

Threatened Species Conservation Amendment Act 2002

As at 31 January 2003

Long Title

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.

1 Name of Act

This Act is the *Threatened Species Conservation Amendment Act 2002* .

2 Commencement

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

3 Amendment of Threatened Species Conservation Act 1995 No 101

The *Threatened Species Conservation Act 1995* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Threatened Species Conservation Act 1995

(Section 3)

[1] Section 4 Definitions

Omit the definitions of **animal** and **plant** from section 4 (1). Insert instead:

animal 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:

(a) humans, or

(b) fish within the meaning of Part 7A of the *Fisheries Management Act 1994* .

Note: Some types of fish may be included in the definition of **animal** . See section 5A.

plant 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 *Fisheries Management Act 1994* .

Note: Some types of marine vegetation may be included in the definition of **plant** . See Section 5A.

[2] Section 4 (1)

Insert in alphabetical order:

Fisheries Scientific Committee means the Fisheries Scientific Committee constituted under Part 7A of the *Fisheries Management Act 1994* .

threatened ecological community means an ecological community specified in Part 3 of Schedule 1 or Part 2 of Schedule 2.

vulnerable ecological community means an ecological community specified in Part 2 of Schedule 2.

[3] Section 4 (1), definition of "threatened species, populations and ecological communities", note

Insert at the end of the definition:

Note: In some cases vulnerable ecological communities are excluded from this expression. See subsection (5).

[4] Section 4 (1), definition of "vulnerable species"

Insert "Part 1 of" before "Schedule 2".

[5] Section 4 (5)

Insert after section 4 (4):

(5) In Parts 6 and 7, a reference to **threatened species, populations and ecological communities** or **threatened species, population or ecological community** (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.

Note: Vulnerable ecological communities are excluded from the licensing provisions of this Act and from related offences under the *National Parks and Wildlife Act 1974*. 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.

[6] Section 5A

Insert after section 5:

5A Relationship between this Act and Part 7A of the Fisheries Management Act 1994

(1) The Minister may, by order made with the concurrence of the Minister administering the *Fisheries Management Act 1994* :

- (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
- (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.

(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.

(3) The Minister and the Minister administering the *Fisheries Management Act 1994* 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.

(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.

(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.

(6) An order under this section is to be published in the Gazette.

(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.

(8) In this section:

fish means any fish (within the meaning of the *Fisheries Management Act 1994*) that is indigenous to New South Wales.

freshwater has the same meaning as in the *Fisheries Management Act 1994*.

marine vegetation means any marine vegetation (within the meaning of the *Fisheries Management Act 1994*) that is indigenous to New South Wales.

[7] Part 2, Introductory note

Insert "and vulnerable ecological communities" after "Schedule 2, of vulnerable species".

[8] Part 2, Introductory note

Insert after the paragraph relating to Division 4:

Division 5 describes the process by which certain minor amendments may be made to Schedules 1-3.

[9] Section 6 Schedule 1 list of endangered species, populations and ecological communities

Omit section 6 (5) and (6). Insert instead:

(5) Any endangered species or species presumed extinct that is a listed threatened species under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth is marked with an asterisk to show that the species is considered to be a threatened species nationally.

(6) Any endangered ecological community that is a listed threatened ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth is marked with an asterisk to show that it is considered to be a threatened ecological community nationally.

[10] Sections 7 and 7A

Omit section 7. Insert instead:

7 Schedule 2 list of vulnerable species

(1) Part 1 of Schedule 2 contains a list of vulnerable species for the purposes of this Act.

(2) Any vulnerable species that is a listed threatened species under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth is marked with an asterisk to show that it is considered to be a threatened species nationally.

7A Schedule 2 list of vulnerable ecological communities

(1) Part 2 of Schedule 2 contains a list of vulnerable ecological communities for the purposes of this Act.

(2) Any vulnerable ecological community that is a listed threatened ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth is marked with an asterisk to show that it is considered to be a threatened ecological community nationally.

[11] Section 9 Listing of nationally threatened species and ecological communities

Omit section 9 (1). Insert instead:

(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 *Environment Protection and Biodiversity Conservation Act 1999* 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.

[12] Section 9 (3)

Omit "If a threatened species or endangered ecological community is omitted from Schedule 1 or 2 to the *Endangered Species Protection Act 1992*". 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 *Environment Protection and Biodiversity Conservation Act 1999*".

[13] Section 9 (4)

Insert after section 9 (3):

(4) If a threatened species or threatened ecological community becomes a listed threatened species or a listed threatened ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* 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.

[14] Section 11

Omit the section. Insert instead:

11 Populations eligible for listing as endangered populations

(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:

- (a) it is disjunct or near the limit of its geographic range,
- (b) it is or is likely to be genetically, morphologically or ecologically distinct,
- (c) it is otherwise of significant conservation value.

Note: The intention of the criteria is to exclude from listing isolated populations of limited conservation value.

(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] Section 12 Ecological communities eligible for listing as endangered ecological communities

Omit "or evolutionary development" from section 12 (a).

[16] Section 13

Omit the section. Insert instead:

13 Species eligible for listing as species presumed extinct 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.

[17] Section 14 Species eligible for listing as vulnerable species

Insert "in New South Wales" after "endangered".

[18] Section 14A

Insert after section 14:

14A Ecological communities eligible for listing as vulnerable ecological communities 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.

[19] Section 17 Scientific Committee responsible for lists

Omit "at least bi-annually" from section 17 (2). Insert instead "at least every 2 years".

[20] Section 19 Making nomination for inclusion on, omission from or amendment of list

Omit section 19 (5). Insert instead:

(5) A nomination must:

- (a) be made in writing addressed to the Chairperson of the Scientific Committee, and
- (b) include any information prescribed by the regulations, and
- (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.

