



National Irrigators' Council

Food · Fibre · Future

*Proposed listings under the
Environment Protection and
Biodiversity Conservation Act 1999
(EPBC Act) threatened ecological
communities*

To the Department of Climate Change, Energy,
Environment and Water

15 October 2024

Table of Contents

Background	1
Contact.....	1
Introduction	1
Key considerations.....	1
Conclusion	3

Background

The National Irrigators' Council (NIC) is the peak industry body for irrigated agriculture in Australia. NIC is the voice of irrigated agriculture and the industries producing food and fibre for domestic consumption and significant international trade. Put simply, our industry is helping to feed and clothe Australia and our trading partners.

Irrigated agriculture in Australia employs world leading practices in water management. Industry has extensively adopted and embraced new technologies and knowledge to ensure we are consistently growing more with less water. Australian farmers also operate under strict regulations and compliance mechanisms. These factors mean we lead the world in both farming practices and produce quality.

NIC's policy and advocacy are dedicated to growing and sustaining a viable and productive irrigated agriculture sector in Australia. We are committed to the triple bottom line outcomes of water use - for local communities, the environment, and for our economy.

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Introduction

Thank you for the opportunity to provide feedback into this process which relates to the nomination for listing of two sites as threatened ecological communities under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act):

- River Murray downstream of the Darling River, and associated aquatic and floodplain systems" (hereafter referred to as "River Murray—Darling to Sea")
- Wetlands and inner floodplains of the Macquarie Marshes.

As background, it is noted that public nominations are sought annually for items that merit listing as threatened under national environment law.

The committee particularly seeks comments on whether the:

- nominated item is eligible for listing
- proposed conservation status is appropriate.



NIC is concerned that these proposed listings are being rushed prior to the Federal election (reminiscent of a previous disallowed attempt prior to the 2013 election) and that little additional work since 2013 has been provided to support the nomination despite significant improvements and other measures being taken since that previous attempt (namely the implementation of the Murray Darling Basin Plan and evolution of environmental water management in these specific regions). The timing of this nomination effectively excludes any new information on the current and future benefits of how water and land is being managed in these areas already by any stakeholders, including Government, community and landholders.

The NIC supports a healthy working Basin, that balances environmental, social, cultural, and economic outcomes and values around the Basin, which includes these areas proposed to be listed. We are concerned that the action of listing some of these areas within the Basin will offer little additional environmental gain, while adding complexity and uncertainty to communities and industries within these areas. It is noted that key species in these areas are already protected under various state and Federal legislation and planning arrangements, as well as being prioritized under Basin Plan water actions.

We therefore question the timing and purpose of the listing right now.

Key considerations

NIC has a number of questions to be considered in relation to the proposed listings prior to the Department finalising its advice.

Firstly, it is noted that the former Labor Government attempted to make these listings in 2013 the day before caretaker period commenced before the election, and they were then disallowed by the subsequent Government. There is a striking resemblance with this proposal emerging again as we rapidly approach election time with very few sitting days of Parliament. It is critical that environmental laws are made based on evidence and not used as political stunts prior to elections.

Secondly, a key reason for the 2013 disallowance was that it would not provide greater environmental protection, given the species and habitats involved are already protected under the Act, but only add more green tape.

South Australian environment department officials said in 2013:

*'In the South Australian government's view more work would be required to demonstrate that listings of the nominated ecological community would deliver equivalent or better environmental outcomes than those already delivered.'*¹

NIC questions what additional environmental outcomes will be gained under this move, noting the costs of increased complexity, uncertainty and regulatory burden for a diverse range of stakeholders, not just water users or agricultural businesses.

The listing in the River Murray—Darling to Sea has the potential to impact delivery of Sustainable Diversion Limit Adjustment Mechanism (SDLAM) projects, that aim to provide alternatives to ensure water delivery to key assets through infrastructure and constraint relaxation. Delay of

¹ [Hansard - House of Representatives 11/12/2013 Parliament of Australia \(aph.gov.au\)](https://aph.gov.au/Hansard/11/12/2013)



SDLAM projects, which are limited in time and money, would result in an overall perverse outcome for this key environmental area, by effectively limiting additional environmental benefits that could be achieved through the implementation of the Basin Plan.

