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- **National Interest Analysis [2009] ATNIA 26**
with attachment on consultation

- **Amendments, done at Rome, Italy on 5 December 2008,**
to Appendices I and II of the Convention on the
Conservation of Migratory Species of Wild Animals
of 23 June 1979
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NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Amendments, done at Rome, Italy on 5 December 2008, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals of 23 June 1979

Nature and timing of proposed treaty action

1. The treaty action concerns amendments to Appendices I and II of the *Convention on the Conservation of Migratory Species of Wild Animals* (the Convention). The amendments were adopted by the 9th meeting of the Conference of the Parties (CoP9) to the Convention, held in Rome, Italy from 1 to 5 December 2008. The amendments to the Appendices list 11 additional species of migratory animals in Appendix I (Attachment A) and ten additional species in Appendix II (Attachment B). Appendix I lists migratory species which are endangered and Appendix II lists migratory species which have an unfavourable conservation status.
2. Under Article XI(5) of the Convention, an amendment to the Appendices enters into force for all Parties 90 days after the meeting of the Conference of the Parties at which it was adopted, except for those Parties that make a reservation. The amendments to the Appendices entered into force on 5 March 2009. The Minister for the Environment, Heritage and the Arts wrote to the Chair of the Joint Standing Committee on Treaties on 4 March 2009 providing details of the amendments and advising that, due to the operation of Article XI(5) of the Convention, entry into force for Australia would occur prior to the usual treaty tabling requirements having been met.

Overview and national interest summary

3. Australia is a Range State for three species of sharks (porbeagle (*Lamna nasus*), shortfin mako (*Isurus oxyrinchus*) and longfin mako (*Isurus paucus*)) that were added to Appendix II of the Convention. A Range State is defined in Article I of the Convention as any State that exercises jurisdiction over any part of the range of that migratory species, or a State the flag vessels of which take that migratory species outside national jurisdictional limits. The porbeagle, longfin mako and shortfin mako are all found in Australian waters.
4. Australia is committed to international shark protection and conservation efforts. Indications are that current approaches to shark management and conservation have proven ineffective in halting the decline of sharks globally. Sharks continue to be at risk internationally from over-fishing, illegal trade, habitat degradation, incidental bycatch and emerging threats such as climate change. The Convention provides the most accessible mechanism to facilitate international action for conservation of migratory shark species. The addition of these three shark species to Appendix II will facilitate such action and complement action already taken.

Reasons for Australia to take the proposed treaty action

5. The Convention came into force generally in 1983 and Australia has been a party since 1 September 1991. The Convention focuses upon terrestrial, avian and marine species that migrate across or outside national jurisdictional boundaries. States Parties to the Convention must protect migratory species listed on its Appendices that live within, or pass through, their jurisdiction.

6. Article I of the Convention establishes two categories that define the conservation status of a migratory species - 'endangered' for a migratory species that is in danger of extinction throughout all or a significant proportion of the area of land or water that it inhabits (its range), and 'unfavourable conservation status' where the following conditions for a favourable conservation status are not being met:

- (1) population dynamics data indicate that the migratory species is maintaining itself on a long-term basis as a viable component of its ecosystems;
- (2) the range of the migratory species is neither currently being reduced, nor is likely to be reduced, on a long-term basis;
- (3) there is, and will be in the foreseeable future, sufficient habitat to maintain the population of the migratory species on a long-term basis; and
- (4) the distribution and abundance of the migratory species approach historic coverage and level to the extent that potentially suitable ecosystems exist and to the extent consistent with wise wildlife management (Article I (1)(c)).

7. Appendix I lists migratory species that are endangered and for which Parties are obliged to provide immediate protection. Appendix II lists migratory species with an unfavourable conservation status and which require, or would significantly benefit from, international agreements for their conservation and management.

8. Australia is a Range State for each of the three species of shark added to Appendix II. Consequently, Australia has obligations with regard to these species.

9. The porbeagle is a wide-ranging coastal and oceanic shark, but with apparently little exchange between adjacent populations. Late and relatively low reproductive capacity and high commercial value (in target and incidental fisheries) of mature and immature age classes makes this species highly vulnerable to over-exploitation and population depletion. The International Union for Conservation of Nature (IUCN) considers that this depletion, despite variations in availability of data and degree of depletion between the northern and southern hemispheres, warrants a vulnerable classification for the porbeagle. In Australian waters, the porbeagle is found off southern Australia from southern Queensland to southern Western Australia.

10. The shortfin mako is a wide-ranging oceanic and pelagic shark with high value meat, and is subject to significant bycatch and targeted fisheries in some areas. Most catches are inadequately or not recorded, and its relatively low reproductive capacity makes it very susceptible to depletion by these fisheries. However, the species is very wide-ranging and has a relatively fast growth rate. The IUCN has classified the shortfin mako as lower risk/near threatened. The shortfin mako is widespread in Australian waters (with the exception of the Arafura Sea, Gulf of Carpentaria and Torres Strait).

