

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

## Background

- 2.1 The Convention on International Trade in Endangered Species of Wild Fauna and Flora<sup>1</sup> (CITES) regulates the international movement (export, re-export and import) of a defined list of fauna and flora species. It arose from recognition that international cooperation is essential to protect and conserve species from over-exploitation due to international trade. Australia has been a party to the Convention since 27 October 1976.<sup>2</sup>
- 2.2 CITES divides fauna and flora species into three appendices, with the international movement of the species on each appendix attracting a different level of regulation. Appendix I includes species threatened with extinction and international commercial trade is generally prohibited.<sup>3</sup> This is the highest level of protection afforded under CITES.

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1 Full Title: Amendments, agreed at The Hague, Netherlands, in June 2007, to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973.

2 National Interest Analysis (NIA), para 8.

3 NIA, para 5.

- 2.3 Appendix II includes species which, although not threatened with extinction at this time, may become so unless trade is regulated. International commercial trade in these species is permitted, but only with an export permit. The exporting country must assess that trade will not be detrimental to the survival of the species in the wild before approving export.<sup>4</sup>
- 2.4 Appendix III includes species which any party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation and as needing the cooperation of other parties in the control of trade.<sup>5</sup>
- 2.5 CITES is implemented within Australia via the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act).<sup>6</sup>

## The Amendments

- 2.6 Amendments to Appendices I and II of the Convention were adopted by the Conference of Parties in June 2007 and entered into force for Australia on 13 September 2007. These amendments alter Appendices I and II through:
- the removal of some plant species from Appendix I and II;<sup>7</sup>
  - the transfer of one species of alligator and one species of beargrass from Appendix I to Appendix II, and the transfer of the slow loris genus and one species of lizard from Appendix II to Appendix I;<sup>8</sup>
  - the addition of two species of gazelle and all but one species of the sawfish family Pristidae to Appendix I, and the addition of one species of freshwater sawfish, one species of European eel and one species of brazilwood to Appendix II;<sup>9</sup> and

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4 NIA, para 25.

5 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 36.

6 NIA, para 26.

7 *Agave arizonica* (Arizona agave) was deleted from Appendix I and all species of the genera *Pereskia*, *Peresklopsis* and *Quiabentia* (all types of cactus) and the species *Shortia galacifolia* (Oconee Bells) were deleted from Appendix II. NIA, para 12.

8 The species *Melanosuchus niger* (black caiman) and *Nolina interrata* (Dehesa beargrass) were transferred from Appendix I to Appendix II. All species of the genus *Nycticebus* (slow lorises) and the species *Heloderma horridum charlesbogerti* (a venomous lizard) were transferred from Appendix II to Appendix I. NIA, para 12.

9 The species *Gazella cuvieri* (Cuvier's gazelle) and *Gazella leptoceros* (rhinoceros gazelle) and all species in the family Pristidae (sawfish) (except the species *Pristis microdon*) were added to Appendix I. The species *Pristis microdon* (freshwater sawfish), *Anguilla anguilla*

- amendments to the annotations of some taxa already listed, including the African elephant and Orchidaceae genera.<sup>10</sup>

2.7 While the amendments change the list of species to which the export and import rules of CITES must be applied, they do not change the substantive obligations under CITES. Australia is still obliged to prohibit and monitor trade in listed species in accordance with the provisions of the Convention.<sup>11</sup>

## Implementation

2.8 Amendments to the appendices of the Convention automatically come into force for all Parties 90 days after the Conference of Parties at which they were adopted, in accordance with Article XV(1)(c), unless parties enter a reservation.<sup>12</sup>

2.9 As Australia did not lodge a reservation, the amendments have already entered into force and are implemented through Section 303CA of the EPBC Act. Section 303CA obliges the Minister to establish a list of CITES species that reflects the content of the three appendices. The list has been amended to reflect the most recent amendments.<sup>13</sup>

## Implications for Australia

### Freshwater sawfish

2.10 The most significant impact of the amendments for Australia arises from the listing on Appendix I and II of several species of sawfish.<sup>14</sup>

2.11 All species of sawfish with the exception of *Pristis microdon* (freshwater sawfish) were listed on Appendix I, affording them the

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(European eel) and *Caesalpinia echinata* (brazilwood) were added to Appendix II. NIA para 12.

