

**National Interest Analysis [2010] ATNIA 32**

**with attachment on consultation**

**2010 Amendments to Appendices I and II  
of  
the Convention on International Trade  
in Endangered Species of Wild Fauna and Flora,  
done at Doha on 25 March 2010**

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# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **2010 Amendments to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Doha on 25 March 2010 [2010] ATNIF 32**

#### **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 15<sup>th</sup> Conference of the Parties (CoP15), held from 13-25 March 2010 in Doha, Qatar, 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) of CITES. Parties may, however, enter a reservation with respect to a particular amendment during that 90 day period, in accordance with paragraph 3 of Article XV. As Australia has not lodged a reservation, the amendments will automatically enter into force for Australia on 23 June 2010. Based on information currently available, to date no Parties have entered reservations in relation to any of the amendments to Appendices I and II adopted at CoP15. As such, the amendments will enter into force for all Parties on 23 June 2010.

#### **Overview and national interest summary**

3. CITES is a multilateral environmental agreement that regulates the international trade (export, re-export, import and introduction from the sea) in endangered species of wild fauna and flora (taxa). CITES includes lists of species in three appendices, with the international movement of the species on each appendix attracting a different level of regulation. 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 system of non detriment finding assessments and permits. The CoP15 amendments make various changes to the lists of species included in Appendices I and II, including the deletion of some taxa from the Appendices, the addition of some taxa to the Appendices, the transfer of taxa between Appendices I and II and amendments to the annotations accompanying some taxa already on the Appendices.

4. 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 their conservation status permits and avoiding burdensome regulation where it is not necessary. Constantly updating the species in each list, taking into account changes to their respective conservation status, is critical. This is why a mechanism permitting timely entry into force of amendments to the Appendices has been included in the Convention.

5. The action is consistent with Australia's strong commitment to CITES and to international cooperation for the protection and conservation of wildlife more generally. The action is required for Australia to meet its obligations as a Party to CITES.

## Reasons for Australia to take the proposed treaty action

6. 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 arose from recognition that international cooperation is essential to protect and conserve species from over-exploitation due to international trade.

7. Participation in CITES advances Australia's interests by promoting Australia as a leading environmental steward in its efforts to protect wild species from over-exploitation due to international 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.

8. CITES provides a mechanism for the 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 unilaterally 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.

9. 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 and implementation of the Convention.

### *Amendments to listed species*

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

- The species *Anas oustaleti* (Mariana mallard) is deleted from Appendix I;
- The species *Euphorbia misera* (cliff spurge), *Orothamnus zeyheri* (marsh rose) and *Protea odorata* (Swartland sugarbush) are deleted from Appendix II;
- Populations of the species *Crocodylus moreletti* (Morelet's crocodile – populations of Belize and Mexico only) and *C. niloticus* (Nile crocodile – populations of Egypt only) are transferred from Appendix I to Appendix II;
- The species *Neurergus kaiseri* (Kaiser's spotted newt) is added to Appendix I; and
- The following species are added to Appendix II:
  - *Ctenosaura bakeri*, *C. oedirhina*, *C. melanosterna*, *C. palearis* (spiny-tailed iguanas);
  - *Agalychnis* spp. (tree frogs);
  - *Dynastes satanas* (rhinoceros beetle);
  - *Opercularia hyphaenoides*, *O. pachypus* (Madagascan shrubs);
  - *Zygosicyos pubescens*, *Z. tripartitus* (Madagascan lump plants) ;

- *Aniba rosaeodora* (rosewood - logs, sawn wood, veneer sheets, plywood and essential oil, excluding finished products packaged and ready for retail);
- *Adenia olaboensis* (adenia);
- *Cyphostemma elephantopus*, *C. montagnacii* (grape trees); and
- *Bulnesia sarmientoi* (Argentine lignum vitae tree - logs, sawn wood, veneer sheets, plywood, powder and extracts).

11. Australia is not a range State for any of the above species (that is, they do not occur naturally in Australia). *Bulnesia sarmientoi* (lignum vitae), which has been listed in Appendix II, is used primarily for essential oil and timber flooring, but Australia does not currently appear to be an importer of this species.

#### *Amendments to annotations*

12. 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. At CoP15, amendments were made to the annotations for various taxa of flora and for the species *Canis lupus* (grey wolf). The details of these are set out in sub-paragraphs 2(f)-(i) in the attached text of the treaty action.

