

**Documents tabled on 27 February 2007:**

**National Interest Analysis [2007] ATNIA 6**

**with attachment on consultation**

**Measure 4 (2006)**

**Specially Protected Species: Fur Seals**

**Edinburgh, 23 June 2006**

**[2006] ATNIF 29**

**Background information:**

**Current status list of parties**



# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### Measure 4 (2006) Specially Protected Species: Fur Seals

#### Nature and Timing of Proposed Treaty Action

1. The proposed treaty action amends Appendix A to Annex II to the *Protocol on Environmental Protection to the Antarctic Treaty* (the Protocol) [1998] ATS 6, by deleting the words “All species of the genus *Arctocephalus*, Fur Seals.”
2. Pursuant to Article 9 of the Protocol and Article IX of the *Antarctic Treaty* [1961] ATS 12, amendments to annexes are adopted by Consultative Parties<sup>1</sup> at the annual Antarctic Treaty Consultative Meeting (ATCM), via a Measure. This Measure was unanimously adopted at ATCM XXIX in June 2006.
3. Pursuant to Article 9 of Annex II to the Protocol, Measure 4 (2006) will automatically become effective one year after the close of ATCM XXIX (that is on 23 June 2007), unless one or more of the Consultative Parties notifies within that timeframe that it wishes an extension of that period or that it is unable to approve the measure. Once effective, Measures are legally binding on all Consultative Parties.

#### Overview and national interest summary

4. Measure 4 (2006) removes fur seal species of the genus *Arctocephalus* from the list of Specially Protected Species which applies under Appendix A to Annex II to the Protocol. Only two species of this genus exist in the Antarctic Treaty area (i.e. south of 60° South Latitude), these being the Antarctic fur seal (*A. gazella*) and the sub-Antarctic fur seal (*A. tropicalis*). The amendments reflect the international scientific consensus on the sound conservation status of fur seal populations in the Antarctic Treaty area and agreement among Consultative Parties that these species no longer require Specially Protected Species status to ensure their conservation.
5. This is in the national interest because it is expected to improve the efficiency and effectiveness of the Antarctic Treaty and associated agreements, to which Australia has been strongly committed since their inception.

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<sup>1</sup> Consultative Parties include all original signatories to the Antarctic Treaty and all Parties that acceded to the Treaty and are demonstrating their interest in Antarctica by conducting substantial scientific research activity there, in accordance with Article IX(2). Consultative Parties have voting status at ATCMs. Contracting Parties whose representatives were entitled to participate in the meetings in this context can also be read as Consultative Parties.

## **Reasons for Australia to take the proposed treaty action**

6. The proposed treaty action is a Measure under the auspices of the Antarctic Treaty to which Australia has been a Consultative Party since it came into force in 1961. Specifically, Measure 4 (2006) amends the Protocol by removing fur seal species of the genus *Arctocephalus* from the list of Specially Protected Species under Appendix A to Annex II.

7. The Treaty is a multilateral agreement which commits the Contracting Parties to ensure that Antarctica is used exclusively for peaceful purposes, guarantees freedom of scientific research, promotes international scientific cooperation, allows for inspection of all operations, sets aside the potential for disputes over territorial sovereignty in Antarctica, and provides for regular meetings between the Parties. The Protocol is a multilateral agreement under the Treaty which commits Parties to the protection of the Antarctic environment and its dependent and associated ecosystems, and designates Antarctica as a natural reserve, devoted to peace and science. Australia has a large territorial claim and an extensive research programme in Antarctica. Australia took a leading role in the formation of the Treaty and the Protocol, and successive Australian governments have viewed maintenance of the Antarctic Treaty and associated agreements as a high priority.

8. Since ATCM XXIII in 1999, the Consultative Parties have sought to review the status of species listed as Specially Protected Species under the Protocol and to establish objective criteria for selecting species for listing. These actions paralleled international work to reach a consensus on criteria for classifying species as Specially Protected Species and the management actions necessary to assist in the recovery of such species. The ATCM XXVIII of 2005 adopted guidelines for the listing and delisting of Specially Protected Species.

9. The ATCM XXIX of 2006 agreed to de-list fur seals as Specially Protected Species on the basis of scientific advice from the Scientific Committee on Antarctic Research (SCAR) (using the guidelines for the listing and delisting of Specially Protected Species) and a recommendation from the Committee on Environmental Protection. SCAR described the recovery of the populations of fur seals in the Antarctic Treaty area as “a major conservation success, attributable to the concerted actions taken nationally and internationally to rescue heavily exploited populations from probable extinction.”

10. In adopting Measure 4 (2006), ATCM XXIX of 2006 noted that fur seals would continue to receive the comprehensive general protection afforded to all Antarctic seal species under the Protocol, and that they would not be exposed to any potential threat of commercial exploitation in future as a result of their de-listing as Specially Protected Species.

