

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

- 9.1 The proposed treaty action concerns *Amendments, Agreed at Bangkok, in October 2004, to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973 (the Amendments)*. Australia has been a Party to the *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)* since 1976. As at March 2005 there were 167 Parties to CITES.¹

Background

- 9.2 CITES is a multilateral environmental treaty which regulates international trade in specimens of wild fauna and flora.² CITES arose from recognition that international cooperation is essential to protect and conserve endangered and threatened species of plants and animals from over-exploitation through international trade.³
- 9.3 CITES provides for different degrees of regulation of trade, resulting in different levels of protection for each species. The level of protection is determined by the Appendix listing of the species. Trade is defined as export, re-export, import and introduction from the sea.

1 National Interest Analysis (NIA), Background information: Current status list.

2 NIA, para. 1.

3 NIA, para. 6 and Mr Neil Ellis, *Transcript of Evidence*, 14 March 2005, p. 12.

- Article II(1) defines Appendix I as including all species threatened with extinction which are or may be affected by trade. These are species for which international commercial trade is generally prohibited. This is the highest level of protection a species is afforded under CITES.
- Article II(2) defines Appendix II as including all species which, although not threatened with extinction at this time, may become so unless trade in specimens of such species is subject to strict regulation. These are species for which international commercial trade is permitted, but is closely monitored.

9.4 To trade specimens of species listed on either Appendix I or Appendix II requires an export permit. An export permit will only be granted if it is advised that the export of the specimen will not be detrimental to the survival of the species, the specimen was not illegally obtained, and that, if living, the specimen will be adequately protected during export.⁴

9.5 In addition to the export permit, to trade specimens of species listed on Appendix I an import permit is required. An import permit will only be granted if it is advised that the import of the specimen will not be detrimental to the survival of the species, that, if living, the proposed recipient is suitably equipped to house and care for the specimen, and that the specimen is not to be used for primarily commercial purposes.⁵

Features of the Amendments

9.6 As identified in the National Interest Analysis (NIA), the key features of the Amendments are:

- the transfer of one dolphin species, one cockatoo species, one parrot species, one tortoise species, and one palm species from the list of monitored species (Appendix II) to the list of prohibited species (Appendix I). The protection afforded to these species has

4 See Article IV(2) in relation to Appendix 2, and Article III(2) in relation to Appendix I. Note that for Appendix I, there is an additional requirement: that an import permit has been granted for the specimen (Article III(2)(d)).

5 See Article III(3).

been increased because they are continuing to decline and/or face increased potential for trade⁶

- the transfer of one rhinoceros species, one eagle species, two species of crocodile, and two species of orchid from the list of prohibited species to the list of monitored species
- the addition of five species of turtle, one gecko species, one shark species, one whale species, one mussel species, one species and four sub-species of herbs, and three species of trees to the list of monitored species. The three marine species have been listed on Appendix II due to population declines related in part to trade⁷
- the deletion of one lovebird from the list of monitored species. This species has improved its population status and is not threatened to the degree it was when it was listed⁸
- changes to the 'interpretative annotations' specifying the populations and/or parts or products derived from those species which are subject to the trade controls of CITES. The amendments made to annotations relating to listed African elephants, specific butterfly species, and plant species more accurately define the products of those species that are subject to trade controls, and define trade controls specific to the species.

9.7 The Amendments to Appendices I and II will not add to Australia's substantive obligations as a party to CITES. Australia is still obligated to prohibit and monitor trade in listed species in accordance with the provisions of CITES. The Amendments simply change the species listed as protected in the Appendices.

Great White Shark

9.8 The Great White Shark has been nominated for inclusion on Appendix II of CITES, including an annotation that states that a zero annual export quota is established for this species. Australia has an

6 NIA, para. 8.

7 NIA, para. 9.

8 Ms Carey Robinson, *Transcript of Evidence*, 14 March 2005, p. 14.

interest in protection of the Great White Shark, having unilaterally listed it on Appendix III in 2001.⁹

- 9.9 Population declines in the Great White Shark were occurring from continued unregulated trade in jaws, teeth and fins,¹⁰ as well as bycatch in commercial net and set line fishing and recreational fishing.¹¹ Australia subsequently nominated the Great White Shark for inclusion on Appendix II at the 13th Conference of the Parties in 2004.¹² As explained by Mr Neil Ellis from the Department of the Environment and Heritage (DEH):

The great white shark has been protected in Australian waters for some time under national as well as state legislation. Because the species is a migratory species ... the national regulatory system ... was not giving it the protection that it deserved and international cooperation was sought to extend the range of protection and to at least monitor the trade that may be occurring on a global scale.¹³

Implementation

- 9.10 The Listing of CITES Species established under s 303CA of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('the EPBC Act') currently gives effect to Australia's obligations arising out of the CITES Appendices. Section 303CA(3) provides that the list must include all species, and only those species, included in any of Appendices I, II and III to CITES.¹⁴ The list will be amended to reflect the Amendments to the Appendices.
- 9.11 The new listings will have limited impact for Australia given that significant trade does not occur in Australia in these species and that

9 Any CITES Party may list a species on Appendix III if the Party identifies that species as being subject to regulation within its jurisdiction for conservation purposes, and as needing the cooperation of other Parties in the control of trade (Article II(3)).

