

16<sup>th</sup> September 2020

Professor Graeme Samuel AC, and  
EPBC Act Review Secretariat  
Department of Agriculture, Water and the Environment (DAWE)  
GPO Box 787  
CANBERRA ACT 2601



Dear Professor Samuel and the Secretariat,

**RE: Submission to the Interim Report of the Independent review of the EPBC Act**

Thank you for this opportunity to make a submission to the Interim Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act (hereafter “EPBC Act”).

I also thank-you for the invitation to participate in the EPBC Act Review Consultative Group in our fortnightly meetings between July and September this year.

Here, I provide a summary of comments I have made as part of this consultative process, and that I believe remain critical for consideration in reforms to the EPBC Act. I also attach tracked changes and comments I have made to the Overarching MNES and Threatened Species and Ecological Communities versions of prototype standards provided to the Consultative Group prior to its final meeting (Meeting 4) by the review Secretariat.

My comments here should be read in conjunction with my original submission to the Review (dated 17<sup>th</sup> April 2020).

Once again, thank you for the opportunity to contribute to the Review. I am happy to provide any further assistance or input going forward.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'MEGAN EVANS', with a long horizontal line extending to the right.

Dr Megan Evans  
Lecturer, Public Sector Management  
Australian Research Council DECRA Fellow  
School of Business  
University of New South Wales, Canberra  
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## **Summary of key points and recommendations provided to the EPBC Act Review Consultative Group**

**Megan Evans, University of New South Wales, Canberra**

I agree with the interim report's recommendations that there is a need for greater consistency, simplicity, transparency, enforceability, and a focus on outcomes in the EPBC Act. I support the development of legally enforceable National Environmental Standards (NES).

However, for the NES to work effectively, they must:

1. encompass what is needed to ensure the EPBC Act is effective and efficient.
2. apply at all scales from the project level to the regional and national.
3. not contain ambiguous, vague or unclear language
4. be supported in their implementation, with appropriate training, regulatory support and consistency in their interpretation and application by federal and (if accreditation and devolution occurs) state/territory staff.
5. be supported by a credible assurance framework, and an independent regulatory body
6. not be expected to provide a "silver bullet" for Australia's extinction crisis, but rather form part of a broader system of funding and programs that incentivise the restoration and recovery of threatened species and ecological communities across land- and sea-scapes

If the above issues are not addressed in the drafting and introduction of NES, there is a risk they may:

- replicate existing problems with the EPBC Act, e.g introducing new terms that require interpretation, are complex, repetitive, voluminous – and therefore further add to the regulatory burden:
- create new problems with the implementation of the EPBC Act, e.g if there is insufficient resourcing, training and consistency in advice provided to staff within and between government agencies. Note that the Australian National Audit Office has consistently identified major deficiencies in the federal Department's capacity to implement the Act effectively. If accreditation/devolution occurs, how can it be assured that state/territory agency staff are adequately trained and provided with resources required to do this work?
- not be used or applied correctly, if legislative reforms don't embed sufficient regulatory "hooks" into decision making processes, meaning they can be skipped over in practice as is often the case for existing guidelines, policies and statutory documents like recovery plans.

Development of NES has been the major focus of the EPBC Act Review Consultative Group (CG). I have provided commentary and suggestions in the drafting of prototype standards as they were developed over the course of CG meetings, but I provide here my comments on the prototype standards provided to the Consultative Group prior to its final meeting (Meeting 4) by the review Secretariat:

**1. The NES should encompass what is needed to ensure the EPBC Act is effective and efficient**

The concept of Column A/Prototype 2.0 – Current settings and Column B/ Prototype - Future State was introduced in CG meetings

- **Column A/Prototype 2.0 was defined as:** ‘Current settings’ reflect the current legislative provisions of the EPBC Act and regulations, as well as current guidelines or documents (such as plans, statutory documents or relevant codes), and are considered able to be implementable in the very near term
- **Column B/ Prototype Future State was defined as:** ‘Future state’ standards require legislative changes to address gaps or constraints in the legislation.
- Prototype 1.0 reflects the Standards as presented in the Interim Report

However, I observed aspects contained within “Column B/ Prototype Future State” in the version distributed by the EPBC Review Secretariat on 3<sup>rd</sup> September 2020 **do NOT require legislative or policy change, e.g**

- “Maintain and enhance” in absolute terms does not require policy or legislative change. It requires a change in the *interpretation and application of the EPBC Act in practice*
- Monitoring, reporting and evaluation was specified for “compliance” in Column A/Prototype 2.0, yet “achievement of an environmental outcome” in Column B/ Prototype Future State. Monitoring, reporting and evaluation to measure environmental outcomes does not require policy or legislative change. It requires a change in the *interpretation and application of the EPBC Act in practice*
- An Environmental Offsets Standard was only specified in Column B/ Prototype Future State. Environmental offsetting is already guided by the EPBC Act Environmental Offsets Policy 2012. I see no reason why explicit an Environmental Offsets Standard would require policy or legislative change.

I am concerned that placing these issues within Column B/ Prototype Future State is unnecessarily placing them outside the scope of the current Review and reform process.