[21] Section 19A

Insert after section 19:

19A Referral of nomination to Fisheries Scientific Committee

(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 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*.

(2) If the Chairpersons agree that the nomination should also be considered by the Fisheries Scientific Committee under Part 7A of the *Fisheries Management Act 1994*, the nomination is to be referred to the Fisheries Scientific Committee for consideration.

(3) In such a case:

- (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 *Fisheries Management Act 1994*, and
- (b) Part 7A of that Act applies in relation to the nomination (in addition to this Division).

(4) For the purposes of this section, a **nomination of a key threatening process** means:

- (a) the nomination of any matter to be inserted in or omitted from Schedule 3, or
- (b) the nomination of any matter in Schedule 3 for amendment.

Note: There is a reciprocal process in Part 7A of the *Fisheries Management Act 1994* for the referral of nominations made under that Part to the Scientific Committee in appropriate cases.

[22] Section 22 Scientific Committee's preliminary determination

Omit "and the reasons for it" from section 22 (2) (c).

[23] Section 22 (3) (b)

Omit the paragraph. Insert instead:

- (b) specify the manner in which members of the public may obtain a copy of the determination and the reasons for it, and

[24] Section 22 (3) (c)

Omit "Director-General". Insert instead "Scientific Committee".

[25] Section 22 (5)

Insert "not less than 30 days and" after "being a date occurring".

[26] Section 22 (6)

Insert after section 22 (5):

(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:

- (a) by publication on the internet site of the National Parks and Wildlife Service,
- (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,
- (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.

[27] Section 23 Scientific Committee's final determination

Omit section 23 (2). Insert instead:

(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).

[28] Section 24 Publication of final determination

Omit "and the reasons for it" from section 24 (c).

[29] Section 24 (2) and (3)

Insert at the end of section 24:

(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) 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:

- (a) by publication on the internet site of the National Parks and Wildlife Service,
- (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,
- (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.

[30] Section 33 Publication of determination for provisional listing

Omit "and the reasons for it" from section 33 (c).

[31] Section 33 (2) and (3)

Insert at the end of section 33:

(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) Copies of the determination and the reasons for it are to be made available to members of the public (free of charge) as follows:

- (a) by publication on the internet site of the National Parks and Wildlife Service,
- (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,
- (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] Part 2, Division 5

Insert after Division 4:

Division 5 - Minor changes to listings

36A Minor amendments to Schedules

- (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:

- (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 (including to reflect new surveys or research information).

(2) A determination under this Division must not alter the listing status of a particular species or ecological community by:

- (a) moving the description of the species or ecological community from one Schedule to the Act to another Schedule, or
- (b) moving the description of a species from Part 1 of Schedule 1 to Part 4 of Schedule 1 (or vice versa).

(3) A determination under this Division must not alter the particular area of any ecological community.

(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.

36B Publication of determination

(1) On making a determination under this Division, the Scientific Committee must, as soon as practicable:

- (a) notify the Minister and the Director-General of the determination, and
- (b) publish notice of the determination in a newspaper circulating generally throughout the State, and
- (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
- (d) publish notice of the making of the determination in the Gazette.

(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) Copies of the determination and the reasons for it are to be made available to members of the public (free of charge) as follows:

- (a) by publication on the internet site of the National Parks and Wildlife Service,
- (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,
- (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.

(4) In this section:

original determination 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.

36C Revision of Schedule on publication of determination 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:

- (a) by omitting the description of the species, population, ecological community or threatening process that is set out in the Schedule, and

(b) by inserting instead a description of the species, population, ecological community or threatening process in the manner required by the determination.

[33] Section 39

Omit the section. Insert instead:

39 Director-General to consult with Scientific Committee The Director-General must:

(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

(b) have regard to its advice in preparing any recommendation for that purpose.

[34] Sections 40 (1) and 41 (1)

Omit "a species, population or ecological community" wherever occurring. Insert instead "an endangered species, population or ecological community".

[35] Section 43 Director-General to refer recommendation to Minister

Omit "the species, population or ecological community" from section 43 (a). Insert instead "the endangered species, population or ecological community".

[36] Section 48 Publication of declaration of critical habitat

Insert ", in particular, the Valuer-General" after "land" in section 48 (a) (ii).

[37] Section 56 Director-General to prepare recovery plans

Omit section 56 (3). Insert instead:

(3) The Director-General may also prepare recovery plans for vulnerable ecological communities.

(4) A recovery plan under this Act may contain provisions for more than one species, population or ecological community.

(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) If the Director-General decides to prepare a recovery plan for a vulnerable ecological community, the recovery plan is to be prepared within 5 years after that decision is made. The time limit referred to in subsection (5) also 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* .

(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

Omit section 58 (2). Insert instead:

(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.

[41] Section 59 Contents of recovery plans

Insert after section 59 (f):

(f1) state performance indicators that are to be applied to measure whether the actions identified in the plan are being implemented and are successfully promoting the recovery of the species, population or ecological community, and

[42] Section 60 Consultation between chief executive officers

Omit section 60 (1). Insert instead:

(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.

[43] Section 60 (2)

Omit "Minister responsible for". Insert instead "chief executive officer of".

[44] Section 65 Approval of recovery plan by Minister

Insert after section 65 (2):

(3) Without limiting subsection (2), the Minister may refuse to approve a plan or refer it back to the Director-General for further consideration on the basis that the plan does not

comply with the requirements of this Act.

[45] Section 66A

Insert after section 66:

66A Advice of Scientific Committee to be included in plan The recovery plan approved by the Minister must include a summary of any advice given by the Scientific Committee with respect to the plan, details of any amendments made to the plan to take account of that advice and a statement of the reasons for any departure from that advice.

