

**Senate Standing Committee on Environment, Communications and the Arts  
Legislation Committee**

Answers to questions on notice

**Environment, Water, Heritage and the Arts portfolio**

Additional Estimates, February 2010

<b>Outcome:</b>	1	<b>Question No:</b>	56
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	Mako Sharks		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

1. What consultation occurred prior to the Rome meeting in December 2008 over the listing of the 3 shark species?
2. I understand DEWHA wrote to each of the State Governments seeking their feedback. What responses were received? And when?
3. What were the views of each of those who responded? Can we please be provided copies of each of the responses from the State Governments?
4. What NGOs were consulted? What was their response?
5. Which recreational or commercial fishing organisations were consulted? What was their response?

**Answer/s:**

In October 2008, the Department wrote to state and territory environment and primary industries agencies to notify and seek their views on the proposed amendments to the Appendices to the Convention prior to the Conference of Parties (CoP).

A generally favourable response was received from the majority of jurisdictions.

- South Australia, the Northern Territory and Western Australia were fully supportive of the proposals.
- Victoria indicated the listing of these species would not have a significant impact indicating that commercial or recreational interactions with these species, including makos, is limited.
- Tasmania suggested the listing would not have more than a negligible impact on the State.
- New South Wales and Queensland did not support the proposals. This was based on perceptions that the listing could lead to increases in monitoring and stock assessment costs. New South Wales was also concerned with the species becoming 'no-take' for fishers.

The correspondence received from state agencies is at [Attachment A](#).

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The department wrote to the Commonwealth Fisheries Association (CFA). The reply from CFA was silent on the listing of mako sharks but indicated that porbeagle sharks are occasionally taken in fisheries around Heard and McDonald Islands. In addition, on 31 October 2008, the Department gave a briefing to the Eastern Tuna Management Advisory Committee on the nominations. The subsequent letter from the Committee is at [Attachment B](#).

There are no records of consultations with NGOs on the Australian Government's position prior to the CoP meeting in December 2009. No recreational or game fishing organisations were consulted.



## Department of Primary Industries

Our Ref: SI004280

Mr Franco Alvarez  
Marine Initiatives Branch  
Department of Environment, Water, Heritage and the Arts  
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Our Ref:

Dear Mr Alvarez,

### IMPLICATIONS FOR PROPOSED SHARK LISTINGS UNDER THE CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS

Thank you for your letter, received on 31 October 2008, regarding the proposed listing of a number of marine species on the Appendices of the Convention on the Conservation of Migratory Marine Species of Wild Animals (CMS), and for the opportunity to comment on implications for the State of Victoria if the listings are successful.

Of the species nominated, three of the four species of shark are found in Victorian waters: the porbeagle shark (*Lamna nasus*), the spiny dogfish (*Squalus acanthias*) and the shortfin mako (genus *Isurus*). Fisheries catch data and anecdotal information collected from Victorian commercial and recreational fishers indicates that interactions with the three species are limited.

In general:

- There are few reported catches of porbeagle shark in southern Australia in either the recreational or commercial sectors.
- Spiny dogfish are not targeted by recreational fishers, and bycatch is infrequent. Occasional interactions occur in several of the commercial fisheries, but most catch is discarded due to the poor eating qualities of the species.
- Shortfin mako are targeted by some Victorian recreational fishers, both inside and outside the three nautical mile limit, but fishing pressure is considered low in comparison with elsewhere in the world. Records indicate occasional by-product or bycatch in commercial fisheries.

Victoria considers that the listing of these species will not have a significant impact on the commercial or recreational fishing sectors in the State. It is unlikely that fishing practices or activities would be substantially affected. Furthermore, due to the limited interactions between fishers and these species of shark, conservation activities managed by the State are unlikely to require amendment.

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If you have any further queries, or would like any additional information, please do not hesitate to contact Ms Melissa Schubert on telephone (03) 9658 4657 or [melissa.schubert@dpi.vic.gov.au](mailto:melissa.schubert@dpi.vic.gov.au).

Yours sincerely

A handwritten signature in cursive script, appearing to read "Richard Bolt".

**Richard Bolt**  
Secretary

7 11/2008

## Department of Primary Industries and Water

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Our ref: H039758  
Your ref:

7 November 2008

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### Implications for Proposed Shark Listings under the Convention on the Conservation of Migratory Species of Wild Animal (CMS)

Dear Mr Alvarez

I write in response to a letter from Mr Andrew McNee regarding the possible listing of species under the Convention on the Conservation of Migratory Species of Wild Animal (CMS), seeking Tasmania's views on the proposal to list the Irrawaddy dolphin (*Orcaella brevirostris*), the porbeagle shark (*Lamna nasus*), the spiny dogfish (*Squalus acanthias*) and the longfin and shortfin mako (*genus Isurus*).