Adopting the recommendations presented in Column A/Prototype 2.0 actually risks the creation of NES that are *worse* than the policy and legislative settings currently under the EPBC Act

I therefore **recommend that Column A/Prototype 2.0 is deleted**, and instead the NES are developed with the settings needed to ensure the EPBC Act is effective and efficient

## **2. The NES must apply at all scales from the project level to the regional and national.**

The use of the term 'collectively' within the prototype standards provides ample scope for individual actions assessed and approved under the NES to NOT meet the Standard.

Point 4) under Prototype 2.0 says the Standard is "relevant to activities at all scales including individual projects" but in the next sentence "the overall outcome could result from the collective achievements of a combination of activities". This is self-defeating and contradictory.

I note that this problem will remain if a different term is used, e.g overall, cumulatively, altogether.

**I recommend that the term "collectively" (and related words) be removed from the NES**

## **3. Vague and ambiguous language should be removed from the NES**

There are many examples of "weasel words" being introduced into the prototype standards. Vague and ambiguous language contribute to delays, inefficiencies, poor outcomes and confusion if they are included in the final NES. For example, unsustainable, irreparable, reasonable, meaningful, unacceptable, ecologically feasible

I provide specific comments and tracked changes to the Overarching MNES and Threatened Species and Ecological Communities in an Attachment, using Column B/ Prototype Future State (renamed Prototype Standard) as the basis.

## **4. The NES cannot be expected to simply "work" – their effective operation relies on targeted and effective support and training of federal, state and territory government staff, as well as sustained investment in supportive infrastructure (e.g data and information systems)**

My original submission and latest Australian National Audit Office report provides ample evidence of the scarce and declining funding provided to the federal Environment Department. Effective policy implementation requires systems, organisations and people all interpreting and applying the policy correctly.

This means that the introduction of NES will require concerted training, capacity building and organisational leadership, to ensure federal and (if accreditation and devolution occurs) state/territory departmental staff are supported to correctly apply the EPBC Act and the NES.

I strongly support the interim review's recommendation for investment to enable a "complete overhaul" of the "antiquated" information systems currently used to inform environmental decisions under the Act.

## **5. An effective and credible assurance framework, including an independent regulatory (statutory) body**

NES must be thought of as one component of an overall structure or architecture, whereby the operation of different parts of that structure together provides assurance. If the Commonwealth is to be the Standards holder, assurance cannot be provided without some form of independent oversight of those

standards. I agree with the interim report's recommendation for the establishment of independent compliance and enforcement body that is "not subject to actual or implied political direction".

Environmental standards, and the processes/systems of governance within which they operate have been highly developed across numerous voluntary and compliance environmental markets over the past 20 years (e.g Forest Stewardship Council, carbon offsetting). Within such schemes, there are a number of core functions, and market participants. Assurance and trust in the system emerges via:

- different market participants undertaking different functions
- functions enabled and overseen by codes of practice or legislation
- infrastructure, e.g a public facing and accessible registry containing sufficient information to enable market activity and provide community assurance

The structure/architecture that the Australian Government adopted to govern the carbon market is a good example of this - and is a key reason why Australian Carbon Credit Units (ACCU) are considered to be high quality and a worthwhile investment. To me it makes sense to model this existing success story.

I maintain my recommendation that the Clean Energy Regulator is a reasonable model to look towards as an independent statutory authority with clear, independent powers relating to compliance and enforcement, monitoring and audit. A genuinely independent regulator can also provide a market enabling function by providing the market assurance necessary to leverage private investment.

I recommend that staff working within any new Commonwealth unit that carries out compliance, enforcement, performance monitoring or audit functions under the EPBC Act should ultimately report to an independent statutory office holder, not a Branch head, deputy secretary or secretary of the Department of the Environment. This statutory office holder should at a minimum be an independent officer of Parliament and be able to report to Parliament independently of the Minister for the Environment.

**6. National Environmental Standards are not the "silver bullet" for an effective EPBC Act – a "quantum leap" in funding and investment is still required to reverse the Australian environment's unsustainable state of decline**

I appreciate that the primary focus of the EPBC Act Review Consultative Group was on the development of Standards. However, even if excellent Standards are introduced and applied, there still needs to be a "quantum leap" forward in funding and capacity to reverse Australia's unsustainable downward environmental trajectory. The latest science estimates 1,700 of Australia's threatened species could be recovered with about \$1.7bn annually (Wintle *et al.*, 2019 *Conservation Letters*).

Australia also need a "quantum leap" forward in how landscape scale management and restoration is incentivised, especially across agricultural landscapes. This will long term, sustained investment, strategic leadership from government, and strong partnerships with agriculture, industry, finance and conservation sectors.

Prototype standards provided to the EPBC Consultative Group by the review Secretariat on 9<sup>th</sup> September

Megan Evans (UNSW Canberra), comments on as of 16<sup>th</sup> September 2020

## Attachment 1: Overarching MNES Standards

'Current settings' reflect the the current legislative provisions of the EPBC Act and regulations, as well as current guidelines or documents (such as plans, statutory documents or relevant codes), and are considered able to be implementable in the very near term. 'Future state' standards require legislative changes to address gaps or constraints in the legislation.

