



THE NORTH-WEST MARINE BIOREGIONAL PLAN

BIOREGIONAL PROFILE

APPENDIX B

AN OVERVIEW OF THE LEGISLATIVE FRAMEWORK FOR ENVIRONMENTAL PROTECTION AND BIODIVERSITY

CONSERVATION IN COMMONWEALTH WATERS



A DESCRIPTION OF THE ECOSYSTEMS, CONSERVATION VALUES AND USES
OF THE NORTH-WEST MARINE REGION



Australian Government

Department of the Environment, Water, Heritage and the Arts

APPENDIX B AN OVERVIEW OF THE LEGISLATIVE FRAMEWORK FOR ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION IN COMMONWEALTH WATERS

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) streamlines national environmental assessment and approvals processes, protects Australian biodiversity and integrates the management of important natural and cultural places. Alongside the EPBC Act, the *Environment Protection (Sea Dumping) Act 1981* (Sea Dumping Act) and the *Historic Shipwrecks Act 1976* are the main pieces of legislation that give effect to the Australian Government's responsibilities to protect and conserve the environmental and heritage assets that exist in the Commonwealth marine environment. Like the EPBC Act, these Acts are also the responsibility of the Minister for the Environment, Heritage and the Arts.

Other key pieces of legislation and regulations that include provisions for the protection of the marine environment are the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*, the *Fisheries Management Act 1991*, the *Great Barrier Reef Marine Park Act 1975*, the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Sea Installations Act 1987*. In addition, the *Native Title Act 1993* interacts with the EPBC Act in areas of environmental protection.

The legislative context in which marine bioregional planning takes place is summarised below.

Environment Protection and Biodiversity Conservation Act 1999

Marine bioregional planning

Marine Bioregional Plans are being developed for the Commonwealth marine area under Section 176 of the EPBC Act. The Commonwealth marine area generally stretches from three nautical miles to 200 nautical miles from the coast.

The States and the Northern Territory are responsible for managing the marine environment in State and Northern Territory coastal waters. Coastal waters include the waters between the territorial sea baseline (normally the low water mark along the coast) and a line three nautical miles seaward of it. As many ecological processes occur across both State and Commonwealth waters, the Australian Government aims to work cooperatively with

the States and the Northern Territory in developing and implementing Marine Bioregional Plans.

Marine Bioregional Plans will bring together comprehensive information and provide guidance to sectoral managers and industry in relation to decisions made under the EPBC Act about key conservation issues and priorities in each marine region. The EPBC Act requires the Minister for the Environment, Heritage and the Arts to have regard to Bioregional Plans when making any decision under the EPBC Act for which the Plan has relevance. Marine Bioregional Plans also aim to streamline conservation and environmental management and to create Marine Protected Areas (MPAs) in Commonwealth waters that will further the development of the National Representative System of MPAs.

Marine bioregional planning is being undertaken by the Department of the Environment, Water, Heritage and the Arts in consultation with all Commonwealth agencies responsible for marine-based activities, and with input from the State and Northern Territory governments and non-government stakeholders.

Referral, assessment and approval

Central to the EPBC Act is the concept of matters of national environmental significance. Matters of national environmental significance 'trigger' the referral, assessment and approval of activities under the EPBC Act. The EPBC Act requires that proposals for actions that have, will have or are likely to have a significant impact on a matter of national environmental significance be referred to the Minister for the Environment, Heritage and the Arts for assessment and approval (unless an exemption has been provided under another provision of the EPBC Act).

The EPBC Act identifies seven matters of national environmental significance:

- World Heritage properties;
- National Heritage places (from 1 January 2004);



- wetlands listed under the *Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971* (Ramsar Convention);
- listed threatened species and ecological communities (excluding species listed as extinct or conservation dependent);
- listed migratory species;
- the Commonwealth marine environment; and
- nuclear actions (including uranium mining).

Of these, three are particularly relevant to marine bioregional planning: *listed threatened species*, *listed migratory species* and the *Commonwealth marine environment*. Further information on the Commonwealth marine area, and its status as a matter of national environmental significance, is provided in Box B1.

Part 5 of the EPBC Act enables the Minister for the Environment, Heritage and the Arts (on behalf of the Commonwealth) to enter into bilateral agreements with a State or Territory. A bilateral agreement may provide for the accreditation or authorisation of a State or Territory process to satisfy the requirements for assessment under the EPBC Act, provided the Minister is satisfied that the State or Territory process meets the criteria prescribed by the Regulations under the Act.