10 NIA, para. 9 and Western Australian Government (Department of the Premier and Cabinet), *Submission*, p. 1.

11 Western Australian Government (Department of the Premier and Cabinet), *Submission*, p. 1.

12 NIA, para. 9. Australia's nomination was made jointly with Madagascar.

13 Mr Neil Ellis, *Transcript of Evidence*, 14 March 2005, p. 13.

14 NIA, para. 20.

Australian laws governing the species affected by the Amendments are already equivalent to CITES obligations.¹⁵

- 9.12 The only species of wildlife mentioned in the Amendments that are found within Australian territory are the Great White Shark, the Hump-head Maori Wrasse, and the Irrawaddy Dolphin.¹⁶ In particular, Australia already regulates the Great White Shark under the EPBC Act, and consequently the CITES listing will not impose additional import or export requirements.¹⁷

Costs

- 9.13 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. This is due to only limited trade occurring in these species within Australia.

- 9.14 There will be minor impacts for industry as a result of the listing of the Hump-head Maori Wrasse on Appendix II. A single operator in Queensland is licensed to export a very small amount of the Wrasse for the aquarium trade. This operator has been consulted and will now require a CITES export permit.¹⁸ Mr Ellis explained the situation:

We have had various discussions with that operator and the operator is quite comfortable with the CITES listing. The Queensland government department that is responsible for the management of fisheries ... is supportive of the listing. The operator is yet to put in an application for a permit at this stage.¹⁹

- 9.15 According to the NIA, there will be some positive impacts for industry as a result of the Amendments to annotations for the species *Euphorbia* spp. and Orchids in Appendix II.²⁰ Australia engages in trade of these species as artificially propagated household plants and

15 NIA, para. 5.

16 Mr Neil Ellis, *Transcript of Evidence*, 14 March 2005, p. 13.

17 NIA, para. 10.

18 NIA, para. 21.

19 Mr Neil Ellis, *Transcript of Evidence*, 14 March 2005, p. 14.

20 NIA, para. 22.

the Amendments will reduce the current regulation required for artificially propagated specimens for these species.²¹

Consultation

9.16 The Amendments to CITES were subject to an extensive consultation process, coordinated by DEH.²² This included:

- the establishment of a consultation page on the DEH website, which linked to a full list of the CITES proposals and invited comments to assist in the development of Australia's position for the 13th Conference of the Parties
- an Inter-Departmental Committee meeting held at the end of June 2004, which provided Commonwealth agencies with the opportunity to provide input for the development of Australia's position for the Conference
- a Non-Government Organisations (NGO) Round Table discussion held in early September 2004 between DEH and key NGO representatives
- an in-depth consultation process with countries within the Great White Shark's home range.²³

9.17 Consultation undertaken with Australian industries regarding the proposed Amendments to the Appendices did not identify any significant impacts or concerns.

Entry into force

9.18 The Amendments were adopted at the 13th meeting of the Conference of the Parties to CITES, which concluded on 14 October 2004. In accordance with Article XV(1)(c), amendments to CITES automatically enter into force ninety days after the meeting of the Conference of the Parties at which they were adopted, so long as a reservation is not lodged under Article XV, paragraph 3.²⁴

21 NIA, paras. 21-22.

22 NIA, Annex 2, pp. 1-2.

23 NIA, Annex 2, p. 1.

24 NIA, paras. 1-2.

9.19 Australia did not lodge a reservation because the Amendments are consistent with Australia's commitment to international cooperation for the protection and conservation of species threatened by trade.²⁵ Hence, the Amendments will have automatically entered into force for Australia on 12 January 2005.²⁶

9.20 Mr Ellis clarified why the treaty entered into force prior to it being tabled in Parliament:

Due to the automatic entry into force, the Minister wrote to the committee in the middle of last year to outline the fact that the Conference of the Parties was coming up in October and that various amendments to the appendices were being proposed. The full list of those proposed amendments was provided. Because of the way the convention is set up, the ninety day entry into force meant that the normal timetabling for this committee could not be achieved.²⁷

Future treaty action

9.21 Appendices I and II form an integral part of CITES and are amended from time to time. The purpose of this is to reflect the changing conservation status of a species and to address the impacts of international trade on the conservation of species.

9.22 Amendments are made according to Article XV of CITES, by two-thirds majority of the Conference of the Parties or through a postal procedure between meetings. Under Article XVII, CITES may also be amended at an extraordinary meeting of the Conference of the Parties, convened at the written request of at least one-third of the Parties.

9.23 At any time, Australia may make a denunciation of CITES in accordance with Article XXIV via written notification to the Depository Government (the Government of Switzerland). This would take effect twelve months after notification was received.

25 NIA, para. 12.

26 NIA, paras. 3 & 4.

27 Mr Neil Ellis, *Transcript of Evidence*, 14 March 2005, p. 13.

- 9.24 Any future amendments to the Appendices or denunciation of CITES would constitute a separate treaty action and would be subject to the normal Australian treaty process.

Conclusion and recommendation

- 9.25 The Committee agrees with the views expressed by the Department of the Environment and Heritage that the Amendments are consistent with Australia's commitment to international cooperation for the protection and conservation of wildlife that may be adversely affected by trade.

Recommendation 7

The Committee supports the Amendments, agreed at Bangkok, in October 2004, to Appendices I and II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973.

Dr Andrew Southcott MP

Committee Chair