Element	Prototype 1.0: Interim Report	Prototype 2.0: Prototype 2.0— Interim Standards based on current settings	Prototype <u>Standard</u>	Evans comments
Environmental Outcome	Matters of national environmental significance are protected, and decision-making actively contributes to their conservation and recovery.	<p>Matters of national environmental significance are protected, and decision-making actively contributes to their conservation, appropriate management and recovery.</p> <p><del>*For heritage places, this includes the human or cultural values related to place.</del></p>	<p>Matters of national environmental significance are protected, maintained and <b>improved*</b> and decision-making actively contributes to their conservation, management and recovery.</p> <p>*For heritage places, this includes the human or cultural values related to place.</p>	<p>Suggest maintain and improve to be consistent with existing EPBC policy language, i.e Environmental Offsets Policy 2012</p> <p>Regardless of specific language, "maintain and enhance/improve" in absolute terms does not require legislative or policy change. It simply requires a change in the interpretation and application of the Act in practice.</p> <p>The current EPBC Environmental Offsets Policy 2012 specifies "improve or maintain" relative to a counterfactual, where the counterfactual selected is <i>usually</i> one of biodiversity decline (if the Risk of Loss factor is greater than 0).</p> <p>But we know that the <b>counterfactuals selected and approved under the Act are often worse than reality</b> (see Maron et al. 2015 and Maseyk et al. 2020). It is still within policy scope for a counterfactual to be the present state that is maintained, which translates to a counterfactual of an EPBC Act that at least maintains the existing state of MNES. <b>For an effective EPBC Act, the counterfactual should actually be one of recovery.</b></p>

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Maseyk F. J. F., Maron M., Gordon A., Bull J. W. & Evans M. C. (2020) Improving averted loss estimates for better biodiversity outcomes from offset exchanges. *Oryx*: 1–11 <https://www.cambridge.org/core/journals/oryx/article/improving-averted-loss-estimates-for-better-biodiversity-outcomes-from-offset-exchanges/B0E2657541609762085DD3D9162EBED6>

Prototype standards provided to the EPBC Consultative Group by the review Secretariat on 9<sup>th</sup> September

Megan Evans (UNSW Canberra), comments on as of 16<sup>th</sup> September 2020

Element	Prototype 1.0: Interim Report	Prototype 2.0: <del>Prototype 2.0 – Interim Standards based on current settings</del>	Prototype <u>Standard</u>	Evans comments
National Standard	<p>1) Actions and decisions are consistent with the principles of ecologically sustainable development.</p> <p>2) Actions do not have unacceptable<sup>a</sup> impacts on matters of national environmental significance.</p> <p>3) Planning and funding decisions that relate to matters of national environmental significance promote their conservation and sustainable management, address key threats and fill key information gaps.</p> <p>4) Monitoring, reporting and evaluation must demonstrate compliance with this national environmental standard.</p> <p>National Environmental Standards for ecologically sustainable development and monitoring and evaluation should be developed and would replace 1. and 4. Interim monitoring and reporting requirements are provided in the monitoring and reporting section of this Standard.</p>	<p><del>1) Collectively, actions, decisions, plans and policies that relate to MNES:</del></p> <p><del>Are consistent with the objects of the EPBC Act and the principles of ecologically sustainable development including the precautionary principle and the principle of non-regression.</del></p> <p><del>Do not have unacceptable or unsustainable impacts on MNES, having regard to the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts.</del></p> <p><del>Avoid, mitigate or offset significant impacts and take all reasonable steps to minimise harm to MNES.</del></p> <p><del>Are not inconsistent with recovery plans, management plans and threat abatement plans, and have regard to any approved conservation advice where relevant.</del></p> <p><del>Promote their conservation and sustainable management, address detrimental cumulative impacts and key threatening processes and fill information gaps that</del></p>	<p>1) <u>Actions, decisions, plans and policies that relate to MNES <u>must</u>:</u></p> <p><u>Improve or maintain</u> environmental values, ecological and cultural integrity, and resilience of MNES.</p> <p><u>Be consistent with the objects of the Act, including the principles of ecologically sustainable development, the precautionary principle and the principle of non-regression.</u></p> <p><u>Not have unacceptable or irreparable impacts on MNES having regard to the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts.</u></p> <p>Avoid, mitigate or <u>as a last resort only, and where there is strong scientific evidence of feasibility, fully offset significant impacts and minimise harm to MNES.</u></p> <p><u>Be consistent with recovery plans, management plans and threat abatement plans, and are consistent with any approved conservation advices.</u></p>	<p>I recommend the term “collectively” (and related words) be removed from the Standards:</p> <ul style="list-style-type: none"> <li>The term itself is problematic, but the problem will remain if a different term is used, e.g overall, cumulatively, altogether</li> <li>It provides ample scope for individual actions under the Standard to NOT meet the Standard. Point 4) under Prototype 2.0 says the Standard is “relevant to activities at all scales including individual projects” but in the next sentence “the overall outcome could result from the collective achievements of a combination of activities”. This is self-defeating and contradictory.</li> <li>It is not specific, granular or unambiguous</li> </ul> <p>The terms “unacceptable”, “unsustainable” and “irreparable” will require definition.</p>