A number of EPBC Act policy statements have been developed to provide guidance on when actions should be referred to the Minister for the Environment, Heritage and the Arts for assessment and approval under the Act. The following EPBC Act policy statements provide guidance about the types of actions that should be referred for assessment and approval:

- *EPBC Act Policy Statement 1.1 Significant Impact Guidelines – Matters of National Environmental Significance* (May 2006). This statement provides proponents of activities in Commonwealth marine areas with guidance about whether or not the actions they propose to take will require assessment and approval under the EPBC Act.
- *EPBC Act Policy Statement 1.2 Significant Impact Guidelines – Actions On, or Impacting Upon, Commonwealth Land and Actions by Commonwealth Agencies* (May 2006). This statement provides guidance on land-based actions which should be referred for approval under the EPBC Act and should be read in conjunction with the *EPBC Act Policy Statement 1.1 Significant Impact Guidelines – Matters of National Environmental Significance*.

- *EPBC Act Policy Statement 2.1 – Interactions between Offshore Seismic Exploration and Whales* (May 2007). This policy statement updates the previous cetacean interaction guidelines (produced in 2001) based on operational experience and public and expert comments. This policy statement should be read in conjunction with the associated background paper and *EPBC Act Policy Statement 1.1*. It seeks to:
 - 1) provide practical standards to minimise the risk of acoustic injuries to whales in the vicinity of seismic survey operations;
 - 2) provide a framework that minimises the risk of biological consequences from acoustic disturbance from seismic surveys to whales in biologically important habitat areas or during critical behaviours; and
 - 3) provide advice to proponents of offshore seismic operations on their legal responsibilities under the EPBC Act.
- *EPBC Act Policy Statement 2.2 Industry – Offshore Aquaculture* (August 2006) This policy statement provides guidance to proponents of marine aquaculture activities to determine whether or not the actions they propose will require assessment and approval under the EPBC Act. These guidelines should be read in conjunction with the *EPBC Act Policy Statement 1.1 Significant Impact Guidelines – Matters of National Environmental Significance*.
- Nationally threatened species and ecological community guidelines have been prepared for a number of land-based threatened species and ecological communities. To date, no guidelines for nationally threatened marine species or ecological communities have been developed.

Copies of the EPBC Act policy statements and guidelines are available at <www.environment.gov.au/epbc/guidelines-policies.html>.

Protecting marine biodiversity

A number of instruments, measures and programs are in place under the EPBC Act for the protection, conservation and recovery of marine biodiversity. The EPBC Act contains provisions that protect listed threatened species, listed migratory species, listed marine species and cetaceans. Species listed under the Act are commonly referred to as ‘protected’ species because it is an offence to kill, injure, take, trade, keep or move a listed species without authorisation.

These provisions apply generally in the Commonwealth marine area (as well as other Commonwealth areas), and to members of species taken in the Commonwealth marine area (as well as other Commonwealth areas) and subsequently moved from the area.

Species listed as threatened under the EPBC Act are those identified as facing serious risk of extinction in the wild (as determined in accordance with criteria specified under Part 7 of the *Environment Protection and Biodiversity Conservation Regulations 2000*). Under the EPBC Act, listed threatened species must be classified into one of the following six categories: extinct, extinct in the wild, critically endangered, endangered, vulnerable, and conservation dependent (Table B1).

Box B1 The Commonwealth marine area

The Commonwealth marine area is defined in the EPBC Act as any part of the sea, including the waters, seabed, and airspace, within Australia's Exclusive Economic Zone (EEZ) and/or over the continental shelf of Australia, excluding State and Northern Territory coastal waters. Generally, the Commonwealth marine area stretches from three nautical miles from the territorial sea baseline (normally the low water mark) to the outer limit of the EEZ, 200 nautical miles from the baseline.

Under the EPBC Act, a person must not take an action within the Commonwealth marine area that has, will have, or is likely to have a significant impact on the environment without approval from the Commonwealth Minister for the Environment, Heritage and the Arts. In addition, a person must not take an action outside the Commonwealth marine area that has, will have, or is likely to have a significant impact on the Commonwealth marine area without approval.



Table B1 Criteria for listing threatened species (from Division 7.01 of the EPBC Regulations)

Item	Criterion	Category		
		Critically endangered	Endangered	Vulnerable
1	It has undergone, is suspected to have undergone or is likely to undergo in the immediate future:	a very severe reduction in numbers	a severe reduction in numbers	a substantial reduction in numbers
2	Its geographic distribution is precarious for the survival of the species and is:	very restricted	restricted	limited
3	The estimated total number of mature individuals is:	very low	low	Limited
	and:			
	(a) evidence suggests that the number will continue to decline at: or (b) the number is likely to continue to decline and its geographic distribution is:	a very high rate precarious for its survival	a high rate precarious for its survival	a substantial rate precarious for its survival
4	The estimated total number of mature individuals is:	extremely low	very low	low
5	The probability of its extinction in the wild is at least:	50 per cent in the immediate future	20 per cent in the near future	10 per cent in the medium-term future

