

Amendments to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

Introduction

- 4.1 The *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) is a multilateral Convention that regulates international trade in endangered species.¹ Australia has been a party to the Convention since 1976.²
- 4.2 CITES provides a mechanism for the listing of species identified as being at risk if subject to international trade. The listings are recorded in three appendices to the Convention, according to the degree of that risk:

Appendix I is the strictest level of regulation and it generally prohibits all international trade, except for some non-commercial [purposes] such as conservation, breeding and so on. Appendix II lists species that could become endangered if their trade is not regulated and it requires documentation to be issued in order for international trade to occur in these species. There is also a third

1 Trade is defined as export, re-export, import and introduction from the sea. *National Interest Analysis* (NIA) [2013] ATNIA 11, 2013 Amendments, adopted at Bangkok on 14 March 2013, to Appendices I and II of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, [2013] ATNIF 9, para. 4. (Hereafter referred to as 'NIA').

2 Department of Sustainability, Environment, Water, Population and Communities, *How CITES works*, <<http://www.environment.gov.au/biodiversity/wildlife-trade/cites/cites.html>>, viewed 1 July 2013.

appendix, Appendix III, where the species are regulated at the initiation of an individual country. It requires, again, the issuing of documentation.³

- 4.3 The main objective of CITES is to regulate the commercial trade of wild animals and plants to ensure those species will not be endangered or put at risk. Timely adjustment of the CITES Appendices is therefore critical to the Convention's effective operation.⁴
- 4.4 Amendments to CITES Appendices are made in accordance with provisions of Article XV of the Convention and are put forward as nominations for consideration at the CITES triennial Conference of the Parties meetings.⁵
- 4.5 At the triennial Conference of the Parties meetings, species may be nominated for insertion or deletion, or moved to a different category to reflect a variation in necessary protection status. These proposals are then either agreed by consensus or voted on and agreed by a two thirds majority, with a second consideration possible in a plenary session.⁶

The 16th Conference of the Parties

- 4.6 The 2013 amendments propose inclusion, transferral or deletion of species in Appendices I and II of the Convention.⁷ The 16th Conference of the Parties, held from 3-4 March 2013 in Bangkok, Thailand, reviewed 70 listing proposals, of which 55 were adopted.⁸
- 4.7 Australia is not a Range State⁹ for the majority of the species covered by the 55 listing proposals (that is, they do not occur naturally in Australia), nor does Australia have an industry in the international trade of the majority of these species. As such, there will be no ramifications for Australia of the listing amendments for the majority of these species.¹⁰

3 Ms Deb Callister, Assistant Secretary, Queensland and South Australia Assessment Branch, Environment Assessments and Compliance Division, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 1.

4 *Report 116*, Joint Standing Committee on Treaties, 11 May 2011, p 7.

5 *Report 116*, Joint Standing Committee on Treaties, 11 May 2011, p 7.

6 Ms Deb Callister, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 1.

7 NIA, para 1.

8 NIA, para 12.

9 A Range State is a country in which a named species is found.

10 NIA, para 13

4.8 The amendments that are relevant to Australia include eight terrestrial species and seven marine species. The relevant amendments apply to the following species:

- *Pristis microdon* (freshwater sawfish);
- *Pteropus brunneus* (dusky (Percy Island) flying fox);
- *Thylacinus cynocephalus* (Thylacine);
- *Onychogalea lunata* (crescent nail-tail wallaby);
- *Caloprymnus campestris* (buff-nosed rat-kangaroo);
- *Chaeropus ecaudatus* (pig-footed bandicoot);
- *Macrotis leucura* (lesser rabbit-eared bandicoot);
- *Rheobatrachus silus* and *Rheobatrachus vitellinus* (gastric-brooding frog species);
- *Manta birostris* and *Manta alfredi* (manta ray species);
- *Carcharhinus longimanus* (oceanic whitetip shark);
- *Lamna nasus* (porbeagle shark); and
- *Sphyrna lewini*, *S. mokarran*, and *S. zygaena* (hammerhead shark species).¹¹

Freshwater sawfish

4.9 The *Pristis microdon* (freshwater sawfish) has been moved from Appendix II to Appendix I. According to the NIA:

Pristis microdon populations have suffered severe declines since the 1960s and the species is now considered critically endangered according to the global IUCN [Red List], and the species is listed as vulnerable under the EPBC Act.¹² Australia currently has a zero export quota for this species, so there will be little change to Australia's regulation of the international trade in the species as a result of this listing amendment.¹³

11 NIA, para 14.

12 *Environment Protection and Biodiversity Conservation Act 1999*.

