



## Dissenting Report—The Hon Kelvin Thomson MP (Deputy Chair), The Hon Melissa Parke MP, Senator Sue Lines, Mr Tim Watts MP and Senator the Hon Joe Ludwig

As members of the Joint Standing Committee on Treaties (JSCOT), we dissent from the majority view of JSCOT and do not support the reservation as lodged by the Australian Government to the *Amendments to Appendix II to the Convention on the Conservation of Migratory Species of Wild Animals*.

### Summary Overview

Australia has been a party to the *Convention on the Conservation of Migratory Species of Wild Animals* (the **CMS**) since 1991. The purpose of the convention is to protect migratory species that are endangered or have an unfavourable conservation status in the circumstances where they cross national jurisdictional boundaries. The protected species are listed in the Appendix I and Appendix II.

At the Bonn Convention conference in November 2014, a number of species were added to Appendix I and Appendix II. On that occasion, the Australian Government lodged a reservation to the listing in Appendix II of the Bigeye, Common, and Pelagic Thresher Sharks, and the Scalloped and Great Hammerhead Sharks.

Due to timing issues over the Christmas break, JSCOT was unable to consider the reservation prior to the reservation being lodged. Therefore, in accordance with Article XIV of the CMS, the reservation took effect in February 2015 and Australia is not considered a party in regard to those species.

The JSCOT has now considered the amendments and the reservation, and has recommended that the reservation should not be withdrawn. We do not support the majority view of the JSCOT on this matter for the reasons set out below.

### Specific Areas of Concern

The Australian Government argues that the reservation is required to protect recreational fishers who regularly catch these species of shark. This argument is

based on the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), which prohibits the taking of species listed in both Appendices of the CMS, except in very limited circumstances. The penalties associated with breaching the Act were cited by a representative from the Department of Environment to be up to \$170,000 and two years' imprisonment.

The approach taken by the Australian Government in lodging the reservation in order to protect recreational fishers is detrimental to Australia's reputation as a world leader in marine conservation. The Government should be acting to support international efforts to protect endangered and at risk marine life, and not to "opt-out" for reasons of convenience or relatively minor administrative complications. The species the subject of this amendment are at risk of over-exploitation through trade, and the reservation means Australia loses credibility in trying to improve marine conservation, especially with respect to countries in our region like Indonesia, among others.

The Australian Government has stated that by its own estimation it will be in full compliance with the requirements of the CMS notwithstanding the reservation. It is unnecessary, disingenuous, and harmful to the pursuit of international cooperation for any nation to exempt itself from sensible, evidence-based convention obligations when those obligations should be met, and indeed will be met in any case.

The better approach would be for Australia to amend its domestic legislation to accommodate any local requirements or administrative complications. As noted in the submission by the Humane Society International, there is a precedent for the Australian Government acting to protect recreational fishers from any unintended consequences arising out of catching species listed in the appendices of the CMS. In 2009, the porbeagle shark and the longfin and shortfin mako sharks were listed in Appendix II. Following this listing, the EPBC Act was amended to ensure that the species concerned could be listed as migratory, with an exemption provided from the strict liability offence of killing, taking, or injuring a member of these species in a Commonwealth area.

The benefit of this approach is that Australia continues to uphold its commitment to protect migratory species at a global level, without disregarding the unintended effect this may have on recreational fishers. In the absence of changes to domestic legislation, the effect of the reservation is that these species of shark will not be protected in accordance with the determination of the international marine science community, and global conservation efforts will be undermined.

It must also be noted that TRAFFIC, the Australian Marine Conservation Society, and the Humane Society International consider that there was inadequate notification or consultation with respect to the Government's decision to lodge the reservation. The JSCOT also notes that the committee was unable to resolve precisely what happened with regard to the consultation process because there has been no opportunity to examine the relevant records.

For all the reasons above, the Australian Government should withdraw the reservation, allow the listing of the species concerned, and make consequent amendments to the EPBC Act as necessary.

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(Deputy Chair)

The Hon Melissa Parke MP

Senator Sue Lines

Mr Tim Watts MP

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