



Environmental
Defender's
Office

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Draft Biodiversity Conservation Strategy for WA
Department of Environment and Conservation
Locked Bag 104
Bentley Delivery Centre
BENTLEY WA 6983

By email: biodiversity@dec.wa.gov.au

Dear Sir / Madam

Proposed draft Biodiversity Conservation Strategy for WA

This letter is a brief submission by the Environmental Defender's Office (EDO) about the proposed draft Biodiversity Conservation Strategy for WA ("draft BCS"). Due to the nature of the EDO, the comments are made only in response to Key Strategic Direction 5.

The 2001 Gallop Government promises for a Biodiversity Conservation Act ("BC Act") and BCS have languished and must be finalized in 2007, before the "pre-poll conservatism" that is likely to characterise 2008. Given the fact a draft BC Bill has not yet been produced, even the draft BCS's target of 2008 will be extremely challenging to achieve without a major shift in political will.

Structural issues are not necessarily legislative ones, but that will be the emphasis of this submission. The EDO is of the strong view that policies without either strong political or strong legal backing are often just window dressing, and it is fair to say that biodiversity conservation does not appear to have strong day to day political support during this current mining boom.

Assuming the content of the proposed BC Act is satisfactory, the EDO strongly supports primary action 60. So what would ideally be in a BC Act?

Key aspects of the Govt's proposed BC Act have always been:

- incorporating significantly higher penalties for killing or detrimentally disturbing native biota;

- listing Threatened Ecological Communities (TECs);
- listing threatening processes; and
- allowing for the creation of bioregional plans.

As a bare minimum, the proposed BC Act must include the above matters. The effectiveness of concepts like bioregional plans will however depend on their legal status and content; more on that below.

Key things the conservation sector has been seeking to find in a BC Act for some years have been:

- the reduction or elimination of the ‘direct’ role of the Department of Fisheries in marine biodiversity conservation, on the grounds of conflict of interest;
- allowing community groups to take actions for breaches of the Act in court on the same basis as DEC, for those unfortunately too frequent occasions when, for whatever reason, the Department cannot or will not enforce the legislation itself; and
- the creation of a new Biodiversity Commission as an “enhanced merger” of the Conservation Commission and the Marine Parks and Reserves Authority (i.e. with significant new resources as well as structural and cultural independence from DEC).

The EDO strongly submits that the above matters be included in the proposed BC Act.

In our submission a BC Act should also include requirements that:

- the Biodiversity Commission be tasked with reviewing the BCS every 5 years;
- the Biodiversity Commission prepare and review Regional Biodiversity Plans¹ (RBPs) on a 5 yearly basis, which plans would be consistent with the BCS;
- all biodiversity uses are consistent with those RBPs, but existing permitting processes would still be the ‘face’ of the process so that in the vast majority of cases no new permits would be required;
- the overriding goal for each RBP would be to ensure that there are viable populations of all native species in that region, and that associated habitats, ecosystems and natural processes in that region are conserved, protected and restored; and
- a key element of each RBP would be to identify specific species, populations, communities, habitats or ecosystems which need specific consideration or management priority.

¹ We advocate Regional Biodiversity Plans, as distinct from Bioregional Plans, to allow for the fact that bioregional boundaries might not always be the best choice for planning purposes. The Minister should have the power to accredit suitable plans done on a larger basis (such as ecoregions or NRM group boundaries, for example), as well as smaller basis (such as local government boundaries). We should also note here that the Minister may wish to do both by, say, having a Southwest Ecoregion plan with smaller plans applying within that area and dealing with biodiversity issues in more detail.

Our proposals can therefore be further summarized as follows:

1. biodiversity conservation should be about maintaining and recovering viable populations, not just extending the current emphasis on threatened species to encompass TECs; and
2. plans to deal with biodiversity conservation should be binding on all decision-makers, not just “relevant considerations” at law.

So how does the balance of Key Strategic Direction 5 stand up against the current conservation sector model?

1. The draft is to be commended for seeking to make biodiversity conservation fundamental in decision making, as well as better coordinated (in both cases see the top of page 41), but without the necessary legal drafting such commitments are purely rhetorical.
2. It is good to see that bioregional plans are still contemplated in proposed action 70, but, again, whether or not they are of real value depends on their legal status and how they are drafted.
3. Our concerns about the proposed bioregional plans apply equally to the proposed local govt action plans (proposed action 76).
4. We await the detail of the proposed marine planning framework (proposed action 71) before such a reform can be compared to long-standing conservation sector recommendations.
5. We await the details of the proposed State agency corporate plans for biodiversity conservation, but we would anticipate that such documents would not meaningfully resolve “tough choices” such as whether a particular development should happen or whether a particular proposed National Park should finally be gazetted.
6. We await the details on proposed primary action 81, as it is respectfully submitted that it is unclear what it means.

Yours sincerely



CAMERON POUSTIE
Principal Solicitor