The EPBC Act also allows for the listing of threatened ecological communities. As of April 2008, no ecological communities in the marine environment have been listed under the EPBC Act. The Commonwealth Minister for the Environment, Heritage and the Arts can also identify and list habitat critical to the survival of a listed threatened species or ecological community on the Register of Critical Habitat. As of April 2008, no habitats in the North-west Marine Region have been listed on the Register of Critical Habitat. In relation to threatened species and communities, the EPBC Act also provides for the identification and listing of key threatening processes and the preparation of threat abatement plans and species recovery plans.

All whales, dolphins and porpoises are protected under the EPBC Act through the establishment of the Australian Whale Sanctuary, which includes all Commonwealth waters. Within the Australian Whale Sanctuary it is an offence to kill, injure or interfere with cetaceans. They are also protected in State and Territory waters.

Migratory species listed under the EPBC Act are species listed under international agreements (to which Australia is a signatory) as species whose protection requires, or would significantly benefit from, international cooperation. These international agreements are discussed in more detail in Appendix A.

Marine species listed under the EPBC Act are species occurring naturally in the Commonwealth marine area that the Australian Government recognises require protection to ensure their long-term conservation. Species listed as marine species are identified in Section 3.3 of the Act.

In Australia, the EPBC Act controls the international movement of wildlife, wildlife specimens and products made or derived from wildlife. These controls apply to all transactions undertaken by commercial and non-commercial organisations and individuals. In addition, controls under the *Quarantine Act 1908* may apply. Under the EPBC Act a permit is required to:

- import or export CITES listed specimens (CITES is the *Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973* – see Appendix A for more detail);
- export specimens derived from native species not included in the list of exempt native specimens; or

- import live plants or animals included in part two of the list of plants and animals suitable for live import.
- See <www.environment.gov.au/biodiversity/trade-use/permits> for more detail.

Protected areas

Part 15 of the EPBC Act provides for the protection of a number of protected areas, including:

- World Heritage listed places;
- wetlands listed under the Ramsar Convention;
- places listed on the National Heritage List;
- places listed on the Commonwealth Heritage List; and
- Commonwealth marine reserves.

The Australian Government has responsibilities under international agreements to protect places on the World Heritage list and wetlands listed under the Ramsar Convention. Both these international agreements are further discussed in Appendix A. The Australian Government can submit places for inclusion in the World Heritage List and the List of Wetlands of International Importance under the Ramsar Convention. Part 15 of the EPBC Act provides protection for World Heritage places by ensuring that an environmental impact assessment process is undertaken for proposed actions that will have, or are likely to have, a significant impact on the World Heritage values of a declared World Heritage place.

The National Heritage List includes places of natural, Indigenous or historic heritage value to Australia. Places nominated for inclusion on the National Heritage List are assessed by the Australian Heritage Council, which makes recommendations to the Minister for the Environment, Heritage and the Arts. The Commonwealth Heritage List comprises natural, Indigenous and historic heritage places on Commonwealth lands and waters that have been identified by the Minister for the Environment, Heritage and the Arts as having Commonwealth heritage values. Approval is required for actions which have, will have, or are likely to have a significant impact on the heritage values of sites listed on either the National or Commonwealth Heritage Lists.

Under the EPBC Act, the Minister for the Environment, Heritage and the Arts must make plans for managing World Heritage and Ramsar sites that are entirely in

Commonwealth areas, as well as for Commonwealth Heritage listed sites. The Minister must also try to prepare and implement plans for sites on the World Heritage, Ramsar and National Heritage lists in other areas, in cooperation with the relevant State or Territory government. Australian Government agencies must not act in contravention of such plans.

Part 15 of the EPBC Act also provides for declaration of Commonwealth reserves over areas of Commonwealth land or sea, and sets out the legal requirements for establishing and managing Commonwealth reserves, including Marine Protected Areas (MPAs). The EPBC Act also provides for the preparation and enforcement of reserve management plans. Many activities are illegal in Commonwealth reserves unless carried out in accordance with relevant management plans, permits and determinations. Part 12 of the *Environment Protection and Biodiversity Conservation Regulations 2000* details the prohibitions or restrictions on activities in Commonwealth reserves.

Fisheries assessments

Under the EPBC Act, the environmental performance of all fisheries managed under Commonwealth legislation, and State-managed fisheries that have an export component, must be assessed. The purpose of the assessment is to ensure that, over time, fisheries are managed in an ecologically sustainable way. The *Guidelines for the Ecologically Sustainable Management of Fisheries – Second Edition* outline specific principles and

objectives that are used to assess fisheries management arrangements. More information on the assessment guidelines can be found at <www.environment.gov.au/coasts/fisheries>.