[46] Section 74

Omit the section. Insert instead:

74 Director-General may prepare threat abatement plans

(1) The Director-General may prepare a threat abatement plan for each key threatening process to manage the threatening process:

(a) so as to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities, or

(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.

(2) A threat abatement plan may contain provisions relevant to more than one key threatening process.

(3) A threat abatement plan for any key threatening process that adversely affects a threatened species, population or ecological community must be prepared:

(a) within 3 years after the description of the key threatening process is first inserted in Schedule 3, or

(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.

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 *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, if the Minister under that Act has made a decision to have a threat abatement plan.

(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.

[47] Section 74A

Insert after section 74:

74A Joint preparation of threat abatement 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 threat abatement plan under this Act and Part 7A of the *Fisheries Management Act 1994*.

(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 79 of this Act and section 220ZO of the *Fisheries Management Act 1994*.

(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 *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 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.

(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.

[48] Section 75 Guidelines for threat abatement plans

Insert after section 75 (2):

(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).

[49] Section 78 Consultation between chief executive officers

Omit section 78 (1). Insert instead:

(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 abatement plan, consult with the chief executive officer of the public authority before completing the preparation of the draft threat abatement plan.

[50] Section 78 (2)

Omit "Minister responsible for". Insert instead "chief executive officer of".

[51] Part 6, Introductory note

Omit the introductory note. Insert instead:

This Part deals with the licensing by the Director-General of actions that are likely to result in:

- (a) the harming of an animal that is of, or part of, a threatened species, population or ecological community, or
- (b) the picking of a plant that is of, or part of, a threatened species, population or ecological community, or
- (c) damage to critical habitat, or
- (d) damage to habitat of a threatened species, population or ecological community.

The offences relating to the above actions are set out in the *National Parks and Wildlife Act 1974* . 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. 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. 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. Division 3 sets out exceptions to licensing requirements. Division 4 sets out miscellaneous provisions.

[52] Section 91

Omit the section. Insert instead:

91 Licence to harm or pick threatened species, populations or ecological communities or damage habitat

(1) The Director-General may grant a licence authorising a person to take action likely to result in one or more of the following:

- (a) harm to any animal that is of, or is part of, a threatened species, population or ecological community,
- (b) the picking of any plant that is of, or is part of, a threatened species, population or ecological community,
- (c) damage to critical habitat,
- (d) damage to habitat of a threatened species, population or ecological community.

(2) A general licence may be issued under section 120 of the *National Parks and Wildlife Act 1974* to authorise an action referred to in subsection (1) only:

- (a) for the welfare of an animal, or
- (b) if there is a threat to life or property.

(3) Subsection (2) does not limit the purposes for which a licence may be issued under this section.

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.

[53] Section 94 Significant effect on threatened species, populations or ecological communities, or their habitats

Omit section 94 (2). Insert instead:

(2) For that purpose, the Director-General must take into account the following:

- (a) each of the factors listed in subsection (3),
- (b) any assessment guidelines issued and in force under section 94A.

(3) The following factors must be taken into account in making a determination under this section:

- (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,
- (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,
- (c) in the case of an endangered ecological community, whether the action proposed:

- (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
- (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,

(d) in relation to the habitat of a threatened species, population or ecological community:

- (i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
- (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
- (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,

(e) whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly),

(f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,

(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.

[54] Section 94A

Insert after section 94:

94A Assessment guidelines

- (1) The Minister may, by order published in the Gazette, issue guidelines (**assessment guidelines**) relating to the determination of whether an action is likely to significantly affect threatened species, populations or ecological communities, or their habitats.
- (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.

[55] Section 96 Publication of licence application

Omit the section. Insert instead:

96 Publication of licence application

- (1) The Director-General is to keep a register of licence applications made under this Act.
- (2) The Director-General must, within 7 days after receiving a licence application, cause a copy of the application to be placed on the register.
- (3) The register is not to include any information the disclosure of which would contravene the *Privacy and Personal Information Protection Act 1998* .
- (4) Copies of the register are to be made available for public inspection (free of charge) at the principal office of the National Parks and Wildlife Service and on the internet site maintained by the National Parks and Wildlife Service.
- (5) If the licence application is accompanied by a species impact statement or a species impact statement is provided in response to a notification from the Director-General that a statement is required, the Director-General must cause to be placed in a newspaper circulating throughout the State a notice:
 - (a) outlining the nature of the application, and
 - (b) specifying the address of the place at which copies of the species impact statement may be inspected or purchased, and
 - (c) inviting written submissions within a period of not less than 28 days after the date of the notice.

[56] Section 96A

Insert after section 96:

96A Sale of copies of species impact statement

- (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.
- (2) The Director-General may refuse to grant an application if that direction is not complied with.
- (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).
- (4) The Director-General must:
 - (a) pay the proceeds of sale of copies of the species impact statement to the applicant, and
 - (b) return to the applicant any unsold copies of the species impact statement.

[57] Section 101 Conditions and restrictions to licence

Insert after section 101 (2) (after the note):

(3) The Audit and Compliance Committee established under section 9 of the *National Parks and Wildlife Act 1974* is to monitor the conditions attached to licences by the Director-General, for the purpose of overseeing the compliance of the Director-General with his or her obligations under this Act.

[58] Section 103 Notification of licence determination

Insert at the end of the section:

(2) The Director-General must give a copy of the reasons for his or her determination of a licence application:

- (a) to the applicant, and
- (b) to any person who asks for it (either free or for a reasonable charge determined by the Director-General).

