Environment Protection and Biodiversity Conservation Act 1999 (Cth): the 2006 Amendments
POSITIVES

- Corporate liability strengthened
- Liability of landholders
- Enforcement provisions strengthened
Ways in Which the EPBC Act May Protect Marine Environments

1. Commonwealth Marine areas and Commonwealth Managed Fisheries Trigger
2. Listed Threatened Species and Ecological Communities Trigger
3. Listed Migratory Species Trigger
4. Listed Marine Species Provisions
1. Commonwealth Marine Areas Trigger

Approval must be obtained for:

- Activities taken in a Commonwealth marine area that are likely to have a significant impact on the environment
- Activities taken outside a Commonwealth marine area that are likely to have a significant impact on the environment in a Commonwealth marine area; and
- Fishing in a Commonwealth managed fishery that is likely to have a significant impact on the environment
2. & 3. Listed Species/Ecological Communities and Listed Migratory Species Triggers

Approval is required under the EPBC Act for activities which are likely to have a significant impact on listed species/ecological communities, whether the activity be in Commonwealth waters, or in State or Territory waters.
Listing Process (Amendments)

- Less species required to be assessed
- Themed annual nominations
- Flexibility of timelines
- Recovery plans no longer compulsory
Accredited Plan Exemption

A plan may be accredited if the Minister considers that “the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.”  

Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 208A(1)(f)
4. Listed Marine Species

- Permits required for the taking or injuring of any listed marine species in a Commonwealth Area

- No longer any right of review of permit decisions made by the Minister (also applies to permit decisions covering listed threatened species & ecological communities, migratory species, whales & other cetaceans & the international movement of wildlife specimens)
General Criticisms

- Proponents may seek surety for damages when third party litigants seek interim injunctions against the proponents for alleged breaches of the Act
- Streamlining of Referrals & Assessment Procedures is at the expense of genuine public consultation & integrated considerations such as having regard to threatened species & heritage listing
- No requirement to review triggers
What Was Not Amended

- Access to Information
- Time frames for public comment
- Expansion of current Matters of National Environmental Significance/Triggers