My view is that the listing of these species would not have more than a negligible impact on Tasmania.

I understand the porbeagle shark would be rarely encountered in Tasmanian waters. The mako (*genus Isurus*) may be a different case. I believe that the shortfin mako (*Isurus oxyrinchus*), known as mako or blue pointer, may be more common in Tasmanian waters and is targeted by recreational fishers at least. I note that the long fin finned species is not found in Tasmania.

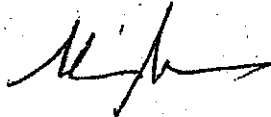
Noting that the listing for mako was proposed by Croatia, I would question if the conservation status of different species is not being "lumped" by virtue of a close taxonomy of two species in the same genus. I am not in a position to make a judgement on their relative status and I would assume that expert opinion would be sought for that issue.

You may be aware that the management regime for the taking of shark species in Tasmanian waters is tightly regulated, and any additional controls flowing from any listing could be implemented without imposing significant management measures. However, any changes would need to be put through our management planning process.

In closing, I would make some comment on the technical content of the paper that you may care to consider. In relation to threats, incidental or accidental mortality from fishing may be an issue for inshore species. In Tasmania for example, where a recreational mako sport fishery operates, there is minimal information available as to how the 'catch and release' fishery impacts the survivorship of sharks caught.

I hope this information is of assistance to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kim Evans', written in a cursive style.

Kim Evans  
**SECRETARY**

## Proforma for Comments

**Document title:** Implications for Proposed Shark Listings under the Convention on the Conservation of Migratory Species of Wild Animal (CMS)

**Date received:** 04/11/08

**Agency/Division/Branch:** Resource Management and Conservation Branch  
Department of Primary Industries and Water

### Summary of key issues

- RMC endorse the proposed listings:
  - The Irrawaddy dolphin (*Orcaella brevirostris*) in Appendix I of the Convention.
  - The four shark species (porbeagle shark (*Lamna nasus*) and the spiny dogfish (*Squalus acanthias*), and the longfin and shortfin mako (genus *Isurus*)) in Appendix II of the Convention.
- Threats to the four shark species should be expanded to include impacts associated with entanglement of fishing gear (cray pot lines, gillnets, longlines) in both the commercial and recreational sector, particularly for species that regularly frequent the inshore areas, such as the spiny dogfish (*Squalus acanthias*), and the longfin and shortfin mako (genus *Isurus*).
- Threats to the four shark species should include impacts associated with release from recreational and commercial 'sports' fishermen. Little research has been compiled on the survivorship and success of released sharks following capture during sport fishing. This particularly applies in Tasmanian waters, where there is a strong recreational mako sport fishery, with minimal information available as to how the 'catch and release' fishery impacts the survivorship of sharks caught.

### Specific comments

Proposal	Section	Page/ para	Comment
11/9	3.1 Direct threat to the population	6/3	As a prized game fish for sports fishermen and recreational anglers, little information is available on the survivorship and well-being (reproductive success) of shortfin mako post-release from such fishing. This could also be seen as a potential threat to the species.

Approved: 

Date: 5/11/08



Ref: OUT08/13730 (08/1865)

Mr Andrew McNee  
Assistant Secretary  
Marine Initiatives Branch  
Department of Environment Water Heritage and Arts  
GPO Box 787  
Canberra ACT 2601

7 November 2008

Dear Mr McNee

**Subject: Proposed listings - Convention on the Conservation of Migratory Species of Wild Animals (CMS)**

Thank you for your letter of 5 November 2008 seeking comments on the proposed listing of porbeagle shark, spiny dogfish and longfin and shortfin mako shark. All of these species are found either within NSW waters or waters for which NSW has fisheries management responsibilities under the Offshore Constitutional Settlement (OCS).

The four shark species proposed for listing are taken to varying degrees in commercial, recreational and beach meshing programs in NSW. Sharks are taken as a key secondary species in the Ocean Trap and Line Fishery and occur in Ocean Trawling as a by-product species. Both of these fisheries have been subject to environmental impact assessments and are managed in accordance with Fisheries Management Strategies. NSW DPI records indicate 1.5 tonnes of mako and 27kg of dogfish "unspecified" were taken in the Ocean Trap and Line Fishery, as well as a total of 116 tonne of "shark unspecified".

NSW DPI has recently introduced measures to better manage catches of large pelagic sharks, and will be working on ways to improve the reporting accuracy of shark species and minimise the impacts of various fisheries on deepwater sharks in general. These species include catches reported as 'unspecified sharks', and including dogfish groups and mako sharks (also includes catches whaler and school, hammerhead and ghost sharks).