Strategic assessments

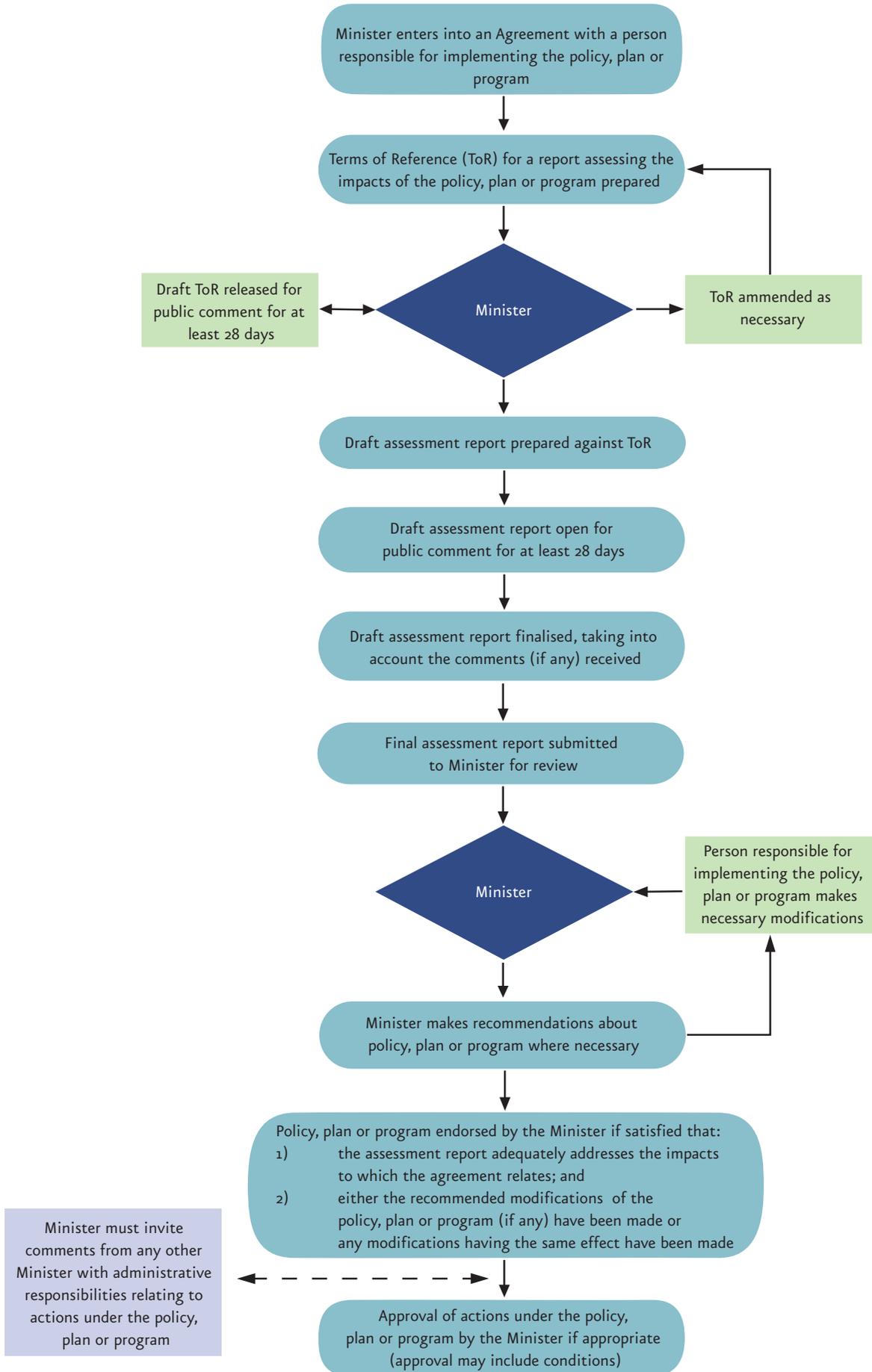
The strategic assessment provisions (under Section 146) of the EPBC Act enable the Minister for the Environment, Heritage and the Arts to enter into agreement with a person responsible for the implementation of a plan, policy or program for an assessment of the impacts of the plan policy or program on matters protected under the EPBC Act. The EPBC Act requires the preparation of a report on the impacts to which the agreement relates (see Figure B.1 for a diagram of the strategic assessment process). If the Minister is satisfied that the report adequately addresses the impacts to which the agreement relates, he or she may endorse the policy, plan or program. This process involves extensive consultation with stakeholders and provides opportunity for public comment.