10 NIA, paras 16 to 20.

11 NIA, para 22.

12 NIA, para 2.

13 NIA para 26.

14 NIA, para 29.

highest level of protection provided under CITES. Freshwater sawfish was listed on Appendix II with the annotation:

for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable aquaria for primarily conservation purposes.<sup>15</sup>

- 2.12 Prior to adoption of these amendments, freshwater sawfish was already regulated as a vulnerable species under the EPBC Act, with controls imposed upon its export.<sup>16</sup>
- 2.13 In its submissions and in evidence to the Committee, the Humane Society International (HSI) expressed concern about the manner in which the listing of the sawfish species was managed by the Australian delegation to the Conference of Parties and the outcomes that were negotiated. These concerns included:
- The lack of support by the Australian delegation for listing the entire family of sawfish on Appendix I, despite it being considered 'critically endangered' by the International Union for Conservation of Nature (IUCN);
  - The nature of the alternative proposal presented by Australia for the listing of freshwater sawfish on Appendix II, including the language used for the annotation, which benefits a single Australian trader;
  - The negligible conservation outcome for the species from display in aquaria; and
  - Damage to Australia's reputation in international wildlife conservation.<sup>17</sup>

### **Listing of freshwater sawfish on Appendix II**

- 2.14 HSI told the Committee that the listing of the entire family of sawfish on Appendix I had widespread international support. HSI considered the proposed listing was 'sabotaged by Australia for the sake of a single trader', damaging Australia's reputation as a leader in international conservation issues in the process.<sup>18</sup>

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15 NIA, para 14.

16 NIA, para 15.

17 Humane Society International, Submission No. 2.

18 Humane Society International, Submission No. 2, p. 2.

- 2.15 HSI also noted that the language used for the annotation is language not previously incorporated in or defined by either CITES or Australian legislation. HSI considered that the annotation could create a damaging precedent for future proposals:

It is creating a loophole ... we could see proposals in the future to downgrade [species] with similar annotations.<sup>19</sup>

- 2.16 The Committee asked the Department of the Environment, Water, Heritage and the Arts (the Department) to comment on the listing. Representatives of the Department informed the Committee that a two thirds majority of parties present and voting at the Conference of the Parties was required to achieve the outcome and that:

I think it is fair to say that there was agreement to Australia's argument that our freshwater sawfish populations are more robust than those in other countries. I think that we would agree that other countries' populations have in many cases been decimated. Perhaps partly because our populations are in very wild and fairly inaccessible country, ours have been less subject to ravage. Therefore, the argument was that they were more robust and that small exports for the purposes of the annotation would not be detrimental to the survival of the species.<sup>20</sup>

- 2.17 In addition, the Department considered that it had both the experience and sufficiently strict requirements for wildlife export to adequately interpret the terms used in the annotation:

...that kind of language – 'appropriate' and 'acceptable' – is what we are used to dealing with all the time.<sup>21</sup>

- 2.18 The Department also stated:

...the annotation is there for all countries to utilise if indeed they can. However, it was very much thought in discussions at the COP itself last year that only Australia would be able to do a non-detriment finding ... for other countries which have in fact decimated their populations, it was felt that that would be virtually an impossible task.<sup>22</sup>

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19 Ms Nicola Beynon, *Transcript of Evidence*, 8 May 2008, pp. 34-35.

20 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 37.

21 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, pp. 37-38.

22 Ms Kerry Smith, *Transcript of Evidence*, 29 July 2008, pp. 59-60.

- 2.19 In its evidence, the sole Australian company trading in freshwater sawfish, Cairns Marine, stated that it considered the annotation effectively increased protection of the species as for all other purposes other than aquaria display, the species would be treated as if listed on Appendix I. In addition, the exporter would be required to demonstrate that the specimen was being exported 'for primarily conservation purposes' putting the onus on the Australian Government to make this determination.<sup>23</sup>
- 2.20 Cairns Marine pointed out that the animals could only go to public aquaria that met certain requirements through an ambassador agreement in terms of the education, signage and information they provide.<sup>24</sup> In addition:

Due to the excellent survivability of Sawfish in Public Aquaria, demand for them has always been limited. There are a limited number of Aquariums large enough and with the facilities to provide for, a species that attains great size in relatively short periods of time. In the year preceding the last CITES conference, there were no Sawfish of any species exported from Australia.<sup>25</sup>

### Export of freshwater sawfish

- 2.21 The Committee notes that six sawfish were exported in 2007, with the Department basing its decision to allow the export upon research by the CSIRO and advice from one of its scientists that it would be sustainable to take up to 10 sawfish annually from the wild.<sup>26</sup>
- 2.22 HSI told the Committee:

There is very little information about the species, to be able to determine that trade can take place sustainably. It is naturally rare. It has been threatened by fishing, particularly net fishing. It is a species that lives up estuaries and river systems. It is vulnerable in terms of its biology. It is from the large shark family and typically this class of animals is slow to breed. They do not cope with hunting and pressure; they are slow to breed and cannot replenish their numbers. So we

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23 Cairns Marine, Submission No. 9, pp 2, 6 -7; Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p.41.