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Prototype standards provided to the EPBC Consultative Group by the review Secretariat on 9<sup>th</sup> September

Megan Evans (UNSW Canberra), comments on as of 16<sup>th</sup> September 2020

Element	Prototype 1.0: Interim Report	Prototype 2.0: Prototype 2.0 – Interim Standards based on current settings	Prototype Standard	Evans comments
		<p><del>impede recovery and appropriate management.</del></p> <p><del>Use all reasonable efforts to prevent detrimental cumulative impacts or exacerbation of key threatening processes on MNES.</del></p> <p><del>Are based on the best available information, and stored and shared consistent with the Data and Information NES.</del></p> <p><del>Meaningful engagement is undertaken with governments, the community, land holders and indigenous peoples.</del></p> <p><del>Monitoring, reporting and evaluation demonstrates compliance with this national environmental standard.</del></p> <p><del>The standard is relevant to activities at all scales including individual projects, regional plans, and activities under government legislation and policies. The overall outcome could result from the collective achievements of a combination of activities.</del></p>	<p>▼ Promote their recovery and management, including by addressing cumulative impacts, managing threats and filling information gaps that impede recovery and appropriate management.</p> <p><u>Are based on the best available information, and stored and shared consistent with the Data and Information NES.</u></p> <p>▼ Monitoring, reporting and evaluation <u>demonstrates compliance with conditions</u>, measures the achievement of the environmental outcome, or demonstrates where further action is needed.</p> <p><u>Meaningful engagement is undertaken with governments, the community, land-holders and Indigenous peoples.</u></p> <p>▼ This standard applies to activities at a range of scales including individual projects and regional plans and in state, territory and national legislation and policies implemented or accredited under the EPBC Act. ▼</p>	<p><del>Monitoring, reporting and evaluation should measure achievement of an environmental outcome AND demonstrate achievement with conditions.</del></p> <p>Currently, most environmental conditions specify processes, not outcomes. This means that frequently, compliance with environmental conditions does not imply an environmental outcome has been achieved (see Lindenmayer et al. 2017).</p> <p>However, it is still appropriate in some cases to apply process-based conditions in combination with outcomes-based conditions.</p> <p>Further, legislative and policy change is NOT required to increase the application of outcomes-based conditions, or to require monitoring that measures the achievement of the environmental outcome. DAWE already has an outcomes-based conditions policy (2016).</p> <p>This means that the Recommended Standard should specify Monitoring, reporting and evaluation demonstrates compliance with conditions AND measures the achievement of the environmental outcome, or demonstrates where further action is needed</p> <p>Not emphasising monitoring that measures the achievement of the environmental outcome in the Recommended Standard risks locking in inadequate practice that is below existing policy and requirements and demonstrably fails to meet the objects of the Act.</p>

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<http://www.sciencedirect.com/science/article/pii/S000632071730349X>

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Prototype standards provided to the EPBC Consultative Group by the review Secretariat on 9<sup>th</sup> September

Megan Evans (UNSW Canberra), comments on as of 16<sup>th</sup> September 2020

Element	Prototype 1.0: Interim Report	Prototype 2.0: Prototype 2.0 – Interim Standards based on current settings	Prototype Standard	Evans comments
Monitoring and Reporting	<p>1) A monitoring and evaluation plan must be prepared. The plan must:</p> <ul style="list-style-type: none"> <li>be based on best available knowledge and information, and</li> <li>implement the precautionary principle<sup>b</sup>. Scenario analysis may be useful when uncertainty is high</li> <li>establish the baseline, key indicators, and monitoring activities relevant to the protected matter</li> <li>be over a time frame and area relevant to the potential risk, and</li> <li>identify thresholds for when Standards are not being met and the management response.</li> </ul> <p>The plan and monitoring results, and the underpinning data and information on which they are based, must be published.</p> <p>Accurate and complete monitoring and compliance records must be kept and provided to the Department upon request.</p>	<p><del>1) A monitoring and evaluation plan must be prepared and implemented for each MNES standard which must:</del></p> <ul style="list-style-type: none"> <li><del>address impacts for each MNES, and be designed to understand and track all cumulative impacts at the relevant scale (eg national, state-wide, regional plan areas or project site)</del></li> <li><del>cover all actions, activities, decisions, plans, or policies that impact the outcomes for MNES, relevant to the scale</del></li> <li><del>establish the baseline, key indicators, monitoring activities, evaluation and reporting processes relevant to the protected matter and the activities being conducted,</del></li> <li><del>be based on the best available evidence, and accord with the NES for Data and Information, and other relevant NES or guidelines</del></li> <li><del>be over a time frame and area relevant to the potential risk or benefit to the MNES</del></li> <li><del>— be designed to ensure the state of the MNES and any changes in its state can be quantified, with the power of</del></li> </ul>	<p>1) A monitoring and evaluation plan must be prepared and implemented for each MNES standard which must:</p> <ul style="list-style-type: none"> <li>address impacts for each MNES, and be designed to understand and track all cumulative impacts at the relevant scale (eg national, state-wide, regional plan areas or project site)</li> <li>cover all actions, activities, decisions, plans, or policies that impact the outcomes for MNES, relevant to the scale</li> <li>establish the baseline, key indicators, monitoring activities, evaluation and reporting processes relevant to the protected matter and the activities being conducted,</li> <li>be based on the best available evidence, and accord with the NES for Data and Information, and other relevant NES or guidelines</li> <li>be over a time frame and area relevant to the potential risk or benefit to the MNES</li> <li>be designed to ensure the state of the MNES and any changes in its state can be quantified, with the power of analysis to</li> </ul>	