Thirdly, we note that the 'draft conservation advice' that underpins the assessment has not been properly updated from 2013. It effectively excludes more than a decade of data from the implementation of the \$13 billion Basin Plan, ignores that 1 in 3 litres of irrigation water is now available to the environment and the successful work of the Commonwealth Environmental Water Holder to deliver water to these landscapes.

The draft advice does say:

'More recent data and analysis on trends will be available soon when Murray-Darling Basin Plan reports are released'.²

The lack of updated scientific information is a problem because stakeholders are providing feedback to this public consultation process without this information, and the decision will be made without this new information also.

Updated conservation advice which takes into consideration the implementation of the Basin Plan should tell a very different story. It would be premature to proceed without this information to inform this decision.

Fourthly, we are concerned that the consultation documents have not appropriately recognized the links between these EPBC Act listings and ramifications for broader water management.

The Government has misleadingly said in consultation documents that:

'Listing of a threatened ecological community is a separate process that does not alter any requirements or directions under any other environmental plans, including the Murray-Darling Basin Plan'.

This ignores the complex regulatory framework of water management, which is connected to these environmental listings, more so those listed under national and international agreements. For example, environmental water requirements and management practices are directly linked to listings such as this (such as through Long Term Water Plans to use NSW as a case study), and are often used as justification for decision-making to further curtail access to water for productive purposes (as environmental outcomes are prioritized above consumptive water in legislative frameworks that provide for a hierarchy of water access).

Given the ongoing and significant changes to water management in the Basin, these links must be properly understood, and stakeholders must have access to this information to make informed submissions to this process. For example, we question how prior to making this listing, a regulatory impact statement should be published, outlining the ramifications, direct and indirect, so decision-making can be evidence-based.

² [River Murray downstream of the Darling River, and associated aquatic and floodplain systems - Climate \(dcceew.gov.au\)](https://www.dcceew.gov.au/river-murray-downstream-of-the-darling-river-and-associated-aquatic-and-floodplain-systems-climate)



Penultimately, the proposal risks perverse impacts for our industry and communities, with additional green tape adding complexity and uncertainty to businesses. There are already considerable environmental laws in place to regulate development and use of water, and this adds another layer, with no clear benefit. The consultation documents do not provide information on the practical ramifications this will have on people, such as the agricultural industry. We also understand that many landholders in the impacted areas have not been consulted with, and are not even aware of this process. This is yet another instance of poor consultation, and rushed Government process without understanding practical ramifications.

Finally, it is pleasing to see in the draft conservation advice that:

'Importantly, the Basin Plan, being primarily concerned with water, does not have the remit to fully address the myriad of other threats currently operating on this ecological community, including those of clearing, invasive species, and climate change.'

We agree that just adding water isn't the solution, and have been saying this all along, yet the Federal Government continues to ignore the complexity of the challenge and the science in their policy implementation. If these areas require increased environmental management, the Federal Government must instead be investing in practical on-ground measures rather than yet another regulation.

Government must focus on ways to complement the environmental water recovery to date and provide non-flow improvements to these riparian areas and others around Australia, rather than add more complexity and uncertainty with little environmental gain by rushing through these listings.

Conclusion

We thank you for the opportunity to provide feedback into this nomination process for potentially listing the River Murray—Darling to Sea and the wetlands and inner floodplains of the Macquarie Marshes as threatened ecological communities under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

We are concerned that this listing is being rushed and is designed to not use the best available science to inform the conservation advice and subsequent decision.

The listing will create additional uncertainty and increase the regulatory burden in these areas, with limited benefit, given the protections and management already in place. If not carefully considered and informed by best-available science and risk assessment (that accepts the contemporary management of land and water in these areas), there will be unintended consequences, far beyond protecting and managing vegetation communities.

We therefore recommend the Government undertake more work to allow for the significant volume of scientific knowledge due with the evaluation of the implementation of the Murray Darling Basin Plan to be incorporated prior to progressing further, whilst they also explore the regulatory complexity in which these listing will operate, and engage with stakeholders accordingly.

Ends.

