

National Interest Analysis [2012] ATNIA 1

with attachment on consultation

**Amendments to Appendices I and II to the
Convention on the Conservation of Migratory Species of Wild Animals
(Bonn, 23 June 1979)**

done at Bergen on 25 November 2011

[2011] ATNIF 32

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

**Amendments to Appendices I and II to the *Convention on the Conservation of Migratory Species of Wild Animals* (Bonn, 23 June 1979)
done at Bergen on 25 November 2011
[2011] ATNIF 32**

Nature and timing of proposed treaty action

1. The proposed treaty action amends Appendices I and II to the *Convention on the Conservation of Migratory Species of Wild Animals*, done at Bonn on 23 June 1979 ('the Convention', [1991] ATS 32). The proposed amendments were adopted by the 10th Conference of the Parties to the Convention, held in Bergen, Norway, from 20 to 25 November 2011. The proposed amendments list five additional species of migratory animals in Appendix I and three additional species in Appendix II. 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. Australia does not propose to lodge a reservation to the proposed amendments. Accordingly, as the proposed amendments were adopted on 25 November 2011, they will enter into force for Australia on 23 February 2012 without further treaty action. Given the timing of the meeting of the Conference of the Parties at the end of the 2011 Parliamentary year, this is the earliest opportunity to table this National Interest Analysis.

Overview and national interest summary

3. Australia is a Range State for two species that were added to Appendix I and Appendix II to the Convention: the giant manta ray (listed on both Appendix I and II), and the eastern curlew (listed on Appendix I). A Range State is defined in Article I of the Convention as a State that exercises jurisdiction over any part of the range of a migratory species, or a State whose flag vessels take that migratory species outside national jurisdictional limits. Australia exercises jurisdiction over part of the range of the giant manta ray and the eastern curlew and so has obligations in relation to these species. The proposed treaty action is in the national interest as Australia is committed to the international protection and conservation of migratory species and to the national protection of such species whilst they are located in, or pass through, areas within Australia's jurisdiction.

Reasons for Australia to take the proposed treaty action

4. The Convention entered into force generally on 1 November 1983 and Australia has been a Party since 1 September 1991. The Convention seeks to conserve terrestrial, avian and marine species that migrate across or outside national jurisdictional boundaries. Parties to the Convention must protect migratory species listed on Appendices I and II that live within, or pass through, their jurisdiction.

5. 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 conditions set out in Article I (1) (c) 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.

6. 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.

7. As a Range State for both the giant manta ray and the eastern curlew, Australia has obligations with regard to these species.

8. The giant manta ray (*Manta birostris*), the largest living ray, has a circumtropical and also semi-temperate distribution throughout the world's major oceans. However, within this broad range, actual populations appear to be sparsely distributed and highly fragmented. Currently this species has a high value in international trade, and directed fisheries exist that target this species in what is considered to be unsustainable numbers. The rate of population reduction appears to be high in several regions: as much as 80% over the last three generations (approximately 75 years), and globally a decline of more than 30% is strongly suspected. Sustained pressure from fishing (both directed and bycatch) has been isolated as the main cause of these declines. The giant manta ray occurs in tropical, sub-tropical and temperate waters of the Atlantic, Pacific and Indian Oceans, and occurs in Australian waters above approximately latitude 35°S.

9. The eastern curlew (*Numenius madagascariensis*) is a large migratory wader that breeds in Russia and north-eastern China, but its distribution is poorly understood. The eastern curlew is a common passage migrant in Japan, the Republic of Korea, China and Borneo, and is rarely recorded moving through Thailand and the Malay Peninsula. During the non-breeding season a few birds occur in southern Korea and China, but most spend the non-breeding season in north, east and south-east Australia. Within Australia, the eastern curlew primarily has a coastal distribution. The species is found in all states, particularly the north, east and south-east regions, including Tasmania. Habitat loss throughout its global range is probably the primary threat to the species, although it is difficult to ascertain whether declines seen at large reclaimed inter-tidal sites such as Saemangeum (in the Republic of Korea) represent true declines, or whether the birds have simply been displaced. Further threats may include disturbance at the nesting and feeding sites, direct persecution throughout its range, and a decrease in the availability of food due to pollution at stopover points in the Republic of Korea.

10. The eastern curlew was included in Appendix II to the Convention at its inception in 1979. As such, the eastern curlew is already listed as migratory under Australian legislation, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), and is also subject to international cooperative conservation efforts under the East Asian-Australasian Flyway Partnership, of which Australia is a founding and active partner.

11. In addition to the two species for which Australia is a Range State, a number of other species were added to the Appendices to 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

12. 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)). Parties shall also endeavour to conclude agreements for the conservation and management of individual migratory species listed in Appendix II (Article II(3)(c)).