13 NIA, para 17.

4.10 The species was listed in Appendix II at the triennial Conference in 2007. At the time, Australia acted to prevent the proposed listing of the species in Appendix I. Australia's objection to the listing was the subject of close examination by the Treaties Committee in its Report 93.

4.11 The Report stated:

The Committee has in-principle concerns about the CITES listing process that has permitted a species considered critically endangered internationally to be traded, irrespective of any argument that the Australian populations are more robust. While this may be the case, it is also clear that population numbers of the species are uncertain.¹⁴

4.12 The Committee was also concerned at the presence of the sole exporter of freshwater sawfish on Australia's delegation to the Annual Conference:

The Committee is concerned about the inclusion of parties with an obvious commercial interest in the outcome of negotiations on an Australian delegation.¹⁵

4.13 Representatives of the Department of Sustainability, Environment, Water, Population and Communities (the Department) explained what had changed since the 2007 Conference of the Parties:

Since then a range of information has come to light and some more studies have been done on the populations in situ in Northern Australia and that has indicated that our belief that it could maintain a small level of trade was incorrect and that there were particular pressures on the population. Also, some information about some genetics indicated that even small levels of trade could be detrimental. So Australia introduced what we call a non-detriment finding, which indicated that there could not be any trade in this from Australia and Australia stopped allowing the trade of it. Consequently, we felt that, in order to match our domestic position, we should not allow any of that trade, that we would move to have it listed on appendix 1.¹⁶

14 Joint Standing Committee on Treaties, *Report 93*, 4 September 2008, p 11.

15 Joint Standing Committee on Treaties, *Report 93*, 4 September 2008, p 11.

16 Ms Deb Callister, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 2.

Dusky flying fox

4.14 The *Pteropus brunneus* (dusky (Percy Island) flying fox) has been removed from Appendix II. Representatives of the Department explained:

...it had been listed as *Pteropus brunneus*, and had been listed on the appendices, but it appears that at the time that it was taxonomically described it was not actually a valid species – that it came from one specimen which was probably a different type of flying fox, and it had never been seen since and has never been described since. Part of this was about trying to tidy up the appendices, so we were not seeking to regulate something which really was not a valid taxonomic species.¹⁷

Removing extinct species

4.15 A number of species believed to be extinct were removed from Appendix I. The species were:

- *Thylacinus cynocephalus* (Thylacine);
- *Onychogalea lunata* (crescent nail-tail wallaby);
- *Caloprymnus campestris* (buff-nosed rat-kangaroo);
- *Chaeropus ecaudatus* (pig-footed bandicoot); and
- *Macrotis leucura* (lesser rabbit-eared bandicoot).¹⁸

4.16 In addition, two species believed to be extinct were removed from Appendix II. The species were:

- *Rheobatrachus silus* (southern gastric-brooding frog); and
- *Rheobatrachus vitellinus* (northern gastric-brooding frog).¹⁹

4.17 The species were removed as they are presumed extinct and do not meet the biological and trade criteria for listing on the Appendices.²⁰

17 Ms Deb Callister, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 6.

18 NIA, para 19

19 NIA, para 20

20 NIA, para 19

Manta ray species

4.18 Manta ray species (currently including *Manta birostris* and *Manta alfredi*) were listed in Appendix II. Australia is a Range State for manta rays, but manta rays are not targeted nor taken as a by-product in Australian fisheries. According to the NIA, the listing may have positive implications, as there are tourism industries in Australia focused on diving and snorkelling with these species.²¹