24 Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p. 40.

25 Cairns Marine, Submission No. 9, p. 20.

26 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 38, Submission No. 6, pp.1- 2.

agreed with everyone who said that this is an animal that is not appropriate for trade.<sup>27</sup>

- 2.23 Research undertaken by the CSIRO and others has suggested that Australian populations are more robust than the global population.<sup>28</sup> Mr Lyle Squire of Cairns Marine told the Committee that, based upon his numerous field trips across around 25 major river systems in northern Queensland:

It is our belief, from what we have seen, that the number of sawfish per river system is measured in thousands rather than hundreds.<sup>29</sup>

- 2.24 Further:

...the microdon have a large area in which they cannot be impacted upon by fishing. Given [their] life history parameters, the range that we are operating in and the fact that there are still good populations of them in the Gulf of Carpentaria, no, I do not believe that we are impacting upon them at all. I am absolutely confident that we are not.<sup>30</sup>

- 2.25 The Department informed the Committee that trade that has occurred since Conference of Parties was implemented in line with CITES requirements, which included preparation of a non-detriment finding, even though the amendments had not yet come into force. In addition, public consultation was undertaken on both the non-detriment finding and the ambassador agreement that is required for the export of Australian listed species.<sup>31</sup> Further:

The comments of HSI and others were taken into account and, indeed, the ambassador agreement was changed on the basis of that.<sup>32</sup>

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27 Ms Nicola Beynon, *Transcript of Evidence*, 8 May 2008, p. 32.

28 Stevens, J.D., R.D. Pillans and J. Salini, 2005, *Conservation Assessment of Glyphis sp. A (speartooth shark), Glyphis sp. C (northern river shark), Pristis microdon (freshwater sawfish) and Pristis Zijsron (green sawfish)*, Exhibit No. 5.

29 Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p. 44.

30 Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p. 45.

31 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 37. The Committee notes that the requirement for the Department, the exporter and importer of a CITES species to enter into an ambassador agreement about the treatment and disposal of the animal and any progeny goes above and beyond the requirements of CITES.

32 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 37.

2.26 HSI stated however that:

...the advice that came from CSIRO was not sufficiently backed up by some genuine attempt to determine if the trade would be sustainable.<sup>33</sup>

2.27 HSI considered that there should be a more independent process for the preparation of non-detriment findings with wider verification among researchers about claims that are made.<sup>34</sup>

### Conservation benefits

2.28 The Department and HSI expressed differing views to the Committee about the conservation benefits to be derived from the display of the sawfish in aquaria. HSI argued that the benefit back to Australia is 'negligible and intangible'.<sup>35</sup>

2.29 However, the Department considered:

...that education is a legitimate and, in fact, very important aspect of conservation.<sup>36</sup>

2.30 Similarly, Cairns Marine submitted that the public display of animals from managed collections and accompanied by appropriate educational material generates interest and conservation will that is then carried forward into research and management of interaction with the species.<sup>37</sup>

2.31 Mr Lyle Squire argued that not only has a great proportion of the information about the biological aspects of the animals come from captive animals in public aquaria but it is overseas aquariums that have the sufficient size and resources to implement breeding programs. In the United States, for example, aquariums enjoy enormous rates of visitation and their research programs are not reliant upon government funding.<sup>38</sup>

2.32 This view was supported by Dr Jamie Seymour of James Cook University who stated that:

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33 Ms Nicola Beynon, *Transcript of Evidence*, 29 July 2008, p. 53.

34 Ms Nicola Beynon, *Transcript of Evidence*, 29 July 2008, p. 53 and 54.

35 Ms Nicola Beynon, *Transcript of Evidence*, 8 May 2008, p. 33.

36 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 38.

37 Cairns Marine, Submission No. 9, pp. 12-17; Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, pp. 40-41.

38 Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p. 41; Cairns Marine, Submission No. 9, p. 15.