Mako sharks are of some importance to recreational fishers and both mako and porbeagle sharks are listed as an eligible game fish species by the Game Fishing Association of Australia.

Records from the NSW Shark Meshing Bather Protection Program indicate there have been a total of 31 mako sharks taken in the program since 1990.

I note your comments that listing on an Appendix of CMS results in automatic recognition as a listed migratory species under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Further, I note that such recognition

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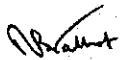


results in the application of other provisions of the EPBC Act relating to actions that have a significant impact on listed species, and to killing, injuring, taking, trading, keeping or moving listed migratory species in Commonwealth waters. Given that OCS vests the management of certain fisheries in Commonwealth waters under NSW law, I would appreciate further details about the application of the EPBC Act to those waters and fisheries, and subsequent implications of the listing on the management arrangements for those fisheries.

In particular, NSW DPI would not support the listing if it results in a "no-take designation", or otherwise significantly impacts on fisheries managed by NSW under OCS arrangements, including increased costs associated with monitoring and stock assessment. NSW DPI also has concerns that the introduction of "no-take" provisions would have perverse outcomes if fishers dump product and do not report landings. Listing would also have a detrimental impact on commercial and recreational fishers who may otherwise retain these sharks for consumption and/or sale.

In summary, pending the provision of additional information about the impact of the proposed listing with respect to OCS arrangements, NSW DPI does not support the nomination at this point in time. Please contact Mr Peter Gallagher on Ph: (02) 4916-3875 if you have any queries regarding this correspondence.

Yours sincerely



**Bill Talbot**  
**DIRECTOR**  
**FISHERIES CONSERVATION & AQUACULTURE BRANCH**



Reference: 01528/08

 Department of  
**Primary Industries and Fisheries**

**Mr Andrew McNee**  
**Assistant Secretary**  
**Marine Initiatives Branch**  
 Department of Environment, Water, Heritage and Arts  
 GPO Box 787  
**Canberra ACT 2601**

Dear Mr McNee

**Proposed listings under the Convention on the Conservation of Migratory Species of Wild Animals (CMS)**

Thank you for your letter of 24 October 2008 seeking comments on the proposed listing of four shark species and the Irrawaddy dolphin, which will be considered at the next Conference of Parties on Migratory Species (CoP).

I am aware that you have also sought comments from the Executive Director, Parks and Wildlife of the Queensland Environmental Protection Agency (EPA). Officers from my Department have liaised with the EPA in relation to this matter. The EPA has a greater interest in the listing of the Irrawaddy dolphin compared to the shark species, given it is the agency responsible for conservation of marine mammals in Queensland.

All cetaceans indigenous to Australia are protected under the *Nature Conservation Act 1992*. The Irrawaddy dolphin *Orcaella brevirostris*, is listed as rare under the *Nature Conservation (Wildlife) Regulation 2005*.

The *Nature Conservation (Whales and Dolphins) Conservation Plan 1997* covers all species of the Order Cetacea occurring in Queensland waters. The management intent for dolphins listed under the conservation plan includes —

- (a) to ensure biologically viable populations in the wild are conserved or re-established; and
- (b) to minimise harm and distress caused directly or indirectly to whales and dolphins by human activities.

The EPA has indicated that it would be supportive of the listing of Irrawaddy dolphin under the Convention on the Conservation of Migratory Species of Wild Animals (CMS).

In relation to the four shark species nominated, three are more regularly found within Queensland waters – the longfin and shortfin mako and the porbeagle. The spiny dogfish is not generally encountered in Queensland waters but may be found on rare occasions in southern Queensland. None of the four species are considered target species in any of Queensland's commercial or recreational fisheries, though they are taken incidentally when targeting other fish species.

Available data from Queensland commercial fishing logbooks show that commercial line fishers on the east coast have some limited interactions with mako sharks, recording up to 200 kg in total in some individual years. However, it should be noted that the current logbooks do not require fishers to record to species level, so this figure is likely to be an underestimate.

Discussions with a number of individual commercial operators has confirmed that they are taken incidentally when line fishing off the continental shelf, particularly out of the Mooloolaba port. These discussions also confirm that the product is harvested and sold. In fact, the price paid for mako flesh is approximately double that paid for whaler sharks, and it does not suffer the same problems with ammonia at larger sizes.

Discussions with recreational fishers indicates that mako sharks are targeted by some specialised game fishers offshore and are also taken incidentally when targeting other species. Larger makos are occasionally retained by game fishers for record purposes, but are mostly tagged and released.

Records from the Queensland Shark Control Program also show there have been some interactions with mako sharks, with a total of 39 taken since 1990.