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Element	Prototype 1.0: Interim Report	<del>Prototype 2.0: Prototype 2.0 – Interim Standards based on current settings</del>	Prototype <u>Standard</u>	Evans comments
		<p><del>analysis to detect change in the MNES explicitly identified</del></p> <p><del>identify thresholds of change in the MNES (distribution, abundance, condition, or integrity) at all relevant scales that will trigger specific mitigation or recovery actions.</del></p> <p><del>The monitoring plan, results, analyses, evaluation of performance against indicators and thresholds, underpinning data and information on which they are based, must be published online annually.</del></p> <p><del>Plans must be reviewed and updated every 5 years.</del></p>	<p>detect change in the MNES explicitly identified</p> <p><del>in the MNES (distribution, abundance, condition, or integrity) at all relevant scales that will trigger specific mitigation or recovery actions.</del></p> <p>The monitoring plan, results, analyses, evaluation of performance against indicators and thresholds, underpinning data and information on which they are based, must be published <u>online and in accordance with the Data and Information Standard.</u></p> <p>Plans must be reviewed and updated every 5 years.</p>	<p><del>Deleted: Future State</del></p> <p>I recommend that this Standard and others make explicit reference to the Data and Information Standard, to provide clarity over <i>who</i> provides and publishes data, which data, <i>where</i> it is published, in what circumstances, and in <i>what format</i></p> <p>The current approach of proponents publishing monitoring reports on their own website in PDF format means this information is technically publicly available, but is extremely inaccessible and not particularly useful.</p> <p>This points to the need for a public facing data &amp; information systems that is beneficial for multiple stakeholders (as well as investment in this infrastructure).</p> <p>Data provided should be sufficiently granular such that clear what is the overall outcome for the MNES as a result of the action, e.g</p> <ul style="list-style-type: none"> <li>- Area of habitat approved for clearing</li> <li>- Number of individuals affected</li> <li>- Reduction in population</li> <li>- Comensurate gains, i.e from conditioned offset outcomes</li> </ul>
<b>Review</b>	This is a prototype and should be replaced with a National Environmental Standard following consultation.	<del>This is a prototype National Environmental Standard based on current settings of the EPBC Act.</del>	This is a prototype National Environmental Standard based on current settings of the EPBC Act.	I recommend clearer and more specific parameters to guide the updating of Standards other than just 'as required', e.g in response to expert advice, public consultation, SoE

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Prototype standards provided to the EPBC Consultative Group by the review Secretariat on 9<sup>th</sup> September

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Element	Prototype 1.0: Interim Report	<del>Prototype 2.0: Prototype 2.0 – Interim Standards based on current settings</del>	Prototype <del>Standard</del>	Evans comments
		National Environmental Standards should be reviewed and updated as required, including when there are substantive changes to the EPBC Act or relevant administrative arrangements.	National Environmental Standards should be reviewed and updated as required, including when there are substantive changes to the EPBC Act or relevant administrative arrangements.	reporting, natural disasters, major ecological events, statutory reviews of the Act.

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This standard should be applied in conjunction with other relevant following National Environmental Standards.

*Definitions*

**Maintain and enhance:** A net improvement in environmental values, ecological and cultural integrity, and resilience of MNES over time and in absolute terms (not relative to a counterfactual scenario).

Suggest maintain and improve to be consistent with existing EPBC policy language, i.e Environmental Offsets Policy 2012

Regardless of specific language, "maintain and enhance/improve " in absolute terms does not require legislative or policy change. It simply requires a change in the interpretation and application of the Act in practice.

The current EPBC Environmental Offsets Policy 2012 specifies "improve or maintain" relative to a counterfactual, where the counterfactual selected is usually one of biodiversity decline (if the Risk of Loss factor is greater than 0).

But we know that the counterfactuals selected and approved under the Act are often worse than reality (see Maron et al. 2015 and Maseyk et al. 2020). It is still within policy scope for a counterfactual to be the present state that is maintained, which translates to a counterfactual of an EPBC Act that at least maintains the existing state of MNES. For an effective EPBC Act, the counterfactual should actually be one of recovery.

**Objects of the EPBC Act:** see s3 of the EPBC Act

**Principles of ecologically sustainable development:** see s3A of the EPBC Act

**Significant impact:** A 'significant impact' is an impact which is important, notable, or of consequence, having regard to its context or intensity.<sup>3</sup> Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the water resource which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. All of these factors should be considered when determining whether an action is likely to have a significant impact. See the Significant Impact Guidelines 1.1: Matters of National Environmental Significance for more information about assessing the significance of impacts on matters of national environmental significance.