My main concern with restricting the collection of these animals for the aquarium trade is that, with no live specimens present for people to see, this group of animals will drop off the radar into obscurity. Presently the chances of anyone seeing these animals in the wild is extreme at best. If they can not be captured to display in public aquaria, where will the general public see them?<sup>39</sup>

- 2.33 A number of submitters told the Committee that without the ability for Cairns Marine to export a small number of sawfish, a number of research projects would be adversely affected.<sup>40</sup> Cairns Marine stated:

Without our self-funded involvement with the species, this research simply would not occur.<sup>41</sup>

## Conclusions and recommendations

- 2.34 The most recent amendments to the CITES appendices raised a number of issues, specifically in relation to the conservation of freshwater sawfish.
- 2.35 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. It also considers the listing may potentially undermine CITES by creating a precedent for other CITES listed species and introducing an unwarranted complexity to the CITES listing process. Further, while the Committee notes that it was considered at the Conference of Parties that other countries would be unable to demonstrate a non-detriment to their wild populations by allowing export, the Committee is concerned about the effect this listing might have in other countries where populations are at much greater threat.

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39 Dr Jamie Seymour, Submission No. 12, p. 2.

40 Cairns Marine, Submission No. 9, p. 9; Professor Shaun Collin, Submission No. 10, pp. 1-3; Dr Stirling Peverell, Submission No. 14, p. 2; Dr Jamie Seymour, Submission No. 12, p. 2.

41 Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p. 39.

- 2.36 While the listing in its current form appears unlikely to adversely affect Australian populations of sawfish and may provide long term benefits in terms of research into the species, the Committee considers that the Department of the Environment, Water, Heritage and the Arts should continue to monitor and assess the effect of both the listing and the annotation upon freshwater sawfish populations.
- 2.37 The Committee is concerned about the inclusion of parties with an obvious commercial interest in the outcome of negotiations on an Australian delegation. The Committee notes that both the HSI and Cairns Marine were members of the Australian delegation to the most recent meeting. It also notes that the Australian Government position was developed at a whole-of-government level and documented in the Australian delegation brief prior to the meeting. The Committee acknowledges that all delegates agree to abide by the Australian Government brief whether they agree with it or not, and that the inclusion of external stakeholders on delegations is common for all developed countries.<sup>42</sup>
- 2.38 However, the Committee considers that the inclusion in a delegation of parties with a commercial or other direct interest in the meeting outcomes presents a conflict of interest and that the Government should review its policy on this issue.
- 2.39 The Committee was unconvinced by the evidence it received as to the scientific basis for the decision to allow the export of six specimens in 2007. Given the uncertainty surrounding population numbers and its critically endangered status internationally, the Committee considers a more rigorous assessment should have been undertaken to determine what level of trade, if any, would be sustainable. The Committee considers that the Government should implement a more formalised process of independent scientific verification in its assessment of non-detriment findings. This includes making non-detriment findings and ambassador agreements for CITES listed species automatically subject to public consultation.
- 2.40 Notwithstanding its concerns, the Committee notes that the listing of the entire family of sawfish on either Appendix I or II of the Convention provides a much higher level of international protection to sawfish species than was previously the case. The Committee therefore supports the Amendments to Appendices I and II of the

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42 Ms Kerry Smith, *Transcript of Evidence*, 29 July 2008, p. 56.

*Convention on International Trade in Endangered Species of Wild Fauna and Flora*, subject to the recommendations below.

### **Recommendation 1**

**The Committee recommends that the Australian Government monitor and assess the impact of trade in freshwater sawfish to determine whether the current listing, with annotation, on Appendix II of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* provides sufficient protection for the species.**

### **Recommendation 2**

**The Committee recommends that the Australian Government review its existing policies on the composition of delegations to CITES negotiations with a view to minimising conflicts of interest, whether real or perceived.**

**Further, the Committee recommends that the Australian Government review the policy of allowing the participation in delegations of parties with a commercial or other direct interest in negotiations.**

### **Recommendation 3**

**The Committee recommends that the Australian Government undertake a consultative and publicly accessible process for the assessment of non-detriment findings and ambassador agreements, including providing the opportunity for public comment by interested stakeholders.**

**Recommendation 4**

**The Committee recommends that the Australian Government review its existing assessment process under the *Environment Protection and Biodiversity Conservation Act 1999* for CITES listed species to provide for a more formalised process of independent scientific verification of the claims made by proponents in non-detriment findings.**