11. Australia’s position is to maintain and improve the efficiency and effectiveness of the Antarctic Treaty and associated agreements. This Measure is consistent with this position.

## **Obligations**

12. No new obligations arise for Australia from this treaty action.

13. Under Article 3(5) of Annex II, a Specially Protected Species designation creates additional conditions on the issue of permits for their taking. Namely, taking must be for a compelling scientific purpose, not jeopardise the survival or recovery of that species or local population, and use non-lethal techniques where possible.

14. While removal of this designation removes these very restrictive conditions on granting a permit, fur seals will remain under the general protections of the remaining paragraphs of Article 3 of Annex II. These protections include the restriction that taking or harmful interference must be in accordance with a permit, and only for purposes of scientific study, educational or cultural uses, or unavoidable consequences of scientific activity. The grant of permits is also limited by the restrictions that no more are to be taken than are strictly necessary, no more taken than can be replaced by natural reproduction the following season, and the diversity and ecosystem balance are maintained.

15. The removal of fur seals from the list of Specially Protected Species is consistent with the objectives of Australia's delegation to ATCM XXIX, and the result of several years of formal and informal negotiations. Removing fur seal species from the list reinforces the operation of the Specially Protected Species designation as a mechanism for protecting Antarctic species at significant risk of extinction.

16. Fur seals also remain subject to the provisions of the *Convention on the Conservation of Antarctic Seals* [1987] ATS 11 (CCAS). CCAS promotes scientific knowledge and research on Antarctic seals species and mandates a permit system. Fur seals are designated as "Protected Species" in the Antarctic Treaty area under the Annex to CCAS. For most purposes Annex II to the Protocol supplants the conservation requirements of CCAS.

### **Implementation**

17. No changes to domestic law or policy are required for implementation. Australia's obligations under Annex II are implemented in domestic law through the *Antarctic Treaty (Environment Protection) Act 1980*.

### **Costs**

18. The proposed treaty action is not expected to impose any additional costs to Australia. The Measure will not require any new domestic agencies or management arrangements to be put in place.

### **Regulation Impact Statement**

19. An assessment undertaken by the Australian Government Antarctic Division shows that no Regulation Impact Statement is required as Measure 4 (2006) would have no impact on business or regulation.

### **Future Treaty Action**

20. Article XII(1) of the Antarctic Treaty provides that it may be amended at any time by unanimous agreement of the Consultative Parties. Any such amendment enters

into force once all Consultative Parties have ratified it. Pursuant to Article 25(1), the Protocol may be amended by the same procedure as the Treaty. Article 9(3) of the Protocol provides that annexes to the Protocol may be adopted and become effective via Article IX of the Antarctic Treaty, although an Annex may itself provide for amendments to become effective on an accelerated basis.

21. Article IX of the Antarctic Treaty provides that Measures may be adopted by Consultative Parties at an ATCM, and they become effective when they have been approved by all Consultative Parties. The ATCM also takes general action under the Antarctic Treaty through both Measures and Decisions. While Measures are legally binding once approved by all Consultative Parties in accordance with Decision 1 (1995), Decisions do not require formal approval to become operative (and are not intended to have the same legal status as a Measure). Measures may have the effect of amending previous Measures.

22. There are currently no other protocols proposed under the Antarctic Treaty. An additional annex to the Protocol (Annex VI) was recently adopted on liability arising from environmental emergencies.

23. No other binding treaty actions are expected at this time on fur seals. Future treaty action by Australia, including any amendments to the Treaty, Protocol and its annexes, would be subject to Australia's domestic treaty-making process.

### **Withdrawal or Denunciation**

24. Neither the Measure nor the Protocol contains a specific withdrawal provision.

25. While the Antarctic Treaty does not contain a general withdrawal provision, Article XII(2)(c) permits withdrawal where an amendment proposed at a Conference held to review the operation of the Treaty (which is different to the regular amendment process under Article XII(1)) has not entered into force (i.e. not been approved by all Consultative Parties) after two years. In such a case, Australia could withdraw from the Treaty under Article XII(2)(c) by giving notice to the depositary Government; such withdrawal would take effect two years after this notice was received.

26. Apart from this situation, Australia can withdraw as a party from either the Antarctic Treaty or Protocol at any time by consent of all the parties after consultation with other contracting States, in accordance with Article 54(b) of the *Vienna Convention on the Law of Treaties* [1974] ATS 2. Withdrawal by Australia would be subject to Australia's domestic treaty-making process.

### **Contact Details**

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International Organisations and Legal Division  
Australian Government Department of Foreign Affairs and Trade.

Antarctic and International Policy Section  
Australian Government Antarctic Division  
Australian Government Department of the Environment and Water Resources.