11. The longfin mako is a widely distributed but rarely encountered oceanic tropical shark. This species is known to be caught as bycatch in tropical pelagic longline fisheries for tuna, swordfish and sharks and in other oceanic fisheries, which operate throughout its range, but at much lower ratios than its smaller relative, the shortfin mako. Catches are inadequately monitored and underestimated due to common misidentification with shortfin makos and because landings do not reflect numbers of individuals finned and discarded at sea. Longfin makos are often caught in the same fishing gear as shortfin makos and therefore populations are considered also likely to have declined. In addition to the inferred declines, this is a species of conservation concern due to its apparent rarity, large maximum size (greater than 4 m), low reproductive capacity (2 to 8 pups per litter) and continued bycatch in intensive oceanic fisheries. The IUCN has classified the longfin mako as vulnerable. The longfin mako occurs in Australian waters south to Geraldton (Western Australia) to at least Port Stephens (New South Wales).

12. In addition to the three species for which Australia is a Range State, a number of other species were added to the Appendices of the Convention on the proposal of other Parties. However, Australia is not listed as a Range State for those other species and therefore does not have to take any further action.

Obligations

13. All Parties to the Convention acknowledge the importance of conserving migratory species (Article II (1)) and the need to take action to avoid migratory species becoming endangered (Article II (2)). The Parties also agree to promote, cooperate and support research relating to migratory species (Article II (3)(a)) and endeavour to provide immediate protection for migratory species included in Appendix I (Article II (3)(b)).

14. Article III(1) of the Convention provides that Appendix I shall list migratory species which are endangered. Article II(3)(b) provides that the Parties 'shall endeavour to provide immediate protection for migratory species included in Appendix I.' Parties that are Range States are required to endeavour to take specific measures to conserve the species and habitat, to prevent the adverse effects of activities that impede or prevent migration, and, to the extent feasible and appropriate, to prevent or minimise factors that endanger the species (Article III(4)). Article III(5) requires Range States to strictly prohibit taking of Appendix I species subject to limited exceptions.

15. Appendix II lists migratory species which have 'an unfavourable conservation status and which require international agreements for their management' and species 'which would significantly benefit from the international co-operation that could be

achieved by an international agreement' (Article IV(1)). Unlike a listing in Appendix I, inclusion of a species in Appendix II does not entail an obligation to immediate protection. The principal obligation in relation to species included in Appendix II is that Parties must endeavour to conclude agreements where these would benefit the species and give priority to those species in an unfavourable conservation status (Article IV(3)).

16. The Convention does not affect the rights or obligations of any Party deriving from any existing treaty or convention (Article XII (2)). The Convention also does not affect the rights of Parties to adopt stricter domestic measures concerning the conservation of any listed migratory species (Article XII (3)).

Implementation

17. In order to meet the international obligations that arise for Australia as a Range State for migratory species listed in Appendix II of the Convention, Australia must cooperate in the development of multilateral conservation agreements where these will benefit the species listed. Australia is meeting this obligation by participating in ongoing multilateral negotiations to develop a Memorandum of Understanding (MoU) on the Conservation of Migratory Sharks under the Convention.

18. At this stage, negotiations are focussed on developing a MoU that covers the great white shark, whale shark and basking shark, (iconic species) with the potential to incorporate the porbeagle, shortfin mako and longfin mako in the future. The scope of the MoU will remain under consideration as negotiations progress.

19. Domestically, listed species will be protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Section 209(3)(a) of the Act specifies that the list of migratory species must include all species that are 'from time to time included in the appendices to the [the Convention] and for which Australia is a Range State under the Convention'. As a result of the listing of the three shark species on Appendix II of the Convention, the list of migratory species pursuant to section 209 of the EPBC Act needs to be amended to include these species. An amendment to the list of migratory species contained in the EPBC Act is an amendment of a legislative instrument.

20. All provisions of the EPBC Act relevant to 'listed migratory species', in particular Parts 3 and 13, will apply to these species once the list has been amended.

Costs

21. The amendments to the Appendices are not expected to impose any additional costs on Australia in terms of meeting its obligations under the Convention. Australia already has a strong protection and conservation management regime in place for migratory species, such as the three shark species recently included in Appendix II. The amendments may require domestic management arrangements to be put in place for commercial and recreational fishing operations that may interact with the three shark species, in particular to ensure compliance with requirements under the EPBC Act. It is anticipated that the costs for most sectors will be minor. However, where Australian fisheries take these species as a significant by-product this could impact on

their profitability. There is likely to be some cost associated with changes required by game or charter fishing operators where they target the species concerned.

22. The development of multilateral conservation agreements (or MoUs) for the protection of these migratory species will require some resources. However the costs associated with the implementation of such agreements are likely to be negligible.