Once the assessment is complete, actions that are taken in accordance with the endorsed policy, plan or program do not require additional approval under the EPBC Act. The strategic assessment provisions of the Act increase certainty and reduce administrative burden for industry, while providing better environmental outcomes by reducing the potential for cumulative impacts arising from the separate assessments of individual projects.



Gulls and ghost crab, Dirk Hartog Island. Photo: Nicola Bryden, Department of the Environment, Water, Heritage and the Arts.

Figure B.1 Strategic assessment process under the EPBC Act



Historic Shipwrecks Act 1976

Australia's historic shipwrecks are an invaluable and irreplaceable heritage resource. The *Historic Shipwrecks Act 1976* protects historic wrecks and relics in the territorial sea, including State and Territory coastal waters, and waters above the continental shelf. The Act does not apply to wrecks and relics in internal waters, such as rivers, lakes, bays or harbours of a State. Each State has complementary legislation that protects historic shipwrecks in its internal waters.

The *Historic Shipwrecks Act* aims to ensure that historic shipwrecks are protected for their heritage values and maintained for recreational and educational purposes. It also seeks to regulate activities that may result in damage, interference, removal or destruction of an historic shipwreck or associated relic. Divers can use historic shipwreck sites for recreational purposes but relics must not be removed from the wreck site and the physical fabric of the wreck must not be disturbed, unless a permit has been obtained.

Under a declaration made under the *Historic Shipwrecks Act*, all wrecks, known and unknown, that are more than 75 years old are protected, together with their associated relics. The Minister for the Environment, Heritage and the Arts can also make a declaration to protect any historically significant wrecks or articles and relics that are less than 75 years old.

The Act requires anyone who finds the remains of a ship or articles associated with a ship to give notification of the location, as soon as practicable, to the Minister for the Environment, Heritage and the Arts.

Some historic shipwrecks lie within protected or no-entry zones. The protected zone can apply to an area of sea and land not exceeding 200 hectares. These zones may cover an area up to a radius of 500 m around a wreck site, and may be declared where a wreck site is at particular risk of interference. This declaration prohibits all entry into this zone without a permit. Permits are also required to undertake any activities otherwise prohibited or restricted by the Act.

The Act is administered by the Australian Government in conjunction with delegates in each of the States, the Northern Territory and on Norfolk Island.

Environment Protection (Sea Dumping) Act 1981

The *Environment Protection (Sea Dumping) Act 1981* was enacted to fulfil Australia's international responsibilities under the London Convention of 1972 and has been amended to implement the 1996 *Protocol to the London Convention (London Protocol)*, which entered into force internationally in 2006. The objective of the London Protocol is to prevent and reduce marine pollution resulting from dumping of wastes and other matter, and is discussed further in Appendix A.

Under the *Sea Dumping Act*, Australia prohibits ocean disposal of waste materials considered harmful to the marine environment and regulates the deliberate loading and dumping of wastes at sea to ensure the environmental impact is minimised. People can apply to the Minister for the Environment, Heritage and the Arts for a sea dumping permit. In deciding whether to grant a permit, consideration is given to the type of material proposed to be dumped, the disposal site and the potential impacts on the marine environment. Marine Bioregional Plans will provide additional information specific to a Region which will be taken into account in decisions about sea dumping.

If the sea dumping activity is likely to have a significant impact on the environment, the Department of the Environment, Water, Heritage and the Arts will also refer the proposal for assessment under the EPBC Act, in accordance with Part 11 of the Act. In such cases, the Department seeks to undertake assessments under both the *Sea Dumping Act* and EPBC Act concurrently.

Permits are required for all sea dumping operations. Currently, about 30 permits are issued in Australia each year, mainly for the dumping of uncontaminated dredged material, disposal of vessels and burials at sea. The *National Ocean Disposal Guidelines for Dredged Material (2002)* have been prepared to assist proponents with the assessment and management of dredged material. Another relatively uncommon activity that requires a permit under the Act is the creation of artificial reefs.

The administration of the *Sea Dumping Act* is the responsibility of the Minister for the Environment, Heritage and the Arts and applies to all Australian waters (other than waters within the limits of a State or the Northern Territory, such as harbours and river estuaries) from the low water mark out to the edge of the EEZ.