I am advised that officers from the Department of the Environment, Water, Heritage and the Arts (DEWHA) have confirmed that if the nomination for CMS is successful, the shark species will automatically be included on the List of Migratory Species under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), making them no-take within Commonwealth waters (i.e. outside three nautical miles). This is likely to have an impact on commercial and recreational fishers in Queensland that take these sharks incidentally and retain them for consumption and/or sale.

Should there be specific sustainability concerns about any of the species in Australian waters (or across their entire range), the Queensland Government would prefer to see a nomination process similar to those for protected species under the EPBC Act (such as that occurring for dwarf sawfish currently). This would provide an opportunity to identify and assess more local information and implement recovery plans where necessary.

On this basis, the Queensland Government, through the Department of Primary Industries and Fisheries, does not at this time support the proposed listing of the four shark species.

I am also conscious that the proposed listing may highlight the need for significant increases in monitoring of the species. This may incur significant additional costs to this Department and other state fisheries management agencies, and I would ask that DEWHA be cognisant of this when providing any comments on nomination.

If you require any further information regarding this matter, please do not hesitate to contact Claire Andersen on telephone 07 3225 2550 or email [claire.andersen@dpi.qld.gov.au](mailto:claire.andersen@dpi.qld.gov.au).

Yours sincerely



**Grant Hall**  
**Deputy Director General**  
**Fisheries**

**Cc. Alan Feely**  
**Executive Director**  
**Queensland Parks and Wildlife**  
**Environmental Protection Agency**  
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Department of Fisheries  
Government of Western Australia



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Franco Alvarez  
Marine Initiatives Branch  
Department of the Environment, Water, Heritage and the Arts  
GPO Box 787  
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Dear Mr Alvarez

**IMPLICATIONS FOR PROPOSED SHARK LISTINGS UNDER THE CONVENTION  
ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMAL (CMS)**

I refer to you Department's letter of 24 October seeking advice on the proposed listing of shark species under CMS convention.

With the exception of the shortfin mako (*Isurus oxyrinchus*), the species nominated for listing under Appendix II of the CMS have not been recorded in either catch return or research data derived from any Western Australian-managed fishery.

Longfin mako (*Isurus paucus*), porbeagle (*Lamna nasus*) and spiny dogfish (*Squalus acanthias*) are not believed to be caught by State-managed fishers, other than as very infrequent incidental bycatch, if at all. Therefore, their listing should have negligible implications for Western Australia.

Shortfin mako, has been a small component of catches by the Joint Authority Southern and West Coast Demersal Gillnet and Demersal Longline Managed Fisheries. Reported annual catches of *I. oxyrinchus* by these fisheries have typically been less than 5 tonne per year. At these low levels of catch, this species' listing under CMS and, by extension, the EPBC Act, is likely to have only minor implications for Western Australia.

The Department considers that these nominations are well justified and therefore listing these four species under CMS would be appropriate and potentially beneficial to their sustainability.

This Western Australian Department of Fisheries scientists specialising in shark research have advised that they consider all of the nominated species (or sub populations of those species) have suffered severe depletions and meet the Convention's definition of "Migratory Species". Accordingly, it is recommended that the Department of the Environment, Heritage, Water and the Arts support the proposed listing.

If the species are listed, it is anticipated that the take of shortfin mako in the Southern and West Coast Demersal Gillnet and Demersal Longline Managed Fisheries would be managed through the normal wildlife trade operation export approval applying to these fisheries with a species specific exemption and the ongoing reporting of species catch data. It is not considered appropriate to protect the species under the Fish Resources Management Act, as they are not specifically targeted by any Western Australian fisheries, the commercial catch is negligible and making them protected species would be unlikely to reduce the incidental catch or subsequent mortality.

Yours sincerely



**STUART SMITH**  
**CHIEF EXECUTIVE OFFICER**

5 November 2008



DEH 33/1227

Date: 7th November 2008

Mr Franco Alvarez  
Marine Initiatives Branch  
Department of the Environment, Water, Heritage and the Arts  
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Dear Mr Alvarez

**EPBC ACT – IMPLICATIONS FOR PROPOSED SHARK LISTINGS UNDER THE  
CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMAL**

Thank you for your letter dated 24 October 2008 inviting the South Australian Government to provide comment on implications for proposed shark listings under the Convention on the Conservation of Migratory Species of Wild Animal (CMS).

The South Australian Government has previously supplied comment on the listings of the porbeagle shark and spiny dogfish (April 2007) which supported the nominations.

The South Australian Government has a strong interest on the conservation of marine species, and is working in partnership with other organizations towards better understanding of the conservation status of fish, sharks and rays in South Australia.