[59] Section 110 Content of species impact statement

Insert after section 110 (2) (d):

(e) an assessment of whether those species or populations are adequately represented in conservation reserves (or other similar protected areas) in the region,

(e1) an assessment of whether any of those species or populations is at the limit of its known distribution,

[60] Section 110 (3) (b1) and (b2)

Insert after section 110 (3) (b):

(b1) an assessment of whether those ecological communities are adequately represented in conservation reserves (or other similar protected areas) in the region,

(b2) an assessment of whether any of those ecological communities is at the limit of its known distribution,

[61] Section 113 Director-General may accredit persons to prepare species impact statements

Omit "assessment reports on" from section 113 (1).

[62] Section 113 (3A)

Insert after section 113 (3):

(3A) Without limiting subsection (3), an accreditation is to include conditions that require a species impact statement to be prepared in accordance with survey standards approved from time to time by the Director-General by order published in the Gazette.

[63] Part 6, Division 3

Insert after Division 2:

Division 3 - Exceptions to licensing requirements

113A Routine agricultural activities

(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.

(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.

(3) It is a defence to a prosecution for an offence under Part 8A of the *National Parks and Wildlife Act 1974* if the accused proves that the action constituting the alleged offence was a routine agricultural activity.

113B Property management plans

(1) The Director-General may, for the purposes of this Act, approve of a property management plan for land prepared by a landholder.

(2) In determining whether to approve a property management plan, the Director-General must take into account such matters as may be prescribed by the regulations.

(3) The Minister is to endeavour to ensure that regulations are made for the purposes of subsection (2) within 6 months after the commencement of that subsection.

(4) 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.

(5) Without limiting subsection (4), 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.

(6) It is a defence to a prosecution for an offence under Part 8A of the *National Parks and Wildlife Act 1974* 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.

(7) 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).

(8) 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 *Environmental Planning and Assessment Act 1979* when approving a property management plan.

Division 4 - Miscellaneous

113C Transitional--effect of changes to list of vulnerable species

(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.

(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.

[64] Section 121 Joint management agreements

Insert at the end of the section the following note:

Note: It is a defence to certain offences under the *National Parks and Wildlife Act 1974* if the act constituting the offence was authorised by and done in accordance with a joint management agreement.

[65] Part 7, Division 3

Insert after Division 2 of Part 7:

Division 3 - Conservation agreements

126A Conservation agreements

(1) A conservation agreement relating to land that is entered into under the *National Parks and Wildlife Act 1974* for the purpose of the conservation of critical habitat or the conservation of threatened species, populations or ecological communities, or their habitats, may make provision for assistance in connection with the following:

(a) maintaining and promoting sustainable farming practices and achieving the objects of this Act,

(b) implementing the requirements of a recovery plan that relates to the land (if appropriate),

(c) ensuring the continued and appropriate agricultural use of the land by the owner of the land.

(2) This section does not limit section 69C of the *National Parks and Wildlife Act 1974*.

[66] Section 129 Members of Scientific Committee

Omit "10 members" from section 129 (1). Insert instead "11 members".

[67] Section 129 (2) (b1)

Insert after section 129 (2) (b):

(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,

[68] Section 129 (3) (g)

Omit the paragraph. Insert instead:

(g) aquatic biology,

[69] Section 129 (4)

Insert after section 129 (3):

(4) If the person or body responsible for nominating a member of the Scientific Committee under this section (**the nominating body**) 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:

(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

(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.

[70] Section 130 Provisions relating to members of Scientific Committee

Insert after section 130 (1):

(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.

(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.

[71] Section 137 Biological Diversity Advisory Council

Omit "14 members" from section 137 (2). Insert instead "15 members".

[72] Section 137 (2) (c)

Omit the paragraph. Insert instead:

(c) 4 scientists, one each to be selected by the Minister from 3 nominees of the Ecological Society of Australia, 3 nominees of the Australian Museum, 3 nominees of the National Biodiversity Council and 3 nominees of the Royal Botanic Gardens and Domain Trust,

[73] Section 137 (3)

Insert after section 137 (2):

(3) If the person or body responsible for nominating members of the Advisory Council under this section (**the nominating body**) fails to submit a nominee or the required number of nominees 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:

(a) may seek a nominee or additional nominees from any other person or body that the Minister considers to be a suitable substitute for the nominating body, and

(b) may appoint any person nominated by that other person or body as a member of the Advisory Council, in place of a nominee of the nominating body.

[74] Section 143 Annual report by Director-General on operation of Act

Insert at the end of section 143:

(2) The report is to include a report on the implementation of Parts 3, 4 and 5 of this Act.

[75] Section 146 Decision not to disclose location of critical habitat

Re-number section 146 (1) as section 146 (1A) and insert before section 146 (1A) (as so re-numbered):

(1) The Director-General may, by notice in writing, determine that any matter in any document in the possession of the National Parks and Wildlife Service that may identify the location of critical habitat or any area or areas of land proposed to be identified as critical habitat should not be disclosed to the public.

[76] Section 146 (2)

Omit "may exercise the function under subsection (1)". Insert instead "may exercise a function under subsection (1) or (1A)".

[77] Section 146, note

Insert at the end of the section:

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 *Freedom of Information Act 1989*.

[78] Section 146A

Insert after section 146:

146A Decision not to disclose other information

(1) The Scientific Committee may make a written recommendation to the Minister 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,
- (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.

(2) The Minister may, by notice in writing:

- (a) accept the recommendation of the Committee that the matter should not be disclosed to the public, or
- (b) reject the recommendation of the Scientific Committee.

(3) The Minister may accept a recommendation referred to in subsection (1) (a) only if the Minister is of the opinion that the public interest requires that the matter not be disclosed.

(4) The Minister may accept a recommendation referred to in subsection (1) (b) only if the Minister is of the opinion that the matter should not be disclosed:

- (a) in the interests of safety or welfare of the individual who might otherwise be identified, or
- (b) to protect that individual against intimidation, harassment or other unwarranted reprisals in connection with the nomination or submission.

