

**SUPPLEMENTARY SUBMISSION NO.3.1**  
**TT 25 & 26 November 2009**



**HUMANE SOCIETY  
INTERNATIONAL**

**Humane Society  
International Inc.**  
ABN 63 510 927 032

PO Box 439  
Avalon NSW 2107  
Australia

Telephone (612) 9973 1728  
Facsimile (612) 9973 1729  
Email [admin@hsi.org.au](mailto:admin@hsi.org.au)

[www.hsi.org.au](http://www.hsi.org.au)

Committee Secretary  
Joint Standing Committee on Treaties  
Department of House of Representatives  
PO Box 6021  
Parliament House  
Canberra ACT 2600  
By email to: [jsct@aph.gov.au](mailto:jsct@aph.gov.au)

14 January 2010

Dear Sir or Madam

**Re: National Interest Analysis [2009] ATNIA 26 with attachment on consultation –  
the listing of three shark species as migratory under the EPBC Act – Supplementary  
submission**

Humane Society International (HSI) is writing further to our submission of 17<sup>th</sup> December 2009, with regards to the Committee inquiry into the listing of three shark species as migratory under the EPBC Act.

The three species were listed as protected migratory species under the EPBC Act on 29<sup>th</sup> January 2010. Since preparing and sending the submission, HSI has become aware of the 21 December 2009 media release of the Minister, Peter Garrett MP, which leaves us concerned that the Minister does not intend to properly enforce protection for these species under the EPBC Act.

In his release of 21 December 2009 the Minister states that:

*“As catch and release activities, when carried out properly, are not likely to have a significant impact on populations of these shark species they equally are unlikely to be subject to enforcement action.”*

**Board of Directors:**

Verna Simpson  
Michael Kennedy  
Peter Woolley  
Elizabeth Willis-Smith  
Patricia A Forkan  
Dr Andrew N Rowan  
Jean Irwin

**US Office:**

Washington DC

**Regional Offices:**

UK/Europe  
Canada  
Latin America/Costa Rica

The Minister's comments are seeking to reassure recreational fishers that they will not be prosecuted for catching and releasing mako sharks even though they are now protected migratory species. Firstly, we do not believe the Minister should purport to give an exemption from offence provisions in the EPBC Act through a media release. HSI has previously successfully challenged Administrative Guidelines that purported to give an exemption from the offence provisions of the EPBC Act in the case of the grey headed flying fox.

We also think the Minister is being misleading. There are two levels of offences that apply to migratory species in Commonwealth waters. A person must not take an action that may cause 'significant impact' to the species without seeking the Minister's approval (section 20). A person is also guilty of an offence if they take an action which results in the death or injury of a member of a listed migratory species (section 211) or if they take, trade, keep or moves a member of a listed migratory species (sections 211A and 211B). We note that these are strict liability offences.

The Minister's comments refer to significant impact and perhaps it can be argued that one recreational fisher killing one mako shark is not causing significant impact to the species. However, recreational fishers must also be aware of the offence provisions that now apply to death, injury, take, trade or moving an individual mako shark in Commonwealth waters under section 210 and 211A and 211B of the EPBC Act. Clearly, a recreational fisher that captures a mako shark with a fishing hook will be guilty of moving, taking and injuring a member of the species. There is known to be a certain level of mortality suffered by sharks that are released and so recreational fishers practising catch and release may also kill mako sharks. The Minister should not purport to give an exemption against these offences and we are very concerned if it is his intention not to enforce the law in relation to recreational fishing for these species.

The Minister goes on to state that:

*"... globally many populations of mako sharks were depleted, however there was no evidence suggesting that Australian populations are similarly threatened."*

HSI also disputes this statement. In our 17<sup>th</sup> December 2009 submission to the Committee, we noted that :

*"Whilst there have been some arguments that this listing will not affect the conservation of the three species in Australian waters, as they are particularly at risk in the Mediterranean Sea and Atlantic Ocean, there is very little data to demonstrate the robustness of Australian populations. For example in NSW, the shortfin mako shark is considered as 'Undefined' due to the lack of programs that would allow an estimate to be derived from the composition of harvested sharks. As a result of HSI's concerns regarding the shortfin mako and other species, a nomination for listing of the species as vulnerable under the EPBC Act was put forward and subsequently included on the Finalised Prioritisation Assessment List (see attached nomination). Claims by recreational fishermen and others that mako sharks are common off the Australian coast are therefore simply not justified."*

This statement by the Minister is therefore at odds to the scientific review process currently being undertaken by his Threatened Species Scientific Committee, at his request. Fishing mortality in commercial target and bycatch fisheries is the main cause of population decline for mako sharks. The additional pressure put on declining stocks by recreational fishers further adds to this decline. We note that the lack of scientific data is due to a lack of study and poor data collection in fisheries (sharks are rarely identified at the species level) rather than there not being any declines to observe. It is our belief that in the absence of any scientific data and knowing the considerable pressure on the species and its inherent biological vulnerability to exploitation, a precautionary approach should be taken. In HSI's view, this must include full protection of the three shark species (porbeagle, shortfin mako and longfin mako) as migratory species under the EPBC Act. We therefore encourage the Committee to recommend the Minister uphold the full listing of the three shark species and proper enforcement of the EPBC Act.

Yours sincerely



Alexia Wellbelove  
Program Officer