Shark species

4.19 A number of shark species have now been included in Appendix II, including:

- *Carcharhinus longimanus* (oceanic whitetip shark);
- *Lamna nasus* (porbeagle shark); and
- *Sphyrna lewini*, *S. mokarran*, and *S. zygaena* (scalloped, great and smooth hammerhead sharks).²²

4.20 According to the NIA, with the exception of the hammerhead sharks, none of these species is directly targeted in Australian fisheries.²³

4.21 Hammerhead sharks are taken in much larger numbers than the other sharks subject to this listing, particularly in Queensland, the Northern Territory and Western Australia.²⁴

4.22 Exports of any of the listed sharks will in future require an export permit underpinned by a non-detriment finding, which will need to be undertaken by the Department.²⁵

4.23 At present, Australian fisheries management authorities have some difficulty in determining the take of each of these species. When shark is exported from Australia it is coded generically, for example as 'shark fins' or 'shark mixed.'²⁶

21 NIA, para 21.

22 NIA, paras 22-26.

23 NIA, paras 22-24.

24 NIA, para 26.

25 NIA, para 22.

26 Mr Geoff Richardson, Assistant Secretary, Marine Biodiversity and Biosecurity Branch, Wildlife Heritage and Marine Division, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 5.

- 4.24 The listing of the shark and manta ray species is unusual because, unlike all the other listings from the 16th Conference of the Parties, it will not come into effect until September 2014.²⁷
- 4.25 The Department is making use of the extended timeframe before the listing comes into effect to identify gaps in the information available on the quantity of each shark species that is exported, and work with State and Territory fisheries management authorities to address these gaps.²⁸

State and Territory opposition

- 4.26 The States and Territories where the bulk of these shark species are commercially fished (Western Australia, the Northern Territory, and Queensland) had, during consultation on the changes proposed for the 16th Conference of the Parties, indicated their opposition to the listing of the shark species. In general, the grounds for their opposition related to the fact that the species were either abundant, or were sustainably fished, within the waters of these States and Territories.²⁹
- 4.27 While not disagreeing with the claims of the State and Territory fisheries management authorities, the Australian Government nevertheless supported the listing of these species because:

...we are looking at not just the state of the Australian population of these particular stocks but the global context. So while we consult and we obviously are interested in and need to take into account the views of our state governments, we then have to weigh that up against the scientific evidence of the global population informing the view that we take to the conventions. We are not just voting on what the population is in Australia; we are voting on what the population is in the international context and whether it meets the requirements that CITES has for listing on its particular appendices... As I said earlier, because something is CITES Appendix II listed does not mean that zero export can happen. It actually is export that needs to be done in conjunction

27 Mr Geoff Richardson, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 5.

28 Mr Geoff Richardson, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 5.

29 NIA, para 61.

with a non-detriment finding about the level of take within Australian waters.³⁰

Consultation

- 4.28 The Committee has in the past been critical of the Department's consultation processes, particularly in relation to the listing of shark species in multilateral conservation treaties. In Report 111, the Committee reviewed the *Amendments to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals*, which involved the listing of shark species in Appendix II of that Convention.³¹
- 4.29 The Committee received over 40 submissions to that inquiry, including many from recreational fishing groups and individuals opposed to the listing of those species. One of the most significant grounds for opposition was the lack of consultation with people involved in recreational fishing.³²
- 4.30 Before the end of that inquiry, the Department told the Committee that the Minister for the Environment, Heritage and the Arts had announced that the Government would move to introduce legislation to ensure that the listing of sharks in Appendix II of the Convention on Migratory Species would not affect recreational fishing activities in Australia.³³
- 4.31 The Committee was keen to ensure that appropriate levels of consultation on the proposals before the 16th Conference of the Parties had occurred prior to the Conference.
- 4.32 In relation to recreational fishing, the Department was able to demonstrate consultation:

...in the lead-up to this and in formulating our position against these nominations we did write out to a number of recreational fishing bodies... The few that responded basically said that they did not believe that this would impact on their constituents in any way.³⁴