[79] Schedule 2

Omit the heading. Insert instead:

Schedule 2 Vulnerable species and ecological communities

(Sections 7 and 7A)

Part 1 - Vulnerable species

[80] Schedule 2, Part 2

Insert at the end of the Schedule:

Part 2Â Vulnerable ecological communities

Vulnerable ecological communities

[81] Schedule 7 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

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

 this Act

Threatened Species Conservation Amendment Act 2002

[82] Schedule 7, clause 1 (2)

Omit "this Act". Insert instead "the Act concerned".

[83] Schedule 7, Part 4

Insert after Part 3:

Part 4 - Provisions consequent on Threatened Species Conservation Amendment Act 2002

8 Licences under Part 6 Section 91, as substituted by the *Threatened Species Conservation Amendment Act 2002* , does not apply in respect of a licence issued under Part 6 before that substitution.

9 Accreditation arrangements The Director-General is to ensure that the arrangements referred to in section 113 (1), as amended by the *Threatened Species Conservation Amendment Act 2002* , and the survey standards referred to in section 113 (3A), as inserted by that Act, are instituted or approved within 18 months after the date of assent to that Act.

10 Re-appointment of members of Scientific Committee Section 130 (1A), as inserted by the *Threatened Species Conservation Amendment Act 2002* , 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.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 - Environmental Planning and Assessment Act 1979 No 203

[1] Section 4 Definitions

Insert ", except as provided by section 5D" after " *Fisheries Management Act 1994* " at the end of the definition of **threatened species, populations and ecological communities** in section 4 (1).

[2] Section 4 (1), definition of "threatened species, populations and ecological communities", note

Insert at the end of the definition:

Note: Section 5D excludes vulnerable ecological communities from this expression.

[3] Section 4 (1)

Insert in alphabetical order:

threatened species has the same meaning as in the *Threatened Species Conservation Act 1995* or (subject to section 5C) Part 7A of the *Fisheries Management Act 1994* .

vulnerable ecological community has the same meaning as in the *Threatened Species Conservation Act 1995* .

[4] Section 5A

Omit the section. Insert instead:

5A Significant effect on threatened species, populations or ecological communities, or their habitats

(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:

- (a) each of the factors listed in subsection (2),
- (b) any assessment guidelines.

(2) The following factors must be taken into account in making a determination under this section:

(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,

(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,

(c) in the case of an endangered ecological community, whether the action proposed:

- (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
- (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,

(d) in relation to the habitat of a threatened species, population or ecological community:

- (i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
- (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
- (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,

(e) whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly),

(f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,

(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.

(3) In this section:

assessment guidelines means assessment guidelines issued and in force under section 94A of the *Threatened Species Conservation Act 1995* or, subject to section 5C, section 220ZZA of the *Fisheries Management Act 1994* .

key threatening process has the same meaning as in the *Threatened Species Conservation Act 1995* or, subject to section 5C, Part 7A of the *Fisheries Management Act 1994* .

[5] Section 5C Application of Act with respect to threatened species conservation--fish and marine vegetation

Insert after section 5C (2):

(3) In this section:

fish has the same meaning as in Part 7A of the *Fisheries Management Act 1994* .

marine vegetation has the same meaning as in Part 7A of the *Fisheries Management Act 1994* .

[6] Section 5D

Insert after section 5C:

5D Application of Act to vulnerable ecological communities

(1) In this Act, a reference to **threatened species, populations and ecological communities** or **threatened species, population or ecological community** (however expressed) does not include a reference to any vulnerable ecological community.

(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.

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 *Threatened Species Conservation Act 1995* , 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.

[7] Section 26 Contents of environmental planning instruments

Insert after section 26 (1):

(1A) An environmental planning instrument may also make provision for or with respect to protecting and conserving vulnerable ecological communities.

(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:

(a) to consult with the Director-General of National Parks and Wildlife or the Minister administering the *Threatened Species Conservation Act 1995* about the effect of the development on the vulnerable ecological community, or

(b) to obtain the concurrence of the Director-General of National Parks and Wildlife or the Minister administering the *Threatened Species Conservation Act 1995* in respect of the development because of its possible effect on the vulnerable ecological community.

[8] Section 26, note

Insert at the end of the section:

Note: Section 5C provides that a reference to the *Threatened Species Conservation Act 1995* , in relation to the critical habitat of fish or marine vegetation, is taken to be a reference to Part 7A of the *Fisheries Management Act 1994* .

[9] Section 34A Consultation with Director-General of National Parks and Wildlife about preparation of studies or instruments

Insert at the end of the section the following note:

Note: Section 5C provides that a reference to the Director-General of National Parks and Wildlife, in connection with the *Threatened Species Conservation Act 1995*, 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.

[10] Section 105A

Insert after section 105:

105A Transitional--amendment to list of vulnerable species

- (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.
- (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.
- (3) In this section:

list of vulnerable species means Part 1 of Schedule 2 to the *Threatened Species Conservation Act 1995* or, subject to section 5C, Schedule 5 to the *Fisheries Management Act 1994*.

[11] Section 110D

Insert after section 110C:

110D Transitional--amendment to list of vulnerable species

- (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:
 - (a) an environmental impact statement was obtained in relation to that activity in accordance with this Part before the amendment was made, and
 - (b) notice of the environmental impact statement has been given as provided for by section 113 (1).
- (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).
- (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.
- (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.
- (5) In this section:

list of vulnerable species means Part 1 of Schedule 2 to the *Threatened Species Conservation Act 1995* or, subject to section 5C, Schedule 5 to the *Fisheries Management Act 1994*.