The Sea Dumping Act applies to all vessels, aircraft or platforms in Australian waters (other than vessels or aircrafts belonging to the naval, military or air forces of a foreign country) and to all Australian vessels or aircraft in any part of the sea. The Act does not cover operational discharges from ships, such as sewage and galley scraps, which are regulated by the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Fisheries Management Act 1991

The *Fisheries Management Act 1991* establishes the Australian Fishing Zone and underpins the domestic compliance and enforcement powers that enable Australia to protect its valuable fishery resources. The Australian Fishing Zone is the area of sea from the coast out to 200 nautical miles, including the waters surrounding external territories. Under the *Fisheries Management Act* and the *Fisheries Administration Act 1991*, the Australian Fisheries Management Authority (AFMA) has an obligation to develop plans and implement policies to manage Commonwealth fisheries in the Australian Fishing Zone. The *Fisheries Management Act* also sets the legislative basis for statutory fishing rights, licences and permits.

The *Fisheries Management Act* requires that management plans are prepared for all fisheries unless AFMA has determined that a management plan for a particular fishery is not warranted. Each management plan sets out the objectives of the plan, measures by which the objectives are to be attained, and performance criteria against which the measures taken may be assessed. These plans are prepared in consultation with participants in the fishery and all draft plans are made available for public comment before they are finalised.

Section 3(1)(b) of the *Fisheries Management Act* sets out the Australian Government's responsibilities regarding the pursuit of ecologically sustainable development. The Act requires fisheries to be managed for the long-term sustainability of fisheries resources for the benefit of all users and interest groups, both now and into the future. This requires that stocks be maintained at a sustainable level and, where necessary, rebuilt to ensure inter-generational equity. It also requires that fisheries management minimises the impact of fishing on biological diversity, ecosystems and habitats.

The *Fisheries Management Act* interacts with the EPBC Act through the requirement under the EPBC Act for all Commonwealth-managed fisheries, and State-managed

fisheries with an export component, to be independently assessed to ensure they are managed in an ecologically sustainable way.

In 2007, the Australian Government released the *Commonwealth Fisheries Harvest Strategy Policy* as well as guidelines for its implementation. The policy is designed to provide the Australian community with a high degree of confidence that commercial fish species are being managed for long-term biological sustainability and economic profitability. The policy provides a more strategic and science-based approach to setting total allowable catch levels in Commonwealth fisheries.

Offshore Petroleum Act 2006

Responsibility for petroleum exploration and development in Commonwealth waters and the extended continental shelf rests with the Australian Government. These activities are regulated by the *Offshore Petroleum Act 2006*, which replaced the *Petroleum (Submerged Lands) Act 1967* in 2008. The Australian Government and the States/Northern Territory jointly administer and supervise industry activities in Commonwealth waters through Joint Authority arrangements. Under the *Offshore Petroleum Act*, the *Petroleum (Submerged Lands)(Management of Environment) Regulations 1999* require that an operator submits an environment plan before commencing any petroleum activity. An environment plan, once approved, establishes the legally binding management conditions that must be met by the operator of an offshore petroleum activity.

Petroleum activities onshore and in coastal waters are regulated by relevant State and Territory legislation.

Sea Installations Act 1987

The *Sea Installations Act 1987* provides the legislative basis for the Commonwealth to:

- ensure that sea installations are operated with regard to the safety of the people using them, and the people, vessels and aircraft near them;
- apply appropriate laws in relation to such sea installations; and
- ensure that such sea installations are operated in a manner that is consistent with the protection of the environment.

A sea installation refers to any man-made structure that when in contact, or brought into physical contact,

with the seabed, or when floating, can be used for an environment-related activity.

An environment-related activity is defined as any activity relating to tourism or recreation; the carrying on of a business; exploring; exploiting or using the living resources of the sea, sea bed or subsoil of the sea bed; marine archaeology; or any other prescribed activity. Examples of structures that are defined as sea installations include floating hotels, tourism pontoons and artificial islands. There are also a number of exclusions that are set out under the Act, including resource industry infrastructure.

The *Sea Installations Act 1987* applies to waters within the outer limits of the EEZ or the continental shelf (where this extends beyond the EEZ), excluding State and Territory coastal waters. It applies from the coast outwards in the case of external Territories.

Proponents wishing to install and/or operate a sea installation must apply for a permit or exemption certificate to the Department of the Environment, Water, Heritage and the Arts, or the Great Barrier Reef Marine Park Authority (GBRMPA) if the installation is proposed to be installed or operated within the Great Barrier Reef Marine Park.

Applications for permits and exemption certificates are assessed on the environmental implications and the safety of the proposal. If the installation or operation of the installation is likely to have a significant impact on the environment, the Department of the Environment, Water, Heritage and the Arts or GBRMPA will also refer the proposal for assessment under the EPBC Act, in accordance with Division 4 of Part 11 of that Act. In such cases, the Department seeks to undertake both assessments concurrently.