13. An amendment was made to the annotation for the Appendix I and II listed *Canis lupus* to clarify that the domesticated form (*Canis lupus familiaris*) and the dingo (*C. l. dingo*) are excluded from listing. The amendment continues exemptions that were in place for dogs and dingoes under a previous taxonomic classification. It will not change Australia's export requirements for dingoes, as Australia regulates all export of native species.

14. Amendments to the annotations for plant taxa listed in Appendix II, detail the parts or derivatives of specimens which are exempt from CITES regulation. The amendments are minor and technical in nature and will have only minor regulatory implications. In addition, minor amendments to existing annotations for Appendix II-listed Cactaceae species exempt certain hybrids, as well as finished products of *Euphorbia antisiphilitica* from CITES regulation. The exemptions will reduce the regulatory burden on importers of those specimens, as import permits will no longer be required.

#### *Entry into force for Australia*

15. The amendments to Appendices I and II agreed at CITES CoP15 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 will all enter into force for Australia on 23 June 2010.

#### **Obligations**

16. The amendments to Appendices I and II will not change the substantive obligations of Parties to 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.

17. 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.

18. 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.

19. 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 still required before specimens can be moved internationally.

### **Implementation**

20. 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 is being 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**

21. 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 regulatory or management arrangements.

22. Rosewood (*Aniba rosaeodora*) has been listed under CITES Appendix II and is used primarily for essential oil. The listing exempts finished products packaged and ready for retail so there will be no regulatory implications for retailers and traders in finished oils. In order to import raw *Aniba rosaeodora* products, however, manufacturers will be required to present an export permit granted by the country of export and obtain a \$30 import permit from the Department of the Environment, Water, Heritage and the Arts (DEWHA).

23. Amendments to the existing annotations for Appendix II Cactaceae species exempting certain hybrids, as well as finished products of *Euphorbia antisyphilitica*,

will reduce costs for importers of those specimens, as \$30 import permits will no longer be required.

### **Regulation Impact Statement**

24. DEWHA has assessed the implementation of these amendments 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**

25. 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 lodge a reservation.

26. 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.

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

28. Any future amendment to either Appendices I and II or the Convention more broadly would constitute a treaty action and be subject to Australia's domestic treaty process, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties (JSCOT).

### **Withdrawal or denunciation**

29. 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.

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

### **Contact details**

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



**ATTACHMENT ON CONSULTATION**

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**CONSULTATION**

*Summary of outcomes*

31. The Department of the Environment, Water, Heritage and the Arts (the Department) consulted with Federal Government, State and Territory agencies, relevant industry groups, Non-Government Organisations (NGOs) and members of the public on proposed amendments to the CITES Appendices in advance of the 15<sup>th</sup> Conference of the Parties (CoP15) at which they were agreed. Numerous submissions and comments were received and considered.

32. The Department concluded that the changes to CITES listings agreed at CoP15 will have a minor impact on Australia. This is due to:

- low levels of imports into, or exports from, Australia, of affected specimens; and
- no change to the ability to trade domestically in affected specimens.

*Consultation process*

33. From 30 October 2009, the Department advised, via letter and email, relevant Federal government agencies, State and Territory 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.

34. Relevant Commonwealth agencies were afforded the opportunity to identify items of interest for CoP15 for which they would provide input for the development of Australia's position. The following Commonwealth agencies were consulted:

- Attorney-General's Department;
- Australian Customs and Border Protection Service;
- Department of Foreign Affairs and Trade;
- Department of Agriculture, Fisheries and Forestry;
- Australian Fisheries Management Authority; and
- Department of Prime Minister and Cabinet.

35. In addition to input from these Commonwealth Departments, comments were received from New South Wales, Victoria, Northern Territory, South Australia, Western Australia and Queensland Governments. Input included support for the *Canis*

*lupus* annotation. Comments were incorporated into briefs and were considered against scientific evidence about the conservation status of the species when negotiating positions were formed.

36. An NGO Round Table discussion was held on 25 November 2009 between the Department and NGO representatives from the Humane Society International, the International Fund for Animal Welfare and TRAFFIC. In addition, detailed comments on amendment proposals for consideration by CoP15 were provided by the International Fund for Animal Welfare, Humane Society International, Species Survival Network, TRAFFIC International/IUCN (World Conservation Union) Species Programme and Species Survival Commission, Greenpeace and the Australian Marine Conservation Society. These comments were included in delegation briefs and were considered against scientific evidence about the conservation status of the species when negotiating positions were formed.

37. Comments were also received from members of the public and were considered against scientific evidence about the conservation status of the species when negotiating positions were formed.