Regulation Impact Statement

23. The Department of the Environment, Water, Heritage and the Arts has assessed the implementation of the Convention against criteria in *The Best Practice Regulation Handbook*. This regulatory option has no impact on business and individuals or on the economy and a Regulation Impact Statement or Business Cost Calculator report is not required. The Office of Best Practice Regulation (OPBR) confirmed that no further regulatory impact analysis is required as the proposal has relatively minor impacts. The OPBR also advised that no further assessment is required in relation to the amendments to the EPBC Act as these changes are not discretionary.

Future treaty action

24. States Parties to the Convention amend Appendices I and II (add to or remove species or populations) when information becomes available and / or action is required to meet the conservation needs of migratory species which are endangered, become endangered or are subject to an unfavourable conservation status. Migratory species may be removed from the Appendices once their conservation needs have been met. Any future amendments of the Appendices will constitute a separate treaty action and be subject to the usual domestic treaty making process, including the tabling of a National Interest Analysis.

Withdrawal or Denunciation

25. Once amendments have entered into force for a Party, the only way to withdraw from them is by denouncing the Convention. Article XIX provides that a Party to the Convention may denounce it by written notification to the Depositary at any time. Such denunciation would take effect twelve months after the Depositary has received the notification and would be subject to the usual domestic treaty process including the tabling of a National Interest Analysis.

Contact details

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ATTACHMENT ON CONSULTATION

Amendments, done at Rome, Italy on 5 December 2008, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals of 23 June 1979

Consultation

26. The Department of the Environment, Water, Heritage and the Arts wrote to its State and Territory environment and primary industries counterparts seeking their views on the amendments to the Appendices to the Convention prior to the 9th CoP. A generally favourable response was received from the majority of jurisdictions, with South Australia, the Northern Territory and Western Australia fully supportive of the proposals.

27. New South Wales and Queensland were not supportive of the proposals, based on concerns regarding the possible consequences of listing the shark species as migratory under the EPBC Act. Both New South Wales and Queensland were concerned that listing the shark species as migratory under the Act could lead to increases in monitoring and stock assessment costs. New South Wales was also concerned should the listing of the sharks as migratory under the Act result in the species becoming 'no-take' for fishers.

28. The listing of the shark species as migratory may require domestic management arrangements to be put in place for commercial and recreational fishing operations that interact with the species. It is anticipated that any associated increases in monitoring and stock assessment costs would be minor. The process will be incorporated into existing commercial fishery assessment and accreditation processes.

Additions to Appendix I of the *Convention on the Conservation of Migratory Species of Wild Animals* adopted by the Ninth Conference of Parties (Rome, December 2008).

MAMMALIA

ORDER Family Scientific Name Common Name

CETACEA Delphinidae *Tursiops truncatus ponticus* Bottlenose Dolphin (Black Sea)

CETACEA Delphinidae *Orcaella brevirostris* Irrawaddy dolphin

CETACEA Delphinidae *Sousa teuszii* Atlantic humpback dolphin

CARNIVORA Felidae *Acinonyx jubatus* Cheetah (except populations of Botswana, Namibia, and Zimbabwe)

SIRENIA Trichechidae *Trichechus senegalensis* West African manatee

AVES

ORDER Family Scientific Name Common Name

ANSERIFORMES Anatidae *Aythya baeri* Baer's pochard

FALCONIFORMES Accipitridae *Neophron percnopterus* Egyptian vulture

CHARADRIIFORMES Laridae *Sterna lorata* Peruvian tern

PASSERIFORMES Muscicapidae *Acrocephalus sorghophilus* Streaked Reed-warbler

PASSERIFORMES Emberizidae *Emberiza aureola* Yellow-breasted bunting

PASSERIFORMES Parulidae *Dendroica caerulea* Cerulean Warbler

Additions to Appendix II of the *Convention on the Conservation of Migratory Species of Wild Animals* adopted by the Ninth Conference of Parties (Rome, December 2008).

MAMMALIA

ORDER Family Scientific Name Common Name

CETACEA Phocoenidae *Phocoena phocoena* Harbour porpoise (North-West African population)

CETACEA Delphinidae *Grampus griseus* Risso's dolphin (Mediterranean population)

CETACEA Delphinidae *Tursiops truncatus* Bottlenose dolphin (Mediterranean population)

CETACEA Delphinidae *Stenella clymene* Clymene dolphin (West African population)

CARNIVORA Canidae *Lycaon pictus* African wild dog

ARTIODACTYLA Bovidae *Ammotragus lervia* Barbary sheep

PISCES (Elasmobranchii)

ORDER Family Scientific Name Common Name

LAMNIFORMES Lamnidae *Isurus oxyrinchus* #Shortfin mako

LAMNIFORMES Lamnidae *Isurus paucus* #Longfin mako

LAMNIFORMES Lamnidae *Lamna nasus* #Porbeagle

SQUALIFORMES Squalidae *Squalus acanthias* Spiny dogfish (Northern Hemisphere populations)

Note: # indicates a species for which Australia is a range state