30 Ms Deb Callister, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 4.

31 Joint Standing Committee on Treaties, *Report 111*, 21 June 2010, p 4.

32 Joint Standing Committee on Treaties, *Report 111*, 21 June 2010, p 7.

33 Joint Standing Committee on Treaties, *Report 111*, 21 June 2010, p 10.

34 Mr Geoff Richardson, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 3.

4.33 The Department also noted that:

...the CITES convention only regulates international trade, so it does not actually impact at all on how the species is taken by the recreational industry in Australia. The listing of the porbeagle under CITES will not impact on the level of recreational take.³⁵

4.34 In relation to commercial fishing, the Department also advised that:

...we did quite a lot of consultation, both with fishers themselves and with state management bodies around the country, and the Australian Fisheries Management Authority for Commonwealth fishers... it is important that it is understood that... being appendix 2 listed does not mean zero export; it means that export must be done with a permit from an approved source, where the approved source is one where a non-detriment finding has been made that the arrangements in place for the level of take of those species is sustainable from Australian waters. The delay of 18 months before these arrangements come into effect – they will not come into effect until September 2014 – gives SEWPaC³⁶, the management authorities and the industry itself the time it takes in which to put in place the arrangements to support a non-detriment finding where that is appropriate.³⁷

Regulation of international trade

4.35 The Conference of the Parties also adopted a Resolution for the better regulation of international trade in species.³⁸ This may require an amendment to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in the future, to reflect the agreed procedures for implementing the Convention in relation to listed specimens harvested in international waters.³⁹

4.36 According to the NIA:

Since the Convention came into force 40 years ago, Parties have disagreed on whether specimens listed under the Convention

35 Ms Deb Callister, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 3.

36 The Department's abbreviation of its name.

37 Mr Geoff Richardson, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 24 June 2013, p. 3.

38 Resolution Conf. 14.6 (Rev CoP16) on 'Introduction from the Sea'.

39 NIA, paras 30- 31.

which are harvested on the high seas are the responsibility of the port State where the catch is landed, the flag State of vessel registration, or the chartering State in instances where a vessel 'rental' agreement is in place.⁴⁰

- 4.37 The agreed resolution represents a combination of each of these scenarios, which allows for transparency, monitoring and review. It includes clear delineation of which State holds responsibility for making non-detriment findings and issuing Convention documents.⁴¹
- 4.38 Domestic regulatory amendments may be required to reflect the intent of this Resolution such that in order for an Australian vessel to fish on the high seas and land its catch in the port of another State, a Convention 'export permit' would be required from Australia's Convention Management Authority, rather than an 'Introduction from the Sea certificate'.⁴²

Implementation

- 4.39 Under CITES Article XV(1)(c), amendments to the Appendices automatically enter into force 90 days after the meeting at which they are agreed unless a party lodges a reservation.⁴³ Consequently, with the exception of the amendments relating to the listing of manta ray and shark species discussed above, these amendments entered into force for Australia on 12 June 2010.⁴⁴
- 4.40 The Minister for Sustainability, Environment, Water, Population and Communities wrote to the Committee on 19 February 2013,⁴⁵ informing of the proposed amendments to CITES to be debated at the 16th Conference of the Parties.
- 4.41 On 16 May 2013, the Minister further advised that the amended Appendix I and II would enter into force 90 days after the Conference, and

40 NIA, para 31.

41 NIA, para 31.

42 NIA, para 31.

43 Article XV (3) provides that reservations may be made in respect to a particular amendment during that 90 day period see NIA, para. 2.

44 NIA, para. 2.

45 Included in papers for the Committee's Meeting 53 of 12 March 2013.

requested the Committee consider the treaty actions prior to dissolution of the Parliament.⁴⁶

- 4.42 CITES is implemented in Australia via the EPBC Act, which requires the Minister to establish a list of CITES species for the purposes of the Act. This list now contains the most recent amendments.⁴⁷

Conclusion

- 4.43 As amendments to CITES enter force automatically (and, for the most part, have already done so), it is not necessary for the Committee to make a recommendation on these amendments.
- 4.44 Nevertheless, the Committee supports the amendments made by the 16th Conference of the Parties and commends the Department's improved consultation with stakeholders, including the Minister's regular advice to the Committee on the matters being considered by the Conference.

46 Included in papers for the Committee's Meeting 58 of 5 June 2013.

47 NIA, para. 20.