**Unacceptable or unsustainable:** Section 46(3)(c) requires that actions approved under a bilateral agreement not have unacceptable or unsustainable impacts on relevant MNES. While a number of EPBC Act decisions provide a precedent for this threshold, the definitions of 'unacceptable' or 'unsustainable' impacts requires granular and specific guidance. Further work should be undertaken to refine this definition.

Prototype standards provided to the EPBC Consultative Group by the review Secretariat on 9<sup>th</sup> September

Megan Evans (UNSW Canberra), comments on as of 16<sup>th</sup> September 2020

## Attachment 2: Threatened Species and Ecological Communities Standard

Threatened species and ecological communities are listed under section 178 of the EPBC Act, following a rigorous scientific assessment of their threat status.

Element	Prototype 1.0 – Interim Report	Prototype 2.0 – Interim Standards based on current settings	Prototype Standard	Evans comments
<b>Environmental Outcome</b>	The status of threatened species and communities improves over time, through the conservation, management and sustainable use of the environment.	<del>Threatened species and ecological communities are protected and maintained over time and decision-making actively contributes to their conservation, appropriate management and recovery.</del>	Threatened species and ecological communities are protected, maintained <del>or improved</del> over time and decision-making actively contributes to their conservation, appropriate management and recovery and other species and ecological communities are managed to avoid declines that warrant listing as threatened.	As per comments on overarching MNES Standard.
<b>National Standard</b>	<p>For vulnerable species:</p> <ol style="list-style-type: none"> <li>No net loss<sup>a</sup> for vulnerable species habitat.</li> <li>Actions must manage on-site impacts and threats, where these are not managed through alternative frameworks<sup>b</sup>.</li> </ol> <p>For endangered species and communities:</p> <ol style="list-style-type: none"> <li>No net loss<sup>a</sup> for endangered species habitat and ecological community distribution.</li> <li>No detrimental change to the listed critical habitat<sup>c</sup> of a species or ecological community.</li> <li>Actions must manage on-site impacts and threats, where these are not managed through alternative frameworks<sup>b</sup>.</li> </ol>	<p><del>The conservation, appropriate management and recovery of each threatened species and ecological community is supported by actions, decisions, plans and policies that collectively:</del></p> <ol style="list-style-type: none"> <li><del>Are not inconsistent with relevant recovery plans and threat abatement plans.</del></li> <li><del>Have regard to relevant conservation advices and relevant critical contemporary information.</del></li> <li><del>Include satisfactory field surveys to ascertain areas of habitat critical to the survival, important populations and condition thresholds.</del></li> <li><del>Employ all reasonable measures to avoid or mitigate impacts to listed threatened species and ecological communities, and offset only where it is ecologically feasible.</del></li> </ol>	<p>The recovery and restoration of each threatened species and ecological community is supported by actions, decisions, plans and policies that</p> <ol style="list-style-type: none"> <li><b>Maintain or improve</b> the viability, function and representation of the threatened species/ecological community.</li> <li>Manage impacts to all species or ecological communities such that new species and communities do not become threatened.</li> <li>Undertake restoration and recovery activities in accordance with the <u>Restoration and Recovery Standard</u>.</li> <li>Implement <b>recovery plans, threat abatement plans, conservation advices</b> and regional plans.</li> <li>Include <u>existing available scientific data and best practice field surveys</u> to ascertain areas of <b>habitat critical to the survival</b>,</li> </ol>	

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**Commented [ME5]:** Please note that the Consultative Group has not been provided with a draft of this Standard to consider for feedback

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**Commented [ME4]:** The "OR"s inserted between the 3 options in the "ecologically feasible" (below table) are highly problematic. This term needs to be defined clearly, specifically and unambiguously

Prototype standards provided to the EPBC Consultative Group by the review Secretariat on 9<sup>th</sup> September

