**Taking or killing of protected fauna**

10 98. (1) A person must not take or kill any protected fauna.  
Maximum penalty:

- (a) in respect of fauna of an endangered or other  
threatened species or a marine mammal—1,000 penalty  
units or imprisonment for 2 years or both; or  
15 (b) in respect of any other protected fauna—100 penalty  
units or imprisonment for 12 months or both.

(2) A person is not to be convicted of an offence arising  
under subsection (1) unless the prosecution proves that the  
person intended, by the act constituting the offence, to take or  
kill protected fauna.  
20

(3) It is not necessary for the prosecution to prove that the  
accused intended to take or kill any protected fauna  
concerned if the prosecution proves that the accused intended  
to take or kill animals generally or animals of a kind that  
included protected fauna.  
25

(4) It is not necessary for the prosecution to prove that the  
accused knew that the animal or kind of animals he or she  
intended to take or kill was or included protected fauna  
within the meaning of this Act.

(5) In any such prosecution, proof that the accused:  
30

- (a) was in possession of protected fauna; or  
(b) set a trap, laid poison or used another device in a  
manner likely to take or kill protected fauna,

35 is evidence that the accused had the requisite intention to take  
or kill the protected fauna, and the onus of proof to the  
contrary is on the accused.

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SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND  
WILDLIFE ACT 1974 No. 80—*continued*

- (6) A person is not to be convicted of an offence arising under subsection (1) if the person proves that:
- (a) the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a licence under Part 9 or an authority under section 171; or 5
  - (b) the act constituting the offence was required to be done by or under any other Act or law. 10
- (7) This section does not apply to the taking of:
- (a) locally unprotected fauna under section 96; or
  - (b) any reptile of a species excluded from this section by the regulations.
- (8) In this section: 15
- “animal” means any kind of animal-life other than humans, including birds and fish;
- “take or kill” includes use an animal, firearm or other thing or means to take or kill.
- (14) Section 99 (**Special provisions relating to marine mammals**): 20
- (a) Omit section 99 (1), insert instead:
    - (1) A person must not approach a marine mammal any closer than such distance as may be prescribed by the regulations or interfere with a marine mammal. 25
    - Maximum penalty: 100 penalty units or imprisonment for 6 months or both.
  - (b) In section 99 (1A) (a), after “subsection (1)”, insert “or section 98 (1)”.
  - (c) Omit section 99 (2) and (3), insert instead:
    - (2) A person is not to be convicted of an offence arising under subsection (1) if the person proves that: 30
      - (a) the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a licence under Part 9 or an authority under section 171; or 35
      - (b) the act constituting the offence was required to be done by or under any other Act or law.
  - (d) From section 99 (4), omit “(c)”.



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SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND  
WILDLIFE ACT 1974 No. 80—*continued*

- (15) Section 100 (**Further exemptions respecting taking or killing protected fauna**):
- 5           Omit “98 (2)”, wherever occurring, insert instead “98 (1)”.
- (16) Section 101 (**Buying, selling or possessing protected fauna**):
- Omit the penalty provision from section 101 (1), insert instead:
- Penalty:
- 10           (a) in respect of fauna of an endangered or other threatened species or a marine mammal—1,000 penalty units or imprisonment for 2 years or both; or
- (b) in respect of any other protected fauna—200 penalty units or imprisonment for 12 months or both.
- 15   (17) Section 103 (**Taking or killing fauna for sale**):
- From section 103 (4), omit “endangered fauna”, insert instead “fauna of an endangered or other threatened species”.
- 20   (18) Section 117 (**Restriction on picking or possession of native plant**):
- After section 117 (3) (b), insert:
- ; or
- 25           (c) in the case of the Forestry Commission—the protected native plant was picked by the Forestry Commission in the course of exercising any of its powers, authorities, duties or functions under the Forestry Act 1916 (or was in the possession of the Commission after having been so picked).
- 30   (19) Section 121 (**Occupier’s licence**):
- From section 121 (3), omit “endangered fauna”, insert instead “fauna of an endangered or other threatened species”.
- 35   (20) Section 122 (**Game licence**):
- From section 122 (2), omit “endangered fauna”, insert instead “fauna of an endangered or other threatened species”.

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**SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND  
WILDLIFE ACT 1974 No. 80—*continued***

- (21) Section 123 (**Trapper's licence**):  
 After section 123 (2), insert:  
 (3) A trapper's licence shall not be issued with respect to fauna of an endangered or other threatened species. 5
- (22) Section 138 (**Payments into the Fund**) and section 139 (**Payments out of the Fund**):  
 In sections 138 (1) and 139 (2) (a), after "Act" wherever occurring, insert "or the Endangered and Other Threatened Species Conservation Act 1993". 10
- (23) Section 145 (**Acquisition of land for reservation etc.**):  
 At the end of the section, insert:  
 (2) This section also applies for the purpose of obtaining land that is or includes habitat of an endangered or other threatened species as proposed under a recovery plan under the Endangered and Other Threatened Species Conservation Act 1993. 15
- (24) Section 148 (**Power of Minister to accept gifts etc.**):  
 After "this Act", insert ", the Endangered and Other Threatened Species Conservation Act 1993". 20
- (25) Schedule 12 (**Endangered fauna**):  
 Omit the Schedule.
- (26) Schedule 12A (**Protected amphibians**):  
 Omit the Schedule. 25

**SCHEDULE 4—AMENDMENT OF ENVIRONMENTAL  
PLANNING AND ASSESSMENT ACT 1979 No. 203**

(Sec. 60)

- (1) Section 26 (**Contents of environmental planning instruments**):  
 After section 26 (e), insert:  
 (e1) protecting, conserving or restoring native species of animals or plants (including their habitat); 30

