

EXPLANATORY STATEMENT 11 OF 2009

AMENDMENT, ADOPTED AT BERGEN IN APRIL/MAY 2009, TO ANNEX 1 OF THE AGREEMENT ON THE CONSERVATION OF ALBATROSSES AND PETRELS (ACAP) OF 19 JUNE 2001 [2004] ATS 5

Practical and legal effect

1. The treaty action is Resolution 3.1 (2009), adopted by the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels (ACAP), which amends the list of species contained in Annex 1 of that Agreement. Annex 1 lists all species to which the Agreement, including conservation measures as adopted by the Meeting of the Parties, applies. The amendments add three northern hemisphere albatross species to the Annex – short-tailed albatross *Phoebastria albatrus*, Laysan albatross *P. immutabilis*, and black-footed albatross *P. nigripes*. The current spelling of *Thalassarche melanophrys* is also amended to *Thalassarche melanophris* following the decision by the International Commission on Zoological Nomenclature.

2. The practical, financial and legal effect of these amendments for Australia is negligible. The northern hemisphere albatrosses rarely overlap with fisheries within Australian jurisdiction and their inclusion under Annex 1 of ACAP is not expected to require any significant change to Australia's negotiating positions in regional fisheries management organisations of which Australia is a member, nor any changes to the practices of Australian fishers.

Nature and timing of proposed treaty matter

3. After consideration of the need for these amendments by the ACAP Advisory Committee in 2007 and 2008, Australia, the United Kingdom and South Africa submitted a draft resolution to the third Meeting of the Parties, held in Norway from 26 April to 1 May 2009. Parties adopted the Resolution (Attachment A) pursuant to Article XII(5) of ACAP, which requires amendments to annexes to be adopted by a two-thirds majority of Parties.

5. In accordance with Article XII(5) of ACAP, these amendments to Annex 1 entered into force on the ninetieth day after their adoption, which is 29 July 2009. Article XII(6) allows any Party to enter a reservation to an amendment within that ninety day period—in which case, the amendment will enter into force for all other Parties on the ninetieth day.

Reasons for Australia to take the proposed action relating to the treaty matter

6. Australia's endorsement of the Resolution is consistent with Australia's active participation in ACAP. The listing of the three species will importantly expand ACAP's coverage to northern hemisphere species, increasing the number of countries eligible to join ACAP. This could result in an increased number of Parties to ACAP, increasing support for the conservation of both northern and southern hemisphere albatrosses and petrels.

Implementing legislation

7. No legislative changes are needed to implement the proposed treaty action.