Megan Evans (UNSW Canberra), comments on as of 16<sup>th</sup> September 2020

Element	Prototype 1.0 – Interim Report	Prototype 2.0 – Interim Standards based on current settings	Prototype Standard	Evans comments
	<p>For critically endangered species and communities:</p> <ol style="list-style-type: none"> <li>1) Actions must deliver a net gain<sup>a</sup> for critically endangered species habitat and ecological community distribution.</li> <li>2) No detrimental change to listed critical habitat<sup>c</sup> of a species or ecological community.</li> <li>3) Actions must manage on-site impacts and threats, where these are not managed through alternative frameworks<sup>b</sup>.</li> </ol> <p>Additional requirements in Commonwealth areas:</p> <ol style="list-style-type: none"> <li>1) Actions must not kill, injure or take a listed threatened species or ecological community, except where an EPBC Act permit is issued.</li> </ol>	<p>For all listed threatened species and ecological communities:</p> <ol style="list-style-type: none"> <li>1) <del>Result in no net reduction in:</del> <ol style="list-style-type: none"> <li>a) <del>the population of a listed threatened species or important population of a vulnerable species</del></li> <li>b) <del>quality or quantity of habitat of a listed threatened species</del></li> <li>c) <del>extent or condition of an Endangered or Critically Endangered ecological community.</del></li> </ol> </li> <li>2) <del>Not exacerbate key threats to the species or ecological community, including (but not limited to):</del> <ol style="list-style-type: none"> <li>a) <del>fragmentation of habitat of a listed threatened species or ecological community</del></li> <li>b) <del>the introduction, spread, encroachment or growth of invasive species (including disease).</del></li> </ol> </li> </ol> <p><del>Result in no negative impacts to habitat critical to the survival and or important populations of listed species, large and/or diverse areas of ecological communities or areas of ecological communities that meet high extant condition thresholds and classes, unless ecologically feasible to offset impacts.</del></p>	<p><b>important populations</b> and <b>condition thresholds.</b> <u>Compilation and provision of these data should comply with the Data and Information Standard</u></p> <ol style="list-style-type: none"> <li>6) Have regard to any relevant <b>critical contemporary information.</b></li> <li>7) <u>Avoid, mitigate or as a last resort only, and where there is strong scientific evidence of feasibility, fully offset significant impacts and minimise harm to MNES.</u></li> </ol> <p>For all listed threatened species and ecological communities:</p> <ol style="list-style-type: none"> <li>1) Protect and enhance areas mapped and outlined on a national habitat and populations register, including:           <ol style="list-style-type: none"> <li>a) <b>habitat critical to the survival</b> and or <b>important populations</b> of listed species</li> <li>b) <b>ecological processes critical to the survival</b> of a species or community</li> <li>c) large and/or diverse areas of ecological communities or areas of ecological communities that meet high extant <b>condition thresholds and classes.</b></li> </ol> </li> <li>2) <u>Result in no net reduction in absolute terms over a scientifically justifiable timeframe.</u></li> </ol>	<p>As per comments on overarching MNES Standard.</p>

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**Commented [ME6]:** These data should be spatially explicit and provided in GIS format

**Deleted:** Employ all reasonable measures to avoid or mitigate impacts to listed threatened species and ecological communities, and **offset** only where it is **ecologically feasible.**

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**Megan Evans (UNSW Canberra), comments on as of 16<sup>th</sup> September 2020**

Element	Prototype 1.0 – Interim Report	Prototype 2.0 – Interim Standards based on current settings	Prototype <del>Standard</del>	Evans comments
		<p><del>For highly restricted and small and declining listed species:</del></p> <p><del>1) Result in no loss of habitat or individuals.</del></p> <p><del>For highly restricted and sensitive ecological communities:</del></p> <p><del>1) Result in no reduction in extent or quality of the community.</del></p> <p><del>Additional requirements in Commonwealth areas:</del></p> <p><del>1) Actions must not kill, injure or take a listed threatened species or ecological community, except where an EPBC Act permit is issued.</del></p>	<p>a) the population of a listed threatened species, consistent with the environmental offsets standard.</p> <p>b) quality or quantity of habitat of a listed threatened species, consistent with the environmental offsets standard.</p> <p>c) extent or condition of an Endangered or Critically Endangered ecological community, consistent with the environmental offsets standard.</p> <p>3) <u>Effectively manage</u> cumulative impacts on habitats or populations of species or Ecological communities across their range <u>such that the MNES is protected, improved or maintained</u>, including:</p> <p>a) fragmentation of habitat of a listed threatened species or ecological community</p> <p>b) the introduction, spread, encroachment or growth of invasive species (including disease).</p> <p><b>For highly restricted and small and declining listed species:</b></p> <p>1) Result in no loss of habitat or individuals.</p> <p><b>For highly restricted and sensitive ecological communities:</b></p>	

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Element	Prototype 1.0 – Interim Report	Prototype 2.0 – Interim Standards based on current settings	Prototype <del>Standard</del>	Evans comments
			1) Result in no reduction in extent or quality of the community.  Additional requirements in Commonwealth areas:  1) Actions must not kill, injure or take a listed threatened species or ecological community, except where an EPBC Act permit is issued.	
<b>Further Information</b>	The <u>Species Profiles and Threats (SPRAT)</u> database contains statutory and policy documents, including Recovery plans, Threat Abatement Plans, Conservation Advices, Survey Guidelines, Significant Impact Guidelines, Species and Ecological Community Policy Statements and Information Guides and Factsheets.	<del>The <u>Species Profiles and Threats (SPRAT)</u> database contains links to Recovery Plans and Conservation Advices as well as an interactive map showing the species modelled habitat and other important information sources like listing advices and Threat Abatement Plans.</del>		

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This standard should be applied in conjunction with other relevant following National Environmental Standards.

#### Definitions

**Condition Thresholds and Classes:** Most Ecological Community listings since 2007 specify condition thresholds and classes. These are intended to focus national legal protection on patches or occurrences of a TEC that are functional, relatively natural and in relatively good condition. They specify a minimum condition and higher condition classes to understand relative importance of a patch, and to guide management and goals for restoration.