[12] Section 112 Decision of determining authority in relation to certain activities

Insert after section 112 (1B):

- (1C) An environmental impact statement is not required (despite subsection (1) (a)) in respect of an activity that:
 - (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

(b) is not likely to significantly affect the environment except as described in paragraph (a),
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 *Threatened Species Conservation Act 1995* . However, the provisions of this Part relating to environmental impact statements (other than 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.

[13] Section 112C Concurrence of or consultation with Director-General of National Parks and Wildlife if Minister is not determining authority

Insert after section 112C (3):

(4) The Director-General of National Parks and Wildlife or, in a case where the Minister administering the *Threatened Species Conservation Act 1995* 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:

- (a) revoking or varying a condition of the concurrence, or
- (b) imposing an additional condition on the concurrence.

[14] Section 112D Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

Insert at the end of the section:

(2) Before the Director-General of National Parks and Wildlife or the Minister administering the *Threatened Species Conservation Act 1995* decides to modify a concurrence in respect of an activity under section 112C he or she must:

- (a) give notice of the proposed decision to any person who made representations under section 113 concerning the species impact statement in respect of the activity, and
- (b) provide the person with an opportunity to make submissions with respect to the proposed decision within a period specified in the notice (being a period of not less than 28 days after the date of the notice), and
- (c) have regard to any submissions made to him or her in accordance with the notice within the period so specified.

[15] Section 115S

Insert after section 115R:

115S Transitional--amendment to list of vulnerable species

- (1) An amendment to the list of vulnerable species does not apply in respect of a designated fishing activity if:
 - (a) an environmental impact statement was prepared in relation to that activity in accordance with this Part before the amendment was made, and
 - (b) notice of the environmental impact statement has been given as provided for by section 115L.
- (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.
- (3) In this section:

list of vulnerable species means Part 1 of Schedule 2 to the *Threatened Species Conservation Act 1995* or, subject to section 5C, Schedule 5 to the *Fisheries Management Act 1994* .

[16] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Threatened Species Conservation Amendment Act 2002

2.2 - Fisheries Management Act 1994 No 38

[1] Section 220B Definitions

Omit the definitions of **fish** and **marine vegetation** from section 220B (1). Insert instead in alphabetical order:

fish 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 *Threatened Species Conservation Act 1995* by order in force under section 5A of that Act.

Note: Animals may be listed under the *Threatened Species Conservation Act 1995* .

marine vegetation 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 *Threatened Species Conservation Act 1995* by order in force under section 5A of that Act.

Note: Plants may be listed under the *Threatened Species Conservation Act 1995* .

Threatened Species Scientific Committee means the Scientific Committee constituted under the *Threatened Species Conservation Act 1995* .

[2] Section 220BA

Insert after section 220B:

220BA Relationship of Part to Threatened Species Conservation Act 1995

(1) The Minister may, by order made with the concurrence of the Minister administering the *Threatened Species Conservation Act 1995* :

(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

(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.

(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.

(3) The Minister and the Minister administering the *Threatened Species Conservation Act 1995* 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.

(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.

(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.

(6) An order under this section is to be published in the Gazette.

(7) For avoidance of doubt, an order under this section does not require the species concerned to be listed under this Part.

(8) In this section:

animal 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.

plant 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.

[3] Section 220IA

Insert after section 220I:

220IA Referral of nomination to Threatened Species Scientific Committee

(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 *Threatened Species Conservation Act 1995* .

(2) If the Chairpersons agree that the nomination should also be considered by the Threatened Species Scientific Committee under the *Threatened Species Conservation Act 1995* , the nomination is to be referred to the Threatened Species Scientific Committee for consideration.

(3) In such a case:

(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

(b) Division 3 of Part 2 of that Act applies in relation to the nomination (in addition to this Part).

(4) For the purposes of this section, a **nomination of a key threatening process** means a nomination of an amendment to Schedule 6.

Note: There is a reciprocal process in the *Threatened Species Conservation Act 1995* for the referral of nominations made under that Act to the Fisheries Scientific Committee in appropriate cases.

[4] Section 220ZJA

Insert after section 220ZJ:

220ZJA Joint preparation of recovery and threat abatement plans

(1) The Director may, with the prior approval of the Minister and the Minister administering the *Threatened Species Conservation Act 1995* , 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 *Threatened Species Conservation Act 1995* .

(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 *Threatened Species Conservation Act 1995* in respect of the plan under that Act.

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 *Threatened Species Conservation Act 1995* .

(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 *Threatened Species Conservation Act 1995* .

(4) If the Minister administering this Act and the Minister administering the *Threatened Species Conservation Act 1995* 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.

(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.

[5] Section 220ZZ Significant effect on threatened species, populations or ecological communities, or their habitats

Omit section 220ZZ (2). Insert instead:

(2) For that purpose, the Director must take into account the following:

- (a) each of the factors listed in subsection (2A),
- (b) any assessment guidelines issued and in force under section 220ZZA.

(2A) The following factors must be taken into account in making a determination under this section:

- (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,
- (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,
- (c) in the case of an endangered ecological community, whether the action proposed:
 - (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
 - (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,
- (d) in relation to the habitat of a threatened species, population or ecological community:
 - (i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
 - (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
 - (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,
- (e) whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly),
- (f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,
- (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.

[6] Section 220ZZA

Insert after section 220ZZ:

220ZZA Assessment guidelines

(1) The Minister may, by order published in the Gazette, issue guidelines (**assessment guidelines**) relating to the determination of whether an action is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

(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.

[7] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Threatened Species Conservation Amendment Act 2002

2.3 - Freedom of Information Act 1989 No 5

Schedule 1 Exempt documents

Insert as clause 24:

24 Documents relating to threatened species conservation

(1) A document is an exempt document if it contains matter that the Director-General under the *Threatened Species Conservation Act 1995* has determined should not be disclosed to the public under section 146 of that Act.