38. The Australian delegation at CoP15 comprised officers from the Department of the Environment, Water, Heritage and the Arts, the Attorney-General's Department, the Australian Fisheries Management Authority and the Department of Foreign Affairs and Trade. Additional members participating as Advisers to the delegation included representatives from the Northern Territory Government, Tony's Tuna International and the Australian Southern Bluefin Tuna Industry Association.

39. Following CoP15, the Minister, the Hon. Peter Garrett AM MP, wrote to the Chair of the JSCOT on 1 March 2010 advising of the listing proposals and the automatic entry into force for those proposals that were agreed by CoP15. Advance notice of the upcoming CoP was provided to the Commonwealth-State/Territory Standing Committee on Treaties.

40. Stakeholders from whom input was sought are identified in the lists below.

## **List of NGOs and Industry groups consulted**

- NGOs
- Arid Lands Environment Centre
- Australasian Bat Society
- Australian Conservation Foundation (ACF)
- Australian Marine Conservation Society (AMCS)
- Birds Australia
- Cairns and Far North Environment Centre (CAFNEC)
- Clean Up Australia Ltd
- Climate Action Network Australia
- Conservation Council ACT Region
- Conservation Council of South Australia
- Conservation Council of Western Australia
- Environment Tasmania
- Environment Victoria
- Environs Kimberley
- Friends of the Earth Australia (FoE)
- Greenpeace Australia Pacific
- Humane Society International
- International Fund for Animal Welfare (IFAW)
- Mineral Policy Institute
- National Parks Australia Council (NPAC)
- National Toxics Network (NTN)
- Nature Conservation Council of NSW
- Pew Trust
- Queensland Conservation Council (QCC)
- Seaweb
- Tasmanian Conservation Trust (TCT)
- The Wilderness Society Inc (TWS)
- TRAFFIC Oceania
- WetlandCare Australia
- World Wildlife Fund Australia (WWF)
- World Society for the Protection of Animals (WSPA)

## Industry

- Western Australia Fishing Industry Council
- Timber and Building Materials Association
- Western Australian Fishing Industry Council Inc
- National Seafood Industry Alliance
- Plywood Association of Australasia Ltd
- Southern Rock Lobster Ltd
- Northern Territory Seafood Council
- Australian Plantation Products and Paper Industry Council (A3P)
- Queensland Seafood Industry Association
- Seafood Services Australia Pty Ltd
- Australian Timber Importers' Federation
- Tasmanian Seafoods Pty Ltd
- Queensland Seafood Industry Association
- Seafood Industry Victoria
- Tuna Boat Owners Association
- Australian Federation of International Forwarders
- Seafood Industry Victoria
- Commonwealth Fisheries Association
- Customs Brokers & Forwarders Council of Australia Inc.
- National Association of Forest Industries Limited
- Western Australian Fishing Industry Council Inc
- Tasmanian Seafood Industry Council
- MPM Limited
- Australian Forest Growers
- Commonwealth Fisheries Association
- National Farmers Federation
- Queensland Aquarium Supply Divers Association
- Australian Wood Panels Association
- Tasmanian Seafood Industry Council
- Ocean Watch Australia
- Seafood Council (SA) Ltd
- Timber Promotion Council
- Timber Trade Industrial Association
- Australian Chamber of Commerce and Industry
- Australian Seafood Industry Council Ltd
- Australian Southern Bluefin Tuna Industry Association
- Australian Industry Group
- Business Council of Australia
- Recfish Australia

## **List of State and Territory agencies consulted**

### New South Wales

- Department of Environment, Climate Change and Water
- Office of Water
- Industry & Investment NSW

### Queensland

- Department of Environment and Resource Management
- Queensland Primary Industries and Fisheries

### Northern Territory

- Department of Natural Resources, Environment, the Arts and Sport
- Department of Regional Development, Primary Industry, Fisheries and Resources

### Western Australia

- Department of Agriculture and Food
- Department of Environment and Conservation
- Department of Fisheries
- Forests Products Commission

- Department of Water

#### Tasmania

- Department of Infrastructure, Energy and Resources
- Department of Primary Industries, Parks, Water and Environment

#### South Australia

- Department for the Environment and Heritage
- Department of Water, Land and Biodiversity Conservation
- Primary Industries and Resources SA

#### Victoria

- Department of Primary Industries
- Department of Sustainability and Environment

#### Australian Capital Territory

- Department of the Environment, Climate Change, Energy and Water