Protection of the Sea (Prevention of Pollution from Ships) Act 1983

The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* is the key legislation that gives effect to Australia's commitments under the International Maritime Organisation's *International Convention for the Prevention of Pollution from Ships, 1973* (also known as MARPOL). More information on MARPOL can be found in Appendix A.

Protection of the Sea (Harmful Anti-fouling Systems) Act 2006

On 9 January 2007, Australia became a contracting party to the *International Convention on the Control of Harmful Anti-fouling Systems on Ships*, which has been implemented in Australian domestic legislation by the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*.

The Convention on the Control of Harmful Anti-fouling Systems on Ships will enter into force internationally on 17 September 2008. This convention prohibits the use of harmful organotins in anti-fouling paints used on ships and establishes a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems.

Broadly, the convention applies to ships of 400 gross tonnage and above engaged in international voyages, and to facilities used by the oil production industry. Surveys are required before a mandatory International Anti-fouling System Certificate can be issued and when an anti-fouling system is changed or replaced.

When the convention enters into force, it will be an offence for any ship bearing harmful chemical compounds on their hulls or external parts or surfaces to enter an Australian port, shipyard or offshore terminal, unless the ship bears a coating to prevent such compounds leaching into the water. A similar offence will apply to Australian ships entering a port, shipyard or offshore terminal elsewhere in the world.

Native Title Act 1993

The *Native Title Act 1993* provides a framework for recognising and protecting native title in Australia. Native title rights and interests are the communal, group or individual rights and interests of Aboriginal people or Torres Strait Islanders in relation to land or waters. The Native Title Act seeks to regulate acts that affect the native title rights of Indigenous Australians. Under Section 227 of the Native Title Act, an act affects native title if it extinguishes native title rights and interests, or if it is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise.

The Native Title Act and the EPBC Act

The EPBC Act does not affect the operation of the Native Title Act, which provides for the recognition and protection of native title and establishes ways in



which dealings affecting native title may proceed. In making decisions under the EPBC Act the Minister for the Environment, Heritage and the Arts is bound by the provisions of the Native Title Act.

The Department of the Environment, Water, Heritage and the Arts, in administering the EPBC Act, has responsibilities to promote the involvement of Indigenous people and their knowledge of biodiversity in developing strategies for ecologically sustainable development and biodiversity conservation, including development of Marine Bioregional Plans and their associated conservation measures. The Department also has responsibilities under the heritage provisions of the EPBC Act to assess and manage listed Indigenous heritage values, including in the marine environment.

The application of native title legislation to the offshore area

'Offshore place' is defined in the Native Title Act as any land or waters other than those lands and waters within the limits of a State or Territory. Section six of the Act extends the operation of the Native Title Act to each external Territory, to the coastal sea of Australia and of each external Territory, and to any waters over which Australia asserts sovereign rights under the *Seas and Submerged Lands Act 1973*. Under the Native Title Act, coastal sea is defined in accordance with section 15B(4) of the *Acts Interpretation Act 1901*.

The recognition of native title offshore was confirmed by the High Court case in *The Commonwealth v Yarmirr* [2001] High Court of Australia 56 (11 October 2001). In this case, the majority of the High Court concluded that non-exclusive native title could exist in offshore areas. The native title rights over areas of water may include the right to use and enjoy the reefs and associated water; the right to hunt and gather, including for dugong and marine turtle; and the right to use resources for food, trapping fish, religious, cultural and ceremonial purposes. Exclusive native title (which would allow the native title holders to control access to the area) was not found to exist because exclusivity of title would be inconsistent with the right of innocent passage under international law, and the common law rights to navigate and fish.

Preservation of Indigenous fishing rights

The Native Title Act recognises that there may be Commonwealth, State or Territory laws that could prohibit or restrict native title holders from hunting, fishing, gathering or carrying out cultural and spiritual activities offshore. Under section 211, native title holders are not prohibited or restricted from carrying on such activities, or gaining access for those purposes, so long as they are carrying out these activities as an exercise of their native title rights and only for the purpose of satisfying their personal, domestic or non-commercial communal needs. As a result, the relevant law's validity is unimpaired but its operation will be suspended in relation to the exercise of native title rights and interests. This exemption does not apply in relation to legislation aimed at environmental protection, research or public health or safety.