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SCHEDULE 4—AMENDMENT OF ENVIRONMENTAL  
PLANNING AND ASSESSMENT ACT 1979 No. 203—*continued*

(2) Section 90 (**Matters for consideration**):

After section 90 (1) (c1), insert:

- 5 (c2) the effect of that development on any endangered or  
other threatened species within the meaning of the  
Endangered and Other Threatened Species  
Conservation Act 1993 (including the means that may  
be employed to protect their habitat);
- 10 (c3) the effect of that development on any other protected  
fauna or protected native plants within the meaning of  
the National Parks and Wildlife Act 1974;

(3) Section 111 (**Duty to consider environmental impact**):

After section 111 (3), insert:

- 15 (4) Without limiting subsection (1), a determining  
authority shall consider the effect of an activity on:
- (a) any endangered or other threatened species within the  
meaning of the Endangered and Other Threatened  
Species Conservation Act 1993 (including the means  
that may be employed to protect their habitat); and
- 20 (b) any other protected fauna or protected native plants  
within the meaning of the National Parks and Wildlife  
Act 1974.

SCHEDULE 5—AMENDMENT OF OTHER ACTS

25 (Sec. 61)

**Fisheries and Oyster Farms Act 1935 No. 58**

After section 114, insert:

**Offence to take endangered species of fish**

- 30 115. (1) A person must not take any fish which is:
- (a) an endangered species; or
- (b) any other threatened species listed as vulnerable or  
rare,
- under the Endangered and Other Threatened Species  
Conservation Act 1993.

35 Maximum penalty: 1,000 penalty units or imprisonment  
for 2 years or both.



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SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

(2) A person is not to be convicted of an offence arising under subsection (1) if the person proves that the act constituting the offence was done under and in accordance with a permit issued under section 15.

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**Land and Environment Court Act 1979 No. 204**

(1) Section 17 (Class 1—environmental planning and protection appeals):

After section 17 (ea), insert:

(eb) appeals under section 91H of the National Parks and Wildlife Act 1974;

10

(ec) appeals under section 43 of the Endangered and Other Threatened Species Conservation Act 1993;

(2) Section 20 (Class 4—environmental planning and protection civil enforcement):

15

(a) Omit section 20 (1) (cf).

(b) In section 20 (3) (a), in alphabetical order of Acts, insert:  
Endangered and Other Threatened Species Conservation Act 1993;

**Non-Indigenous Animals Act 1987 No. 166**

20

Section 4 (Application of Act):

At the end of section 4 (2), insert:

Endangered and Other Threatened Species Conservation Act 1993.

**Soil Conservation Act 1938 No. 10**

25

(a) Section 21B:

Omit section 21B (6) (b), insert instead:

(b) land containing endangered or other threatened species within the meaning of the Endangered and Other Threatened Species Conservation Act 1993;

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SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

(b) Section 21D:

Omit section 21D (3A) (c), insert instead:

- 5 (c) an adverse effect on endangered or other threatened species within the meaning of the Endangered and Other Threatened Species Conservation Act 1993;

**Timber Industry (Interim Protection) Act 1992 No. 1**

(1) Section 13 (Amendment of EPA Act):

Omit the section.

10 (2) Section 14 (Quarterly reporting by the Minister for the Environment):

Omit the section.

**SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

15

(Sec. 62)

**Regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

20 (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

25 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

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SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS—*continued*

**Interim endangered species of fauna for purposes of National Parks and Wildlife Act 1974**

2. Until endangered species of animals are specified in Schedule 1 to this Act, endangered species of fauna for the purposes of the National Parks and Wildlife Act 1974 are those species that were, immediately before the repeal by this Act of Schedule 12 to that Act, endangered fauna of a species listed in Part 1 of that Schedule or marine mammals. 5

**Interim other threatened species of fauna for purposes of National Parks and Wildlife Act 1974** 10

3. Until other threatened species of animals are specified in Schedule 2 to this Act, other threatened species of fauna for the purposes of the National Parks and Wildlife Act 1974 are those species that were, immediately before the repeal by this Act of Schedule 12 to that Act, endangered fauna of a species listed in that Schedule (apart from Part 1 and marine mammals). 15

**Savings and transitional provisions consequent on repeal of Endangered Fauna (Interim Protection) Act 1991**

4. (1) The Scientific Committee established under section 92A of the National Parks and Wildlife Act 1974, as inserted by the Endangered Fauna (Interim Protection) Act 1991, is dissolved. 20

(2) Any requirement for the preparation or consideration of a fauna impact statement prepared under section 92D of the National Parks and Wildlife Act 1974, as inserted by the Endangered Fauna (Interim Protection) Act 1991, ceases to apply in respect to any matter arising before or after the repeal of that section by this Act. 25

(3) Any stop work order made under section 92E of the National Parks and Wildlife Act 1974, as inserted by the Endangered Fauna (Interim Protection) Act 1991, ceases to have effect. However, nothing in this clause prevents the making of an interim protection order under Part 5 of this Act with respect to the same activity to which the stop work order applied. 30



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SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS—*continued*

5 (4) The repeal of the Endangered Fauna (Interim Protection) Act 1991 or the Endangered Fauna (Interim Protection) Amendment Act 1992 by this Act does not affect any offence committed before the repeal.

(5) The repeal of the Endangered Fauna (Interim Protection) Act 1991 by this Act does not affect any general licence issued under section 120 of the National Parks and Wildlife Act 1974 before the repeal.

10 **Consequential amendment of Environmental Planning and Assessment Regulation 1980**

5. The Environmental Planning and Assessment Regulation 1980 is amended by omitting clause 41A (c)–(e) and clause 56 (f) and (e1).

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