

Documents tabled on 12 March 2008:

National Interest Analysis [2008] ATNIA 8

with attachment on consultation

**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**

[2007] ATS 30

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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 [2007] ATS 30

Nature and timing of proposed treaty action

1. The treaty action is notification of amendments to Appendices I and II of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* [1976] ATS 29 (CITES) adopted by the 14th Conference of the Parties (CoP14), held from 3 – 15 June 2007 in The Hague, Netherlands, in accordance with paragraph 1 of Article XV of CITES.
2. Amendments to the Appendices automatically come into force for all Parties to the Convention 90 days after the Conference of the Parties at which they were adopted, in accordance with Article XV(1)(c). Parties may, however, enter a reservation with respect to a particular amendment in accordance with paragraph 3 of Article XV of CITES. As Australia has not lodged a reservation, the amendments automatically entered into force on 13 September 2007.
3. Based on information currently available, no Parties to CITES have registered Reservations for any amendments to Appendices I and II adopted at CITES CoP14. As such, the amendments entered into force for all Parties to CITES.

Overview and national interest summary

4. CITES includes lists of flora and fauna species (taxa) divided into three appendices, with the international movement of the species on each appendix attracting a different level of regulation. These amendments make various changes to the lists of species included in Appendices I and II. The amendments include:
 - the deletion of some taxa from the lists (one from Appendix I and four from Appendix II);
 - the transfer of some taxa from one list to the other (two from Appendix I to II and two from Appendix II to I);
 - the addition of some taxa to the lists (three to Appendix I and three to Appendix II); and
 - amendments to the annotations of some taxa already listed.
5. Listing on Appendix I means that international commercial trade in the species is generally prohibited, whilst listing on Appendix II means that international trade is regulated via a permit system. Ensuring that species are listed in the appropriate appendix is crucial to the effective operation of the Convention. It ensures that species are protected from over-exploitation whilst facilitating legal trade in specimens where the conservation status permits and avoiding burdensome regulation where it is not necessary.
6. Constantly updating the species in each list, taking into account changes to their respective conservation statuses, is critical. This is why a mechanism permitting timely entry into force of amendments to the Appendices has been included in the Convention.
7. The action is consistent with Australia's strong commitment to CITES, and to international cooperation for the protection and conservation of wildlife more generally.

Reasons for Australia to take the proposed treaty action

8. CITES is a multilateral environmental agreement that entered into force generally on 1 July 1975 and to which Australia has been a Party since 27 October 1976. It regulates 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.

9. Participation in CITES advances Australia's interests by promoting Australia as a leading environmental steward in its efforts to protect wild species from overexploitation due to trade. It also facilitates Australia's domestic conservation and trade interests by protecting native species from detrimental trade and aids legitimate wildlife trade into and out of Australia. CITES also provides a forum for international cooperation needed to regulate species of interest to Australia.

10. CITES includes lists of species in three appendices, with the international movement of the species on each list attracting a different level of regulation. CITES provides a mechanism for strict regulation of international trade in endangered species via Appendix I, and for regulating and monitoring trade in species that may become endangered if trade is not regulated via Appendix II. A Party may also identify species or populations within its jurisdiction where the cooperation of other Parties is needed to assist in regulating international trade, and to avoid undermining the domestic regulation. These species are included in Appendix III.

11. As noted, timely amendments to the CITES appendices ensures that species are regulated appropriately according to current conservation requirements. This is crucial to the effective operation of the Convention.