I understand that the listing of these species under CMS Appendix II is not likely to have major negative implications for South Australia's fisheries and could greatly assist the current efforts towards the recovery of population numbers for both species.

The following information is provided on the spiny dogfish (*Squalus acanthius*); the porbeagle shark (*Lamna nasus*) and the shortfin mako shark (*Isurus oxyrinchus*) which are found in South Australian waters and waters adjacent to South Australia. The two remaining species, the Irrawaddy dolphin (*Orcaella brevirostris*) and longfin mako (*Isurus paucus*) do not occur in South Australia or in waters adjacent to South Australia.

### **Porbeagle Shark (*Lamna nasus*)**

#### **General Comment**

- Species has a global distribution.
- Species is red-listed by IUCN as Vulnerable.
- Based on life history traits, this species is intrinsically vulnerable to over-exploitation. (Cheung, William W. L, Watson, Reg, Morato, Telmo, Pitcher, Tony J., auly, Daniel. 2007, Intrinsic vulnerability in the global fish catch, Marine Ecology Progress Series 333: 1-12).

#### **South Australian State waters**

- It is rarely recorded in South Australian State waters, with very few records during the past 100 years.
- This species is not specifically protected under the *SA Fisheries Management Act 2007*. No bag limits or size limits apply under the *SA Fisheries Management Act 2007* for recreational fishing.
- May be taken as commercial bycatch in State waters however the species is not a regular catch item. No catch data available.

#### **Commonwealth waters adjacent to South Australia**

- Commercial fisheries controlled under Commonwealth fisheries legislation. It is appropriate that the Australian Fisheries Management Authority provide comment on the implications of listing of this species for Commonwealth waters.
- In Australia, Porbeagle Shark is reported to be at risk due to impacts from the operation of the otter trawl component of the South East Trawl Fishery and the following sub-fisheries of the Gillnet, Hook and Trap Fishery: southern shark gillnet, southern shark demersal long-line, scalefish demersal long-line, and scalefish automatic long-line.

### **Spiny Dogfish (*Squalus acanthius*)**

#### **General comment**

- Species has a global distribution.
- Species is red-listed by IUCN as Vulnerable.
- Based on life history traits, species is intrinsically vulnerable to over-exploitation. (Cheung et al. 2007, Intrinsic vulnerability in the global fish catch, Marine Ecology Progress Series 333: 1-12).
- In Australia, the Spiny Dogfish has traditionally been of little value as a food fish because the flesh is considered to be rather coarse. The impact on population numbers is mainly due to the fact that it forms a bycatch component of some fisheries, and the flesh is marketed in small quantities as fresh headed and gutted carcasses.

#### **South Australian State waters**

- It is rarely recorded in South Australian State waters.



- Very limited scientific information exist on population sizes, migratory patterns, total catches from all fisheries combined (byproduct and discarded bycatch), and potential impacts of fishing on reproductive potential for southern Australia.
- This species is not specifically protected under the *SA Fisheries Management Act 2007*. No bag limits or size limits apply under the *SA Fisheries Management Act 2007* for recreational fishing.
- Species is taken as commercial bycatch in South Australian State waters.
- In South Australia, dog shark catches are not separated by species, but most refer to Spiny Dogfish / Spurdog. In most years, the species is not targeted specifically but has been caught by some fishers licensed in the South Australian Marine Scalefish Fishery and are reported to be part of the bycatch in the Rock Lobster Fishery.

#### Commonwealth waters adjacent to South Australia

- In southern Australia, it occurs in continental shelf waters.
- Very limited scientific information exist on population sizes, migratory patterns, total catches from all fisheries combined (byproduct and discarded bycatch), and potential impacts of fishing on reproductive potential for southern Australia;
- Species is taken as a by-product species in the south east trawl fishery, the offshore shark gillnet and long line fisheries managed by the Australian Fisheries management Authority.
- Commercial fisheries controlled under Commonwealth fisheries legislation. It is appropriate that the Australian Fisheries Management Authority provide comment on the implications of listing of this species for Commonwealth waters.

#### Shortfin mako shark (*Isurus oxyrinchus*).

##### General comment

- Species has a global distribution.
- Species is red-listed by IUCN as Lower Risk - Near Threatened. However, the shortfin mako has not been re-assessed since 2000.
- Based on life history traits, species is intrinsically vulnerable to over-exploitation. The shortfin mako is ranked as the most vulnerable of the three shark species (Cheung et al. 2007, Intrinsic vulnerability in the global fish catch, Marine Ecology Progress Series 333: 1-12).