**Measure 4 (2006)**  
**Specially Protected Species: Fur Seals**

**CONSULTATION**

1. The Department of Foreign Affairs and Trade convenes consultative meetings with other government departments – including the Australian Government Antarctic Division of the Department of the Environment and Water Resources, the Attorney-General's Department and the Department of Industry, Tourism and Resources – and with non-government organisations before each annual ATCM. In May 2006, before ATCM XXIX, the consultative forum was attended by the Antarctic and Southern Ocean Coalition (a coalition of environmental non-government organisations). The views expressed at the meetings are taken into account in developing Australia's position on the proposals to be considered by the ATCM.
2. A representative from the Antarctic and Southern Ocean Coalition participated as a member of the Australian delegation at ATCM XXIX. The State Government representative on the Australian delegation to ATCM XXIX was from the Department of Economic Development of the Government of Tasmania.
3. Measure 4 (2006) does not affect the States and Territories, as the measure only applies to the Antarctic Treaty area (i.e. south of 60° South Latitude).





## BACKGROUND INFORMATION

### CURRENT STATUS LISTS

#### Signatories of the Antarctic Treaty, as at 1 January 2007:

State	Date of entry into force	Consultative status
Argentina	23 June 1961	Original signatory
Australia	23 June 1961	Original signatory
Austria	25 August 1987	
Belgium	23 June 1961	Original signatory
Belarus	27 December 2006	
Brazil	16 May 1975	27 September 1983
Bulgaria	11 September 1978	05 June 1998
Canada	04 May 1988	
Chile	23 June 1961	Original signatory
China	08 June 1983	07 October 1985
Colombia	31 January 1989	
Cuba	16 August 1984	
Czech Republic	01 September 1993	
Denmark	20 May 1965	
Ecuador	15 September 1987	19 November 1990
Estonia	17 May 2001	
Finland	15 May 1984	20 October 1989
France	23 June 1961	Original signatory
Germany	05 February 1979	03 March 1981
Greece	08 January 1987	
Guatemala	31 July 1991	
Hungary	27 January 1984	

India	19 August 1983	12 September 1983
Italy	18 March 1981	05 October 1987
Japan	23 June 1961	Original signatory
Korea DPRK	21 January 1987	
Korea ROK	28 November 1976	09 October 1989
Netherlands	30 March 1967	19 November 1990
New Zealand	23 June 1961	Original signatory
Norway	23 June 1961	Original signatory
Papua New Guinea	16 September 1975	
Peru	10 April 1981	09 October 1989
Poland	23 June 1961	29 July 1977
Romania	15 September 1971	
Russian Federation	23 June 1961	Original signatory
Slovak Republic	01 January 1993	
South Africa	23 June 1961	Original signatory
Spain	31 March 1982	21 September 1988
Sweden	24 April 1984	21 September 1988
Switzerland	15 November 1990	
Turkey	24 January 1996	
Ukraine	28 October 1992	04 June 2004
United Kingdom	23 June 1961	Original signatory
United States	23 June 1961	Original signatory
Uruguay	11 January 1980	07 October 1985
Venezuela	24 March 1999	

**Parties to the Protocol on Environmental Protection to the Antarctic Treaty, as at 1 January 2007:**

<b>State</b>	<b>Date of Signature</b>	<b>Date of Ratification</b>
Argentina	4 October 1991	28 October 1993
Australia	4 October 1991	6 April 1994
Belgium	4 October 1991	26 April 1996
Brazil	4 October 1991	15 August 1995
Bulgaria		21 April, 1998 <sup>1</sup>
Canada	4 October 1991	13 November 2003
Chile	4 October 1991	11 January 1995
China	4 October 1991	2 August 1994
Czech Republic	1 January 1993	25 August 2004
Ecuador	4 October 1991	4 January 1993
Finland	4 October 1991	1 November 1996
France	4 October 1991	5 February 1993
Germany	4 October 1991	25 November 1994
Greece	4 October 1991	23 May 1995
India	2 July 1992	April 26 1996
Italy	4 October 1991	31 Mars 1995
Japan	29 September 1992	15 December 1997
Korea, Republic of	2 July 1992	2 January 1996
Netherlands	4 October 1991	14 April 1994
New Zealand	4 October 1991	22 December 1994

Norway	4 October 1991	16 June 1993
Peru	4 October 1991	8 March 1993
Poland	4 October 1991	1 November 1995
Romania		3 February 2003
Russian Federation	4 October 1991	6 August 1997
South Africa	4 October 1991	3 August 1995
Spain	4 October 1991	1 July 1992
Sweden	4 October 1991	30 March 1994
Ukraine		25 May 2001 <sup>1</sup>
United Kingdom	4 October 1991	25 April 1995
United States of America	4 October 1991	17 April 1997
Uruguay	4 October 1991	11 January 1995

<sup>1</sup> Date deposit of Accession. Entry into force 30 days after the deposit of accession.