Amendments to listed species

12. The amendments make various changes to the lists of taxa included in Appendices I and II, as follows:

- The species *Agave arizonica* (Arizona agave) is deleted from Appendix I;
- All species of the genera *Pereskia*, *Pereskiaopsis* and *Quiabentia* (all are types of cactus), and the species *Shortia galacifolia* (Oconee Bells, a type of Diapensiaceae) are deleted from Appendix II;
- The species *Melanosuchus niger* (black caiman, a type of alligator) and *Nolina interrata* (Dehesa beargrass) are transferred from Appendix I to Appendix II;
- All species of the genus *Nycticebus* (slow lorises, a type of primate) and the species *Heloderma horridum charlesbogerti* (a venomous lizard) are transferred from Appendix II to Appendix I;
- The species *Gazella cuvieri* (Cuvier's gazelle) and *Gazella leptoceros* (rhin gazelle), and all species in the family Pristidae (sawfish) (except the species *Pristis microdon*) are added to Appendix I; and

- The species *Pristis microdon* (freshwater sawfish), *Anguila anguila* (European eel) and *Caesalpinia echinata* (brazilwood) are added to Appendix II.

Sawfish

13. All species in the family Pristidae (sawfish), except *Pristis microdon*, were listed under Appendix I as a result of a decline in population numbers due to key adverse impacts on sawfish from trade in fins, meat and rostrum (toothed ‘snout’). There is no significant commercial export from Australia in sawfish specimens as the genus is not targeted for non-live export and several Queensland and Northern Territory Fishery Codes of Conduct have incorporated “no-take” policies for sawfish into their codes of conduct.

14. There is a small level of international trade in live sawfish specimens for aquaria. To ensure the continuation of this trade, which promotes conservation education, Australia successfully proposed that one species from this genus, *Pristis microdon* (freshwater sawfish) be instead 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”. This will have the effect of allowing this trade to continue provided requirements for export of Appendix II listed specimens are met.

15. *Pristis microdon* is already regulated under Australia’s Environment Protection and Biodiversity Conservation Act 1999, and consequently the effect of the CITES listing will have relatively minor additional export requirements.

Amendments to annotations

16. Many of the species listed in the Appendices to CITES have interpretive annotations specifying: the populations of the species that are subject to the trade controls of CITES; and/or the parts or products derived from the species that are subject to the trade controls; and/or the circumstances under which trade is permitted.

17. Various amendments were made to the annotations for various taxa of flora and fauna. The details of these are set out in sub-paragraphs 2(h)–(l) in the attached text of the treaty action.

African elephant annotation

18. Under a compromise agreement amending the annotation for the Appendix II listed African elephant (*Loxodonta africana*), Botswana, Namibia, South Africa and Zimbabwe will be permitted to make a single sale of ivory in addition to the sale that was agreed in principle in 2002 and approved by the CITES Standing Committee in early June 2007. The combined sales will total 60 tonnes. The amendment will not change Australia’s import requirements for African elephant as Australia has a stricter domestic measure in place treating all African elephant specimens as if they were listed under Appendix I.

19. The ivory for the sales agreed to at CoP14 will consist of all government-owned stocks that have been registered and verified as of 31 January 2007. Each sale is to consist of a single shipment per destination and may only go to countries whose internal controls on ivory sales have been verified as being sufficient by the CITES Secretariat. Re-export from the importing country will not be permitted. The agreement stipulates that after these shipments have been completed no

new proposals for further sales from these four countries are to be considered by CITES during a "resting period" of nine years that will commence as soon as the one off sales have been completed.

Orchidaceae and other annotations

20. The amendment to the annotations for four Orchidaceae genera (*Cymbidium*, *Dendrobium*, *Phalaenopsis* and *Vanda*), of which certain specimens are exempt from CITES regulation, are minor and technical in nature, aimed at clarifying identification for Customs officers, and will have no additional regulatory implications. Additional minor amendments to existing annotations for Appendix II Orchidaceae species, and several other Appendix II listed plant species have also been included. Three *Cactaceae* species have been removed from Appendix II, and the amended annotation to *Hydrastis canadensis* (goldenseal) removes the exemption for powdered root.

Entry into force for Australia

21. The amendments to Appendices I and II following the 14th CITES Conference of the Parties are consistent with Australia's commitment to the conservation of species threatened by international trade. Therefore, Australia did not lodge a reservation under paragraph 3 of Article XV for any of the amendments, and they all entered into force for Australia on 13 September 2007.