(2) A document is an exempt document if it contains matter that the Scientific Committee under the *Threatened Species Conservation Act 1995* has recommended to the Minister should not be disclosed to the public under section 146A of that Act and the Minister has accepted that recommendation.

2.4 - Land Tax Management Act 1956 No 26

Section 10 Land exempted from tax

Omit section 10 (1) (p1). Insert instead:

(p1) land that is the subject of a conservation agreement entered into under the *National Parks and Wildlife Act 1974* , 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,

2.5 - National Parks and Wildlife Act 1974 No 80

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

threatened species has the same meaning as in the *Threatened Species Conservation Act 1995* .

[2] Section 9 Audit and compliance

Insert after section 9 (2):

(2A) The Audit and Compliance Committee has such other functions as may be conferred or imposed on it by this or any other Act.

[3] Section 45 Provisions respecting animals in parks and sites

Omit "or a trapper's licence under section 123" from section 45 (3) (a). Insert instead ", a trapper's licence under section 123 or a scientific licence under section 132C".

[4] Section 56 Provisions respecting animals in nature reserves

Omit "or a trapper's licence under section 123" from section 56 (3) (a). Insert instead ", a trapper's licence under section 123 or a scientific licence under section 132C".

[5] Section 70 Fauna in wildlife districts, wildlife refuges and other areas

Insert ", a scientific licence under section 132C" before "or a licence under Part 6" in section 70 (3) (a).

[6] Section 91AA Director-General may make stop work order

Omit section 91AA (4) (b). Insert instead:

(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

(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.

[7] Section 98 Harming protected fauna, other than threatened species, endangered populations or endangered ecological communities

Omit "threatened species, populations or ecological communities" from section 98 (1). Insert instead "threatened species, endangered populations, endangered ecological communities".

[8] Section 98 (3) (a)

Omit "or an emu licence under section 125A". Insert instead ", an emu licence under section 125A, a scientific licence under section 132C".

[9] Section 98 (4)

Insert after section 98 (3):

(4) A person is not to be convicted of an offence arising under subsection (2) if the person proves that:

(a) the act constituting the offence was authorised by, and done in accordance with, a conservation agreement, or

(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 *Threatened Species Conservation Act 1995*.

[10] Section 98 (5) (b) and (c)

Omit section 98 (5) (b). Insert instead:

(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

(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.

[11] Section 99 Harming threatened interstate fauna

Insert "or a scientific licence under section 132C" after "section 120" in section 99 (2).

[12] Section 101 Buying, selling or possessing protected fauna

Insert after section 101 (6):

(7) In this section, **protected fauna** does not include any threatened species or endangered population.

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.

[13] Section 112F Restriction on issue of licences to take marine mammals for exhibition etc

Omit "A general licence shall not be issued under section 120". Insert instead "A licence is not to be issued under section 120 or section 132C".

[14] Section 112G Approaching marine mammal

Insert ", a scientific licence under section 132C" after "a general licence under section 120" in section 112G (3).

[15] Section 112G (5)

Insert ", 132C, 132D" after "129".

[16] Section 117 Restriction on picking or possession of native plant

Insert after section 117 (3) (a):

(a1) the act constituting the offence was authorised by, and done in accordance with, a conservation agreement, or

(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 *Threatened Species Conservation Act 1995*, or

[17] Section 117 (3) (b) (i)

Insert "or 132C" after "section 131".

[18] Section 118 Restriction on selling of native plant

Insert after section 118 (2):

(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:

(a) was done in relation to a plant that was cultivated by a person as a hobby, and

(b) both the person who supplied the plant, and the person to whom it was supplied, are persons who cultivate plants as a hobby.

[19] Section 118A Harming or picking threatened species, endangered populations or endangered ecological communities

Omit section 118A (1) (a). Insert instead:

(a) harm any animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community, or

[20] Section 118A (1) (b)

Omit "species, population or ecological community, being an".

[21] Section 118A (2)

Omit the subsection (but not the penalty). Insert instead:

(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.

[22] Section 118A (3) (a)

Insert ", a scientific licence under section 132C" before "or a licence granted under Part 6".

[23] Section 118A (3) (b) (ii)

Omit the sub-paragraph. Insert instead:

(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

(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] Section 118A (3) (b1) and (b2)

Insert after section 118A (3) (b):

(b1) was authorised by, and done in accordance with, a conservation agreement, or

(b2) was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995*, or

[25] Section 118B Buying, selling or possessing threatened species or endangered population

Omit section 118B (1) (but not the penalty). Insert instead:

(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.

[26] Section 118B (4)

Insert ", or a scientific licence under section 132C" before "or a licence granted under Part 6".

[27] Section 118B (5) (a1) and (a2)

Insert after section 118B (5) (a):

(a1) the act constituting the offence was authorised by, and done in accordance with, a conservation agreement, or

(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 *Threatened Species Conservation Act 1995* , or

[28] Section 118C Damage critical habitat

Omit section 118C (5) (b) (ii). Insert instead:

(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

(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

[29] Section 118C (5) (d) and (e)

Insert at the end of section 118C (5) (c):

, or

(d) was authorised by, and done in accordance with, a conservation agreement, or

(e) was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995* .

[30] Section 118D Damage habitat of threatened species, endangered population or endangered ecological community

Omit "a threatened species, population or ecological community" from section 118D (1). Insert instead "a threatened species, an endangered population or an endangered ecological community".

[31] Section 118D (2) (b) (ii)

Omit the sub-paragraph. Insert instead:

(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

(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

[32] Section 118D (2) (d) and (e)

Insert at the end of section 118D (2) (c):

, or

(d) was authorised by, and done in accordance with, a conservation agreement, or

(e) was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995* .