##### South Australian State waters

- Species is rarely recorded in State waters.
- In South Australian waters this species is not specifically protected under the *SA Fisheries Management Act 2007*. No bag limits or size limits apply under the *SA Fisheries Management Act 2007* for recreational fishing.
- Species is taken as commercial bycatch.
- Targeted by recreational game fishers. No catch data currently available, although some information will become available at the completion of the 2007/08 Statewide Recreational Fishing Survey.

Commonwealth waters adjacent to South Australia

- Oceanic species commonly occurring along the edge of the shelf in the Great Australian Bight.
- Targeted by recreational game fishers along parts of the continental shelf.
- Commercial fisheries controlled under Commonwealth fisheries legislation. It is appropriate that the Australian Fisheries Management Authority provide comment on the implications of listing of this species for Commonwealth waters.
- Species taken as a by-product species in the south east trawl fishery, the offshore shark gillnet and long line fisheries managed by the Australian Fisheries Management Authority

If you have any enquiries regarding this advice should be directed to the South Australian EPBC State Coordinator, Frank Dal Piva on (08) 8463 4821, or e-mail: [sa.epbc@saugov.sa.gov.au](mailto:sa.epbc@saugov.sa.gov.au).

Yours sincerely

Greg Leaman  
**EXECUTIVE DIRECTOR**

**From:** Heather Brayford [Heather.Brayford@nt.gov.au]  
**Sent:** Thursday, 6 November 2008 6:46 PM  
**To:** Alvarez, Franco  
**Cc:** Karen Edyvane  
**Subject:** FW: Request for comment 6 Nov - Convention on Migratory Species [SEC=UNCLASSIFIED]

**Expires:** Tuesday, 6 November 2018 1:30 AM

**Attachments:** NT Fisheries Environment.doc

Dear Mr Alvarez

Thank you for the opportunity to comment on the proposed listing of 5 marine species under the Convention of Migratory Species (CMS), to be considered at the forthcoming Conference of the Parties of the Convention on Migratory Species.

Both the porbeagle shark (*Lamna nasus*) and the spiny dogfish (*Squalus acanthias*) are temperate water species and are therefore not found in the Territory waters. The longfin and shortfin mako (genus *Isurus*) are likely to occur in oceanic waters off the Northern Territory coast, but no interaction with the species through our NT Fishery Observer Program and compulsory commercial fishing logbooks has been recorded. Similarly, there is no record through logbook returns or observer programs of interactions with the Irrawaddy dolphin.

Given the absence of any recorded catch or interaction, I have no specific comment to make on the proposed listings.

If you require any further information please contact Ms Tricia Beatty at this office on (08) 8999 2393 (tel) or email: [tricia.beatty@nt.gov.au](mailto:tricia.beatty@nt.gov.au)

Heather Brayford  
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**From:** Iffland, Rebecca [mailto:Rebecca.Iffland@environment.gov.au] **On Behalf Of** McNee, Andrew  
**Sent:** Friday, 31 October 2008 9:21 AM  
**To:** Heather Brayford  
**Cc:** [ian.kurnow@nt.gov.au](mailto:ian.kurnow@nt.gov.au)  
**Subject:** FW: Request for comment 6 Nov - Convention on Migratory Species [SEC=UNCLASSIFIED]

Dear Heather

Please find attached a letter sent to your agency's Senior Executive. I'm copying you in to ensure you are across this issue and to facilitate a prompt response from your territory. I would like to apologise once more for the short turn around time requested.

<<NT Fisheries Environment.doc>>  
Kind regards,

Rebecca Iffland on behalf of Andrew McNee  
Assistant Secretary, Marine Initiatives Branch  
Marine Division  
Department of the Environment, Water, Heritage and the Arts  
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Mr Peter Komidar  
Acting Director  
Department of Environment, Heritage, Water and Arts  
GPO Box 787 Canberra  
ACT 2601

4 November 2008

Dear Peter,

Thank you for taking the time to meet with Eastern Tuna MAC on Friday 31 October 2008 to advise of the possible listing of long fin and short fin mako sharks (genus *Isurus*) on Appendix II of the Convention of Migratory Species (CMS).

Eastern Tuna MAC would like to reiterate its advice provided to you at the meeting on the potential listing of mako sharks.