Obligations

22. The amendments to Appendices I and II will not change the substantive obligations under CITES. As such, Australia will still be obliged to prohibit trade in the species included in Appendices I and II except in accordance with the provisions of CITES. The amendments will, however, change the list of species to which the export and import rules must be applied.

23. CITES provides different degrees of regulation of trade depending on the Appendix listing of the species, as outlined in the following paragraphs. Trade is defined as export, re-export, import and introduction from the sea.

24. International movement in species listed on Appendix I is subject to particularly strict regulation to ensure the survival of the species in the wild. International movement is possible only under limited circumstances and appropriate CITES documentation must accompany shipments.

25. International movement of species listed on Appendix II requires the determination by the country of export that the shipment will not be detrimental to the survival of the species in the wild. Regulation of Appendix II listed species is less restrictive than Appendix I, though appropriate CITES documentation is generally required before specimens can be moved internationally.

Implementation

26. CITES is implemented in Australia via the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Section 303CA of that Act requires the Minister to establish a list of CITES species for the purposes of the Act, which is to reflect the content from time to time of the three Appendices. Implementation of the current amendments to CITES has therefore required

the Minister's delegate to amend the list pursuant to subsection 303CA(9). The instrument amending the list under Section 303CA has been published in the Gazette, and registered on the Federal Register of Legislative Instruments. It is not a disallowable instrument (under Section 44 of the *Legislative Instruments Act 2003*).

Costs

27. The treaty action is not expected to impose any additional costs to Australia in complying with its obligations under CITES, nor will there be any significant effect on Australia's trade interests. Australia already has legislation and administrative arrangements in place to implement the provisions of CITES. The amendments to the Appendices will not require any new domestic agencies or management arrangements.

Sawfish

28. Minor impact for industry may result from the Appendix I listing of Pristidae species excluding *Pristis microdon*. Queensland and the Northern Territory are the only Australian jurisdictions that have EPBC Act approval for the export of sawfish specimens. Sawfish are not targeted by any Queensland or Northern Territory Fisheries except the Marine Aquarium Fisheries. Given the insignificant levels of sawfish by-product retention, the policy of the Queensland Government to encourage conservation of sawfish species and the incorporation of "no-take" policies into several Queensland and Northern Territory Fishery Industry Codes of Conduct, it is concluded that the prohibition on commercial sawfish export will impose minor, if any, additional costs on industry or regulating governments.

29. Only one company is engaged in the export of live Pristidae specimens. The company exports less than eleven live *Pristidae* specimens (including *P. microdon*) per year under the Queensland Marine Aquarium Fishery. Trade in Pristidae specimens makes up a very small proportion of profits for the company. This trade will not be able to continue in its entirety. However, the company will still be able to export *P. microdon* specimens provided it meets export requirements for Appendix II. As *P. microdon* is already regulated under the EPBC Act, export requirements will be similar to current requirements and incur minor additional cost relative to the value of live specimens.

Brazilwood

30. Brazilwood (*Caesalpinia echinata*) has been listed under CITES Appendix II, and is used for making bows for the violin family of instruments. The listing exempts finished products, such as bows, from CITES regulation so there will be no regulatory implications for musicians and traders in finished bows. Bowmakers will be required to obtain an export permit from the country of export, and \$30 import permits from the Department of the Environment and Water Resources (DEW) in order to import raw *Caesalpinia echinata* products.

Goldenseal

31. *Hydrastis canadensis* (goldenseal) is used in traditional medicines. The amendment to the annotation to remove the exemption for powdered root will require importers to obtain both a CITES export permit from the country of export and a \$30 import permit from DEW in order to

import powdered *Hydrastis canadensis* roots. Export (including re-export) will also require \$30 export permits from DEW and may also require import permits from the destination country.