Key references and further reading

Legislation

Available from the Commonwealth of Australia Law website <www.comlaw.gov.au>:

Acts Interpretation Act 1901

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation Regulations 2000

Environment Protection (Sea Dumping) Act 1981

Fisheries Administration Act 1991

Fisheries Management Act 1991

Great Barrier Reef Marine Park Act 1975

Historic Shipwrecks Act 1976

Native Title Act 1993

Offshore Petroleum Act 2006

Petroleum (Submerged Lands) (Management of Environment) Regulations 1999

Protection of the Sea (Prevention of Pollution from Ships) Act 1983

Protection of the Sea (Harmful Anti-fouling Systems)

Quarantine Act 1908

Sea Installations Act 1987

Seas and Submerged Lands Act 1973

Policies and guidelines

Department of Agriculture, Fisheries and Forestry (DAFF), 2007, *Commonwealth Fisheries Harvest Strategy Policy*, Commonwealth of Australia, Canberra, <www.daff.gov.au/fisheries/domestic/harvest_strategy_policy>, accessed 27/03/2008.

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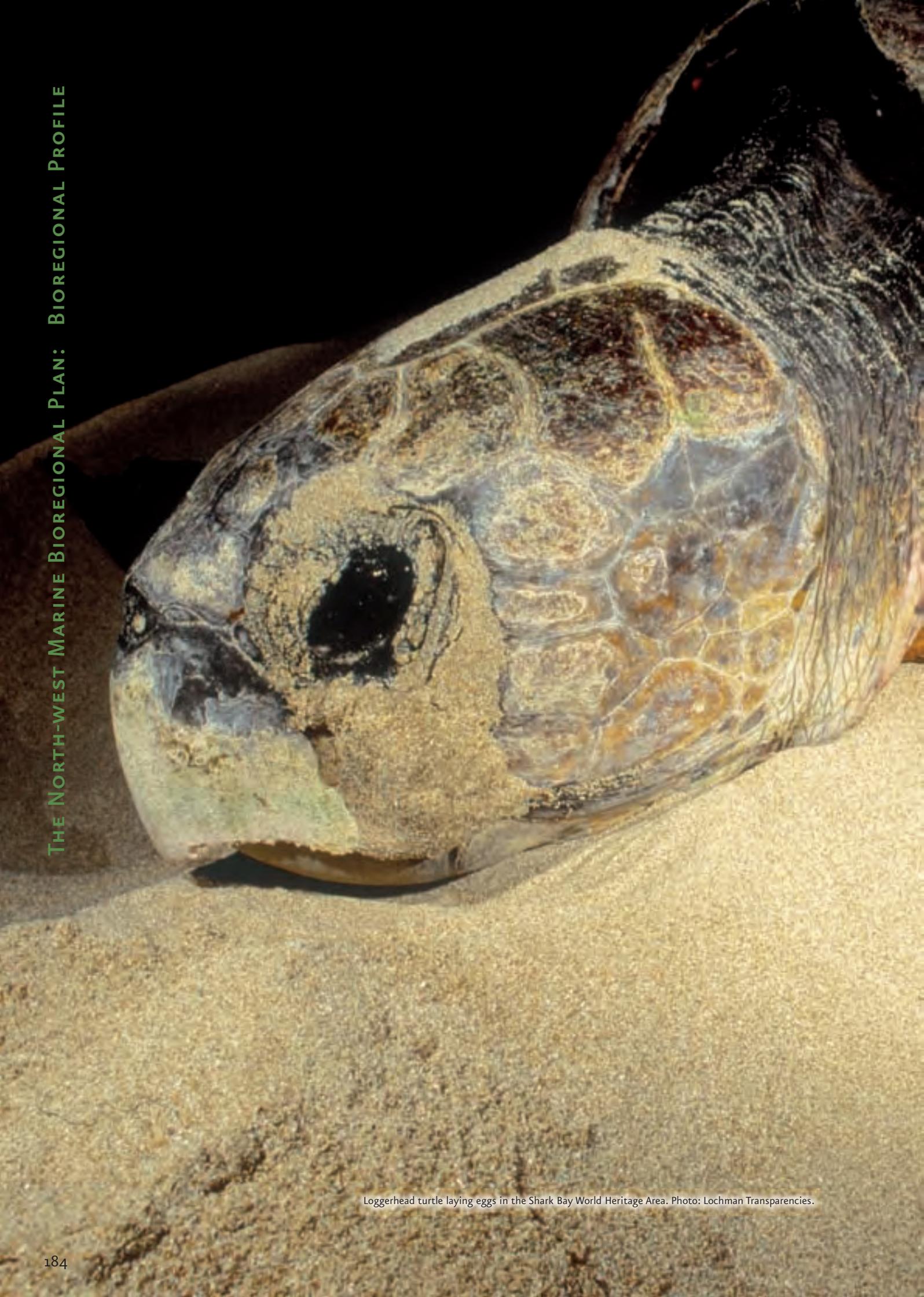
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Loggerhead turtle laying eggs in the Shark Bay World Heritage Area. Photo: Lochman Transparencies.