13. Article III (1) of the Convention provides that Appendix I shall list migratory species which are endangered. Parties that are Range States are required to endeavour to take specific measures to conserve the species and its 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.

14. Pursuant to Article IV of the Convention, 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 extend 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 having an unfavourable conservation status (Article IV(3)). Article V provides guidelines for such agreements.

15. 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

16. In order to meet the international obligations that arise for Australia as a Range State for the giant manta ray, listed on Appendix I to the Convention, Australia must 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.

17. With the addition of the giant manta ray to Appendix II, Australia must cooperate in the development of multilateral conservation agreements where this will benefit the species listed. Australia is a signatory to the Memorandum of Understanding (MoU) on the Conservation of Migratory Sharks, which was developed under the Convention. Including the giant manta ray under the auspices of that MoU may be considered by signatories in the future.

18. Domestically, species listed on Appendices I and II are protected under the EPBC Act. Through listing the species as 'migratory' under the EPBC Act, it becomes an offence to kill, injure, take, trade, keep or move the species in Commonwealth waters. 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 Convention and for which Australia is a Range State under the Convention'. As a result of the listing of the giant manta ray on Appendices I and II to the Convention, the list of migratory species pursuant to section 209 of the EPBC Act needs to be amended to include this species. An amendment to the list of migratory species contained in the EPBC Act is an amendment of a legislative instrument. As noted in paragraph 10, the eastern curlew is already listed as migratory under the EPBC Act and, as such, no further action is required in relation to this species.

19. All provisions of the EPBC Act relevant to 'listed migratory species', in particular Parts 3 and 13, will apply to both the giant manta ray and the eastern curlew once the list has been amended to include the giant manta ray. Currently, those Parts apply to the eastern curlew.

Costs

20. The proposed 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 included in Appendices I and II of the Convention. The proposed amendments will not require any additional domestic management arrangements to be put in place for commercial and recreational fishing operations that may occasionally interact with the giant manta ray. Commercial fishers will be required to report any interactions that may occur with giant manta rays, as they are currently required to do for any listed migratory species.

Regulation Impact Statement

21. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

22. The triennial Conference of the Parties to the Convention amends Appendices I and II (to add 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. Article XI(5) provides that amendments to the Appendices shall enter into force 90 days after the meeting of the Conference of the Parties at which they were adopted, except for those Parties which have lodged a reservation under Article XI(6). Any future amendments to the Appendices will constitute a separate treaty action and will be subject to the domestic treaty making process.

Withdrawal or Denunciation

23. 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 may denounce the Convention by written notification to the Depositary at any time. Such denunciation would take effect twelve months after the Depositary has received the notification. Denunciation would be subject to the domestic treaty process.

Contact details

Marine Biodiversity Policy Branch

Marine Division

Department of Sustainability, Environment, Water, Population and Communities

ATTACHMENT ON CONSULTATION

**Amendments to Appendices I and II to the *Convention on the Conservation of Migratory Species of Wild Animals* (Bonn, 23 June 1979)
done at Bergen on 25 November 2011
[2011] ATNIF 32**

Consultation

24. The Department of Sustainability, Environment, Water, Population and Communities (the Department) undertook extensive consultation (commencing in August 2011) with relevant Commonwealth departments, State and Territory environment and primary industries counterpart agencies, environmental non-government organisations (NGOs) and commercial and recreational fishing stakeholders, seeking their views on the proposed amendments to the Appendices to the Convention prior to the 10th Conference of Parties in November 2011.

25. All Commonwealth departments consulted were supportive of the proposed amendments, as were all State and Territory environment and fisheries management agencies that responded to the Department. The Departmental correspondence noted that if feedback was not received within a particular timeframe, it would be understood that the proposed amendments were supported. New South Wales did not provide a response.

26. The following commercial and recreational fishing organisations were consulted in the lead-up to the Conference of Parties:

- Commonwealth Fisheries Association
- Game Fishing Association of Australia
- Recfish Australia
- Australian National Sportfishing Association
- Boating and Fishing Council
- National Seafood Industry Alliance.

Broad support was received from a number of key fishery stakeholders, who noted that their members did not target the giant manta ray.

27. The following conservation NGOs were consulted on the proposed amendments:

- Migratory Wildlife Network
- Humane Society International
- Australian Marine Conservation Society
- Whales Alive
- World Wide Fund for Nature
- International Fund for Animal Welfare
- Wilderness Society

- Birds Australia
- Wetlands International
- Australasian Wader Studies Group
- Whale and Dolphin Conservation Society.

Broad support was received from a number of conservation NGOs with regard to the proposed amendments.

28. As is evidenced from the information outlined above, extensive national consultation occurred on the proposed species nominations prior to the 10th Conference of Parties, with relevant Commonwealth departments, State and Territory agencies, non-government conservation organisations and fishing industry stakeholders all supportive of the proposals.