Regulation Impact Statement

32. The then Department of the Environment and Water Resources has assessed the implementation of the Treaty against criteria in *The Best Practice Regulation Handbook*. This regulatory option has low impact on business and individuals or on the economy and a Regulation Impact Statement or Business Cost Calculator report is not required.

Future treaty action

33. Appendices I and II are amended from time to time in accordance with the provisions of Article XV of CITES. That is, amendments may be adopted by two thirds majority of the Conference of the Parties or through a postal procedure between meetings. Amendments to Appendices I and II then enter into force automatically 90 days following the meeting or the completion of the postal procedure for all Parties except those Parties that make a reservation.

34. The Convention itself (that is, other than the Appendices) can only be amended at an extraordinary meeting of the Conference of the Parties, pursuant to Article XVII. Such amendments are to be adopted by a two-thirds majority, and will enter into force for those Parties accepting it 60 days after two-thirds of the Parties have deposited an instrument of acceptance.

35. CITES does not expressly provide for the negotiation of future related legally binding instruments such as protocols or annexes.

36. Any future amendment to either Appendices I and II or the Convention more broadly will constitute a treaty action and will be subject to Australia's domestic treaty process, including consideration by JSCOT.

Withdrawal or denunciation

37. Australia may denounce CITES in accordance with Article XXIV, by written notification to the Depositary Government (Government of Switzerland) at any time. The denunciation takes effect twelve months after the Depositary Government has received the notification.

38. Any denunciation by Australia would constitute a treaty action and would be subject to the domestic treaty process.

Contact details

International Wildlife Trade
Approvals and Wildlife Division
Department of the Environment, Water, Heritage and the Arts.

ATTACHMENT ON CONSULTATION

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 [2007] ATS 30

Summary of outcomes

1. Following consultations with State and Territory agencies, the then Department of the Environment and Water Resources – now the Department of the Environment, Water, Heritage and the Arts - (the Department) concluded that this proposed action will have a minimal impact on the States and Territories. The impact will be the prohibition of commercial export of all sawfish (family: Pristidae), except *Pristis microdon*, that was not acquired prior to the listing coming into effect i.e. prior to 13 September 2007. Sawfish export status in range States/Territories is as follows: Western Australia requires the release of all sawfish specimens; sawfish are suspected to be extinct in New South Wales; and while several Queensland and Northern Territory Fisheries do have export approval, it is estimated that levels of take of sawfish are relatively minor.

2. The Department also consulted with relevant industry groups and Non-Government Organisations (NGOs) and concluded that the CITES listing will have a minor impact on industry. This is due to:

- insignificant levels of sawfish by-product retention;
- the policy of the Queensland and Northern Territory Governments to encourage conservation of sawfish species;
- the incorporation of “no-take” policies into several Queensland and Northern Territory Fishery Codes of Conduct; and
- the continued ability to trade domestically.

3. Only one company is engaged in the export of live Pristidae specimens. The company exports less than eleven live Pristidae specimens (including *P. microdon*) per year under the Queensland Marine Aquarium Fishery. Trade makes up a very small proportion of profits for the company. The company will no longer be able to export Pristidae species (excluding *P. microdon*). However, following consultation with the States and Territories, Australia successfully proposed at 14th Conference of the Parties (CoP14) that one species from this family, *Pristis microdon* (freshwater sawfish) be instead 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”. This will have the effect of allowing trade to continue as long as the export requirements for Appendix II listed species are met. As *Pristis microdon* is already regulated as a threatened species under the EPBC Act, new regulatory requirements following the CITES listing will be similar to current requirements with the added condition that a non-detriment finding be made to ensure proposed trade does not threaten the survival of the species in the wild.

Consultation process

4. From 1 March 2007, the Department advised, via letter and email, relevant government agencies, NGOs and industry groups of the upcoming CoP, and invited comments on the list of proposals for amendment to the Appendices, available on the CITES website. A consultation page was also established on the Department's website advising of the meeting and requesting comments from the public and interested groups.