- There are no specific management measures in the Eastern Tuna and Billfish Fishery (ETBF) for mako sharks. However, wire traces have been banned for the entire fishery and vessels are limited to 20 sharks per trip as general measures to protect all sharks.
- Long finned makos are rarely encountered and short finned makos are an incidental catch of longline fishing operations. The ban on the use of wire traces has reduced commercial catches in recent year, as has the reduced number of hooks being set in the fishery. Operators report only seeing 1-2 mako sharks per trip.
- Short finned makos are always landed when they are dead on the line as they are a valuable commercial product for the domestic market. Between 40-80 tonnes per annum have been landed by ETBF operators in recent years. Industry members estimate an average size of 90-100kg per shark. Makos have a market price of more than \$3 per kg for flesh plus \$50 per kg for fins, it is informally estimated the species is worth about \$300,000 to the fishery before value adding.
- These are incidental catches and not the result of targeted shark fishing. Most commercial interactions with longlines are from makos predated on captured target species rather than makos taking longline baits.
- Mako sharks are revered by the gamefishing fraternity as the best fighting species in the oceans and off NSW there is a minimum size limit of 80kgs so anything under that is released alive. Around 87% of all mako captures are tagged and released.
- Mako sharks are also taken by other Commonwealth fisheries.

Eastern Tuna MAC was concerned by your advice that if makos species are listed under Appendix II of the CMS then it must be included in the list of migratory species established under section 209 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Under sections 20-20A of the EPBC Act

actions that have a significant impact on the species are prohibited unless approved by the Minister.

Eastern Tuna MAC considers that if genus *Isurus* is listed under CMS the strict application of the EPBC Act will not provide additional protection to mako sharks as it is a purely incidental by-catch in the ETBF. Wherever longline fishing occurs mako sharks will still be captured. While it may be possible to establish a provision where captured makos are not landed, most are dead on retrieval of the long line. Consequently, given the general measures already in place for all shark species, not landing incidental captures of the species would be a waste of the resource, likely result in a decrease in the accuracy of the current monitoring of catches and contradict AFMA's and the Australian government's policy to reduce discarding.

Targeting of mako sharks by longliners does not occur and industry members indicated it would not be economically viable as the species does not school; indeed most operators cut sharks off when retrieved alive as they cause damage to gear and represent a serious OHS issue for crew. A possible move by the fishery to circle hooks to reduce turtle interactions has the potential to slightly increase the catch of mako sharks as circle hooks catch more sharks than the traditional tuna hooks. This is the only current reason why the annual catch of makos in the ETBF may increase from its current incidental levels. Also the proposal by some members of the WCPFC to implement mandatory use of circle hooks is yet to be accepted and may not occur.

Once again thank you for the opportunity to provide advice on this important potential listing. If you have further queries or would like to speak directly with ETBF industry operators please contact the MACs Executive Officer Ian Freeman on 0418 265558 or by email at [finsptyltd@bigpond.com](mailto:finsptyltd@bigpond.com).

Yours Sincerely,



Bill Nagle  
Chairman  
Eastern Tuna MAC

**Senate Standing Committee on Environment, Communications and the Arts  
Legislation Committee**

Answers to questions on notice

**Environment, Water, Heritage and the Arts portfolio**

Additional Estimates, February 2010

<b>Outcome:</b>	1	<b>Question No:</b>	57
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	CMS meeting – Rome 2008		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

1. Who attended the Rome meeting of CMS in December 2008 and in what capacity?
2. Who was a member of the official delegation?
3. Why is HSI listed as an official member of the delegation? On what basis were they included in the official delegation? Who invited them? When were they invited?
4. What position was taken to the Rome meeting?
5. What data was used to back-up this position, apart from CSIRO advice?
6. Can we please be provided with a copy of the advice from CSIRO? When was this received?
7. What contribution did DEWHA officials make to the meeting? Are any speeches/reports of officials available?
8. What contribution did HSI make?
9. Did HSI have to seek approval from DEWHA prior to making any of its contributions to the Rome meeting?
10. What DEWHA guidelines/rules/protocols did the HSI representative operate under as a member of the delegation?

**Answer/s:**

1. The Australian delegation included three officers from the Department of the Environment, Water, Heritage and the Arts and one representative of the Humane Society International (HSI). Details are provided in response to Question on Notice 49 from Additional Estimates, February 2010.
2. See response to part 1.
3. It is not uncommon for non-government organisations (NGOs) to participate as members of official Australian delegations for international meetings. HSI sent a written request to join the Australian delegation on 10 October 2008, following which an invitation was extended to several other conservation non-government organisations. The delegation was selected in consultation with relevant Australian Government agencies. HSI was not provided with any financial support by the Australian Government to attend the meeting. A condition of HSI's participation was a requirement to adhere to the Australian Government delegation brief.