[33] Section 118E Court may order offender to restore habitat

Omit "a threatened species, population or ecological community," from section 118E (1). Insert instead "a threatened species, an endangered population or an endangered ecological community,".

[34] Section 118E (1)

Omit "that critical habitat or habitat of a threatened species, population or ecological community". Insert instead "that critical habitat or habitat".

[35] Section 118F

Insert after section 118E:

118F Definitions In this Part:

animal has the same meaning as in the *Threatened Species Conservation Act 1995* .

Note: The definition of **animal** in the *Threatened Species Conservation Act 1995* may include some types of fish.

plant has the same meaning as in the *Threatened Species Conservation Act 1995* .

[36] Part 9, heading

Omit the heading. Insert instead:

Part 9Â Licensing in respect of fauna, native plants and threatened species
Licensing in respect of fauna, native plants and threatened species

[37] Section 120 General licence

Omit section 120 (1) (a) and (a1). Insert instead:

- (a) to harm or obtain any protected fauna for any specified purpose,
- (a1) to hold or keep in possession or under control any protected fauna for any specified purpose,

[38] Section 120 (2B)

Insert after section 120 (2A):

(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.

Note: Section 91 of the *Threatened Species Conservation Act 1995* 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:

- (a) for the welfare of an animal, or
- (b) if there is a threat to life or property.

[39] Section 131 Licence to pick protected native plants

Insert at the end of section 131:

(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.

[40] Part 9, Division 3A

Insert after Division 3:

Division 3A - Scientific licences

132C Scientific licences

(1) An authorised officer may issue a licence (in this Act referred to as a **scientific licence**) authorising a person to take action, for scientific, educational or conservation purposes, that is likely to result in one or more of the following:

- (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,
- (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,
- (c) damage to critical habitat,
- (d) damage to a habitat of a threatened species, an endangered population or an endangered ecological community.

(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.

(3) A scientific licence may be issued without conditions or limitations or may be

issued subject to specified conditions or limitations.

(4) In particular:

(a) a scientific licence may but need not specify the animal or plant that may be harmed or picked under its authority, and

(b) a scientific licence may but need not be limited to specified areas.

(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.

(6) To avoid doubt, the Director-General is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when issuing a scientific licence.

132D Licence authorises certain actions Except in so far as any conditions or restrictions attached to a scientific licence otherwise provide:

(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

(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

(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.

132E Definitions In this Division:

animal has the same meaning as in the *Threatened Species Conservation Act 1995* .

Note: The definition of **animal** in the *Threatened Species Conservation Act 1995* may include some types of fish.

plant has the same meaning as in the *Threatened Species Conservation Act 1995* .

[41] Section 133 Conditions and restrictions attaching to licences and certificates and variation of licences and certificates

Insert "(whether issued under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*)" after "The holder of a licence or certificate" in section 133 (4).

[42] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Threatened Species Conservation Amendment Act 2002

[43] Schedule 3, Part 4

Insert as Part 4:

Part 4 - Provisions consequent on enactment of Threatened Species Conservation Amendment Act 2002

41 Conservation agreement and joint management agreements A reference, in an amendment made to Parts 7, 7A, 8 or 8A by the *Threatened Species Conservation Amendment Act 2002* , to a conservation agreement, or a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995* , does not

extend to any agreement entered into before the commencement of the amendment concerned.

42 Changes consequent on introduction of scientific licences The amendments made to Divisions 2 and 3 of Part 9 by the *Threatened Species Conservation Amendment Act 2002* do not apply in respect of any licence issued before the commencement of those amendments.

43 Commencement of National Parks and Wildlife Amendment Act 2001

(1) Sections 132C (2) and 132D, as inserted by the *Threatened Species Conservation Amendment Act 2002* , do not apply in respect of state conservation areas or Aboriginal areas until the commencement of Schedule 1 [26] to the *National Parks and Wildlife Amendment Act 2001* .

(2) Until the commencement of Schedule 1 [28] to the *National Parks and Wildlife Amendment Act 2001* , the provisions of sections 132C (2) and 132D (a), as inserted by the *Threatened Species Conservation Amendment Act 2002* , are taken to apply in respect of state recreation areas in the same way as they apply to the other areas mentioned in those provisions.

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

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

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

Historical notes

Table of Acts *Threatened Species Conservation Amendment Act 2002 No 78* . Second reading speech made: Legislative Assembly, 31.5.2002; Legislative Council, 19.6.2002. Assented to 2.10.2002. Date of commencement (except Sch 1 [2] insofar as it inserts a definition of "vulnerable ecological community" in sec 4 (1) of the *Threatened Species Conservation Act 1995* , Sch 1 [3] [5] and [7], Sch 1 [10] insofar as it inserts sec 7A in the *Threatened Species Conservation Act 1995* , Sch 1 [18], Sch 1 [37] insofar as it inserts a new sec 56 (3) and (6) in the *Threatened Species Conservation Act 1995* , Sch 1 [53]-[55] [59] [60] and [80], Sch 2.1 [1]-[4] [6] and [7] and Sch 2.2 [5] and [6]), 31.1.2003, sec 2 and GG No 33 of 31.1.2003, p 600; date of commencement of Sch 1 [2] insofar as it inserts a definition of "vulnerable ecological community" in sec 4 (1) of the *Threatened Species Conservation Act 1995* , Sch 1 [3] [5] and [7], Sch 1 [10] insofar as it inserts sec 7A in the *Threatened Species Conservation Act 1995* , Sch 1 [18], Sch 1 [37] insofar as it inserts a new sec 56 (3) and (6) in the *Threatened Species Conservation Act 1995* , Sch 1 [53]-[55] [59] [60] and [80], Sch 2.1 [1]-[4] [6] and [7] and Sch 2.2 [5] and [6]: not in force.