5. An Inter-Departmental Committee meeting was held on 1 March 2007 providing relevant Commonwealth agencies the opportunity to identify items of interest for CoP14 for which they would provide input for the development of Australia's position. The following agencies were involved:

- Australian Government Department of Foreign Affairs and Trade (DFAT);
- Australian Government Department of Agriculture, Fisheries and Forestry (DAFF);
- Australian Fisheries Management Authority (AFMA);
- Australian Customs Service; and
- Other areas within the then Department of the Environment and Water Resources, including the Marine and Biodiversity Division.

6. The Minister for the Environment wrote to the then Chair of the Joint Standing Committee on Treaties on 10 April 2007 advising of the listing proposals and the automatic entry into force for those proposals that were agreed by CoP.

7. An NGO Round Table discussion was held on 17 April 2007 between the Department and key NGO representatives, including Humane Society International, The International Fund for Animal Welfare, TRAFFIC, and World Society for the Protection of Animals. Comments included support for the Appendix I listing of *Pristidae* (sawfish), and support for the 20 year moratorium on the sale of elephant ivory. These comments were incorporated into briefs and considered against scientific evidence about the conservation status of the species when negotiating positions were formed.

8. A brief on CoP14 issues was provided to the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) 18 April 2007 meeting.

9. Responses:

- Whole of Government positions were formed with DAFF, DFAT and AFMA.
- Comments were received from New South Wales, Victoria, Northern Territory, Western Australia, Queensland and Tasmania Governments. Input included both support and opposition to the proposed listing of *Pristidae* (sawfish) to Appendix I of CITES; and support for changes to the annotations for *Euphorbia* species (spurge), *Orchidaceae* species (orchids) and *Cactaceae* species (cacti). Comments were incorporated into briefs and were considered against scientific evidence about the conservation status of the species when negotiating positions were formed.

- The following NGOs provided detailed comments on amendment proposals for consideration by CoP14. Comments were included in delegation briefs, and were considered against scientific evidence about the conservation status of the species when negotiating positions were formed.
 - International Fund for Animal Welfare (IFAW), Humane Society International (HSI), Species Survival Network (SSN), TRAFFIC/IUCN Species Programme and Species Survival Commission, World Wide Fund for Nature (WWF), IWMC World Conservation Trust, and Safari Club International.
- Comments from members of the public were received and were considered against scientific evidence about the conservation status of the species when negotiating positions were formed.
- No comments were received from Timber Industry representative bodies.
- Cairns Marine Aquarium Fish responded by advising the Department that the proposed listing of all species of the family Pristidae (sawfish) to Appendix I of CITES would end their current small export market of live sawfish to aquaria. The Australian delegation successfully proposed at CoP14 the listing of one species of sawfish - *Pristis microdon* - to Appendix II with an annotation, allowing a small level of trade for conservation purposes to continue as long as the export requirements for Appendix II listed species are met. No other comments were received from Fisheries Industry representatives.
- Over 50 responses from musicians and instrument makers were received regarding the proposed listing under Appendix II of *Caesalpinia echinata*, a wood commonly used for bows for the violin family of instruments. Concerns regarding the difficulty in travelling with musical instruments were incorporated into Australia's negotiating position and a proposed exemption allowing international movement of finished products without documentation was agreed at CoP14.

10. Participating as members of the Australian delegation at the Conference were officers from the then Department of the Environment and Water Resources and the Department of Foreign Affairs and Trade. Additional members of the delegation included representatives from:

- the Western Australian Government, nominated by the Natural Resource Management Standing Committee;
- the Northern Territory Government. The representative attended in his capacity as Oceania regional representative to the CITES Plants Committee, and also Chaired Committee I at the CoP;
- the NGO Humane Society International, nominated by the National Environment Consultative Forum, in the capacity of Adviser; and
- Cairns Marine Aquarium Fish as a fisheries industry representative, in the capacity as Adviser.

