

**TRAFFIC**<sup>®</sup>  
the wildlife trade monitoring network



Committee Secretary Joint  
Standing Committee on Treaties  
PO Box 6021  
Parliament House  
Canberra ACT 2600

By email to: [jsct@aph.gov.au](mailto:jsct@aph.gov.au)

27 February 2015

Dear Secretary,

**Re: Inquiry on Treaties tabled on 10 February 2015**

TRAFFIC and the Australian Marine Conservation Society (AMCS) welcome the opportunity to provide this submission to the Joint Standing Committee on Treaties inquiry on Treaties tabled on 10 February 2015.

TRAFFIC and AMCS' focus in this submission will be on only one of the three Treaties tabled, the Amendments to Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979) (CMS).

TRAFFIC and AMCS have a long term interest in the use of Multilateral Environment Agreements in conserving shark species through providing advice to Australian Government Departments, publishing analysis of catch and trade of sharks, advocating for particular listings of species within the appendices particularly in relation to CMS and the Convention on International Trade in Endangered Species (CITES) and providing advice to governments on the requirements to implement such listings.

TRAFFIC was contracted by the Government of the United Kingdom to develop a method of determining aquatic species in trade that are at risk of overexploitation and explore the benefits that could be derived by including them within the appendices of CMS or CITES.<sup>1</sup> This work was further developed with funding from the UK Government<sup>2</sup> which specifically analysed the risk to shark species through inadequate management. The UK Government presented this information to the Scientific Council of CMS in 2014 in support of proposals to list the shark and ray species. TRAFFIC provided all of this documentation and background materials to the Department of the Environment prior to the November 2014 CMS meeting where the 21 species were successfully listed.

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<sup>1</sup> Sant, G., Goodman, G., Crook, V., Lack, M. and Oldfield, T.E.E. (2012). Fish and Multilateral Environmental Agreements: developing a method to identify high risk commercially-exploited aquatic organisms in trade and an analysis of the potential application of MEAs. JNCC Report No. 453. Joint Nature Conservation Committee, Peterborough. Available at <http://jncc.defra.gov.uk/page-6120>

<sup>2</sup> Lack, M., Sant, G., Burgener, M. and Okes, N. (2014). Development of a Rapid Management-Risk Assessment Method for Fish Species through its Application to Sharks: Framework and Results. Report to the Department of Environment, Food and Rural Affairs. Defra Contract No. MB0123. Available at: <http://bit.ly/1mDeLG7>

TRAFFIC and AMCS would like to outline the contact we had with the Department of Environment and Minister for the Environment in regard to the CMS and references in the National Interest Analysis [2015] ATNIA 1 consultation attachment in regard to “Extensive consultation” and issues raised by stakeholders:

1. **10 June 2014** – TRAFFIC was forwarded email correspondence by another NGO in which the Department of Environment had asked for comment by NGOs in regard to identifying the following for the proposed CMS species:  
“Robustness of nomination  
Benefit to the species for inclusion on the Appendices to CMS  
Domestic ramifications following possible inclusion on the Appendices to the CMS”  
TRAFFIC, despite not being on the email list emailed the published documents mentioned earlier in this submission in support of the listings.
2. **11 June 2014** – TRAFFIC, as follow-up to the 10 June correspondence informed the Department of Environment that:  
“I guess one position issue to put on the table way ahead of any future listings is the concern we had with the political interference in the domestic Australian listing process that occurred with Mako. As you would be aware it was as a result of intervention by the recreational/game fishing sector. I can make very clear to you on behalf of TRAFFIC that we will certainly object, as we did previously, to any interference if it were to occur again.”
3. **21 October 2014** – TRAFFIC emails Department of Environment two weeks prior to CMS November meeting asking when the Australia consultation meeting/call would occur only to be informed it had occurred without TRAFFIC being invited to participate.
4. **14 January 2015** – AMCS and TRAFFIC letter to Minister Hunt seeking confirmation the CMS listed species would be fully implemented under Australian legislation and noted that:  
“During 2010, representatives from AMCS and TRAFFIC advised the then Minister for the Environment, Minister Garrett, of our extreme disappointment that exemptions to the EPBC Act Migratory listings were granted to allow recreational fishing for longfin and shortfin mako and porbeagle sharks.”
5. **21 January 2015** – Email from Department of Environment notifying NGOs the intention of the Government to take out CMS reservations.
6. **28 January 2015** – Joint letter with other NGOs to Minister Hunt  
Re: CMS CoP11 shark listings and Australia’s reservations.  
Raised objections to Australia undertaking reservation.

We would therefore question whether the stakeholder consultation could be described as ‘extensive’, as noted in the National Interest Analysis [2015] ATNIA 1 consultation attachment. It specifically mentions TRAFFIC in the consultation despite the fact it was TRAFFIC not the Department who had to proactively offer our opinion as opposed to being asked for it by the Department and not being included in the full extent of consultations. Secondly there is no reference to the position TRAFFIC raised in point two above in relation to Australia taking action to not fully implement the CMS listings as prescribed by Australian legislation.

TRAFFIC and AMCS are concerned that Australia had two options to consider if it wanted to restrict the effect of the CMS listings on Australian domestic catchers (recreational or commercial). Firstly it could, as it has done, lodged a reservation with CMS. Secondly it could have made an amendment to the EPBC Act where they would be listed as migratory but an exemption provided from the strict liability offence of killing, taking or injuring a member of a listed migratory species in a Commonwealth area for these species (s212(1)(r) of the EPBC Act). While AMCS and TRAFFIC continue to oppose this option it would have at least provided additional domestic protection than a reservation at CMS does. Both our

organisations fully support the listing of these species as a result of their conservation status, domestically and internationally.

AMCS and TRAFFIC believe that Australia should not have lodged reservations for the listings of the five species of thresher and hammerhead sharks in Appendix II of CMS and that our own work has demonstrated they are at risk of overexploitation and these reservations will undermine conservation efforts for these species. Australia has tarnished its reputation as a leader in the conservation of sharks with this action and in fact has brought it in to the realm of Parties to international conventions that are “Parties of Convenience” which take out reservations when the measures of a convention apply to them. Something Australia in the past was critical of others for doing. TRAFFIC and AMCS call on the Federal Environment Minister to withdraw the reservation.

TRAFFIC and AMCS thank the Committee for the opportunity to present these views. Should there be the opportunity to provide these views in person at the public hearing on 16<sup>th</sup> March, we would be more than willing to do so.

Should you require any further clarification of our position, please do not hesitate to contact either Glenn Sant, TRAFFIC at [glenn.sant@traffic.org](mailto:glenn.sant@traffic.org) or 0418 416030 or Tooni Mahto, Marine Campaigns Officer at AMCS at [toonimahto@amcs.org.au](mailto:toonimahto@amcs.org.au), or on 0467 081258.

Yours sincerely,

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