**Conservation advice:** An approved conservation advice is a document, approved in writing by the Minister that contains a statement that sets out:

the grounds on which the species or community is eligible to be included in the category in which it is listed; and

the main factors that are the cause of it being so eligible;

and either:

information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or

a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community.

Under section 266B of the EPBC Act, the Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extinct or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species or community continues to be listed.

Section 139(2) of the EPBC Act requires that the Minister must have regard to any approved conservation advice for the relevant species in deciding whether to approve the taking of an action.

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**Habitat:** the biophysical medium or media: (a) occupied (continuously, periodically or occasionally) by an organism or group of organisms; and (b) once occupied (continuously, periodically or occasionally) by an organism or group of organisms and into which organisms of that kind have the potential to be introduced, and (c) biophysical media projected to become suitable for occupation under future climates if specified in the Conservation Advice.

**Habitat critical the survival of a species or ecological community:** Refers to areas that are necessary:

for activities such as foraging, breeding, roosting, or dispersal

for the long-term maintenance of the species or ecological community (including the maintenance of species essential to the survival of the species or ecological community, such as pollinators)

to maintain genetic diversity and long-term evolutionary development, or

for the reintroduction of populations or recovery of the species or ecological community.

Such habitat may be, but is not limited to: habitat identified in a recovery plan or conservation advice for the species or ecological community as habitat critical for that species or ecological community; and/or habitat listed on the Register of Critical Habitat maintained by the Minister under the EPBC Act.

**Highly restricted and small and declining listed species:** Critically endangered or Endangered listed species with distributions, population sizes and decline which is highly precarious to their survival as demonstrated by species that meet Criteria B, C or D of the [Common Assessment Method](#).

**Highly restricted and sensitive ecological communities:** Ecosystems that meet the criteria for Critically Endangered or Endangered under Criterion 2 of the EPBC Regulation 7.02 because their geographic distribution is very restricted or restricted and the nature of its distribution makes it likely that the action of a threatening process could cause it to be lost in the near or immediate future.

**Important population:** A population that is necessary for a species' long-term survival and recovery. This may include populations identified as such in Conservation Advices and Recovery Plans, and/or that are:

key source populations either for breeding or dispersal

populations that are necessary for maintaining genetic diversity, and/or

populations that are near the limit of the species' range.

**Maintain and enhance:** A net improvement in environmental values, ecological integrity, and resilience over time and in absolute terms (not relative to a counterfactual scenario).

**Offsets:** measures provided to compensate, repair or replace an impacted value, including changes to the integrity, quality, condition and/or extent of habitat.

An offset is **ecologically feasible** where it can be demonstrated that the species or community can be restored in a timeframe commensurate with development impact OR enough space exists to undertake restoration (not ecologically or tenure constrained) OR scientific knowledge exists on how to restore the habitat.

**Recovery plan:** A document, approved in writing by the Minister that contains a statement that sets out the research and management actions necessary to stop the decline of, and support the recovery of, the listed threatened species or listed threatened ecological community concerned so that its chances of long-term survival in nature are maximised. Section 139(1) of the EPBC Act requires that the Minister must not act inconsistently with a recovery plan for the relevant species in deciding whether to approve the taking of an action.

**Satisfactory field surveys:** Scientifically informed and designed field surveys by suitably qualified people which are undertaken during optimal times for detection, of an appropriate duration, repeated where necessary and include full coverage of the impact site including areas directly and indirectly affected and adequate to produce site wide vegetation and habitat mapping and species records and which can inform detailed design of an action to demonstrate avoidance and mitigation.



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**Threat Abatement Plan:** A document, approved in writing by the Minister that contains a statement that sets out the research, management and other actions necessary to reduce the key threatening process concerned to an acceptable level in order to maximise the chances of the long-term survival in nature of native species and ecological communities affected by the process. Section 139(1) of the EPBC Act requires that the Minister must not act inconsistently with a threat abatement plan for the relevant species in deciding whether to approve the taking of an action.

*Additional Future State definitions:*

**Cumulative impacts:** A reference in this standard to impacts considered on a cumulative basis is a reference to all impacts, whether arising from approved actions or otherwise after the stipulated baseline.

**Ecological Processes Critical to the Survival of a species or community:** include, but are not limited to, life cycle processes (breeding, feeding and dispersal), interactions among species and physical processes such as hydrological regimes.

**Function:** the contribution of a species/ecological community to processes in nature, including (but not limited to) those that influence the viability of other species and those that provide ecosystem services to people.

**High contributions to viability, function or representation:** To meet the requirement for representation, populations and habitat areas designated for impact avoidance should encompass the full range of genetic, compositional, structural, functional and biophysical variation across the habitat of the species or ecological community . Requirements for representation should be determined in statutory instruments at a geographic scale ecologically appropriate to variation in the species or ecological community .

**Representation:** the viability and function of a species/ecological community throughout its habitat as defined in the EPBC Act measured in geographic units appropriate to the threatened species or ecological community .

**Viability:** the long-term (5 generations of 100 years, whichever is longer) maintenance of persistence, function and distribution of a species/ecological community