11. Stakeholders from which input was sought are identified in the attached lists.

List of NGOs and Industry groups consulted

NGOs

Australian Conservation Foundation
Arid Lands Environment Centre
Australian Marine Conservation Society
Australian Rainforest Conservation Society
Birds Australia
Clean Up Australia
Climate Action Network Australia
Conservation Council of SA
Conservation Council of the SE Region and Canberra
Conservation Council WA
Earthwatch
Environment Centre of the NT
Environment Victoria
Environs Australia
Friends of the Earth
Greenpeace
Humane Society International
International Fund for Animal Welfare
National Cultural Heritage Forum
National Toxics Network
NSW Nature Conservation Council
Queensland Conservation
Surfrider Foundation
Tasmanian Conservation Trust
TRAFFIC Oceania
Trust for Nature
The Wilderness Society
Victorian National Parks Association
Wetlands Care australia
Whale and Dolphin Conservation Society
World Wide Fund for nature (WWF)

Timber industry

National Association of Forest Industries Limited
Australian Timber Importers' Federation
Plywood Association of Australasia Ltd
Timber Promotion Council
Australian Forest Growers
Australian Wood Panels Association
Australian Plantation Products and Paper Industry Council (A3P)
Timber and Building Materials Association (TABMA)
Timber Trade Industrial Association
Customs Brokers & Forwarders Council of Australia Inc.
Australian Federation of International Forwarders

Fisheries industry

Commonwealth Fisheries Association
Seafood Services Australia
Queensland Seafood Industry Association
Queensland Aquarium Supply Divers Association
Northern Territory Seafood Council
Western Australian Fishing Industry Council Inc
Tasmanian Fishing Industry Council
Seafood Council (SA Limited)
Seafood Industry Victoria
Ocean Watch Australia Ltd
South Rock Lobster Ltd
Marine Product Marketing

Note: The Australian Seafood Industry Council disbanded mid last year and there currently is no peak body for the Australian Seafood Industry.

Bow makers and musicians

List obtained from the Directory of Australian Violin and Bowmakers compiled by Alan Coggins (<http://www.abcviolins.com/ozmakers.html>). It was requested that the Department's invitation to comment be circulated to interested parties.

A. Gabor Balogh
Adele Beardsmore and Alan
Coggins
Rainer Beilharz
Volker Beilharz
Doxe Violins
Arts Music
Stanley River Music
Jeffrey A Ellis, Bowmaker
Epoch Musical Instruments
Violin World
The Sydney String Centre
Ilja Grawert Violin Maker
The Violin Studio
Guscott Australia
Violins to Cellos
John D Johnston Violin Maker and
Restorer
Norman Miller Master Violin
Maker
Arthur Robinson Violin Maker
The Violin Place
Auburn Strings
Simmers Violin Shop
Lance Scott Violin Maker
Smiths Violins
Ian Watchorn Maker and
Conservator of Musical
Instruments
Neville Whitehead Lutherie
Alex W Grant Violins

List of State and Territory agencies consulted

New South Wales

Department of Primary Industries
Department of State and Regional
Development
Department of Environment &
Conservation NSW

Queensland

Department of Primary Industries
and Fisheries
Environment Protection Agency /
Queensland Parks & Wildlife
Service
Department of State Development
Department of Natural Resources
and Water

Northern Territory

Department of Primary Industries,
Fisheries and Mines
Department of Natural Resources,
Environment and the Arts

Western Australia

Department of Fisheries
Department of Industry and
Resources
Department of Environment and
Conservation

Tasmania

Department of Primary Industries
and Water
Dept of Infrastructure, Energy and
Resources
Department of Tourism, Arts and
the Environment

South Australia

Primary Industries and Resources
Fisheries Division
Environment Protection Authority
Department for Environment and
Heritage

Victoria

Department of Primary Industries
Department of Innovation, Industry
and Regional Development
Department of Sustainability and
Environment