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4. While Australia did not nominate the species for inclusion in the Convention on Migratory Species Appendices, the Government did support their inclusion on Appendix II. This is consistent with the Government's commitment to international shark protection and conservation.
5. The position was based on the information provided in the nominations and the Commonwealth Scientific and Industrial Research Organisation (CSIRO) report.
6. The CSIRO analysis of the nominations was received in September 2008. A copy of the report has been provided in response to Question on Notice 50 from Additional Estimates, February 2010.
7. The delegation supported the nominations consistent with the agreed Australian Government position.
8. To the Department's knowledge the HSI representative did not make any statements at the meeting.
9. HSI agreed to adhere to the delegation brief and accept the directions of the Head of Delegation. HSI agreed to speak at the meeting only with the approval of the Head of Delegation and in accordance with the Australian delegation's instructions.
10. See response to part 9.



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**Environment, Water, Heritage and the Arts portfolio**

Additional Estimates, February 2010

<b>Outcome:</b>	1	<b>Question No:</b>	58
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	CMS meeting – Rome 2008 – consultation		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

1. What consultation occurred between DEWHA and fishing organisations between the Rome meeting and the tabling of the NIA on Nov 25? Recfish? Commonwealth Fisheries Association?
2. What consultation occurred during this period with environmental (NGO)s?
3. What correspondence was received from HSI International during this period?

**Answer/s:**

1. The Department wrote to the Commonwealth Fisheries Association (CFA) on 17 March 2009, notifying them the longfin mako, shortfin mako and porbeagle sharks had been listed on Appendix II of the Convention on Migratory Species (CMS) and that they must now be listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) as migratory.

The Department wrote to the CFA again on 10 September 2009, advising that Minister Garrett would await the outcomes of the Independent Review of the EPBC Act prior to listing the three shark species as migratory.

The Department wrote to Recfish Australia, the Game Fishing Association of Australia and the Boating and Fishing Council of Australia on 2 November 2009, advising that as a result of the inclusion of longfin mako, shortfin mako and porbeagle sharks on Appendix II of the CMS, it was a legal requirement that the species be listed as migratory under the EPBC Act, and that this would occur by the end of January 2010. The Department also discussed the listing of these sharks with representatives from Recfish Australia at a meeting on 25 November 2009.

2. The Department wrote to the Humane Society International (HSI) and the World Wide Fund for Nature on 10 September 2009, advising that Minister Garrett would await the outcomes of the Independent Review of the EPBC Act before proceeding with listing these species as migratory.

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3. The Environmental Defender's Office, acting on behalf of HSI, wrote to the Minister on 25 September 2009 (see Question on Notice 60 from Additional Estimates, February 2010). In a teleconference in October 2009, the Department explained to HSI the need for a reasonable period prior to listing to allow communication with affected stakeholders. HSI subsequently emailed the Department on 30 October outlining its view that such a period was not required, but that if it was held that it should not be for longer than six weeks. Minister Garrett subsequently wrote to HSI notifying that the listing would take place on 29 January 2010 (see Question on Notice 60 from Additional Estimates, February 2010).

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**Environment, Water, Heritage and the Arts portfolio**

Additional Estimates, February 2010

<b>Outcome:</b>	1	<b>Question No:</b>	59
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	National Interest Analysis		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

The National Interest Analysis [2009] ATNIA 26 paper compiled by DEWHA and tabled on November 25 stated:

*“It is anticipated that the costs for most sectors will be minor”*

Further it added

*“There is likely to be some cost associated with changes required by game or charter fishing operators where they target the species concerned”.*

1. How did DEWHA come to these conclusions?
2. Did DEWHA provide the NIA to Minister Garrett for his approval? Did he read and approve and/or note it? What date was this approved and/or noted by the Minister?

**Answer/s:**

1. The National Interest Analysis (NIA) states that no additional costs are expected for Australia to meet its international obligations under the Convention on Migratory Species.

The assessment that costs of domestic implications would be minor was focused broadly across the economy. In this sense, the overall impacts were not anticipated to be significant. The NIA did include a focus on the implications for commercial fisheries, where any changes to management arrangements were anticipated to be minor and therefore low cost. These conclusions were based on consultation with Commonwealth, state and territory fisheries agencies and the Commonwealth Fisheries Association, and on assessment of known catch data for the species concerned in Australian fisheries. The NIA also indicated there would likely be some costs associated with changes required by the recreational sector (in particular game and charter fishing operators) where they target the species concerned. There was no detailed analysis of the economic implications for this sector.

2. Minister Garrett approved the NIA on 17 November 2009.

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Answers to questions on notice

**Environment, Water, Heritage and the Arts portfolio**

Additional Estimates, February 2010

<b>Outcome:</b>	1	<b>Question No:</b>	60
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division Department of the Environment, Water Heritage and the Arts		
<b>Topic:</b>	Humane Society – legal advice		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

In a statement on January 25, HSI International said:

*“Minister Garrett had already tried to avoid these listings until HSI’s lawyers advised him of his legal responsibilities”*

1. When did HSI provide this advice to the Minister?
2. When did HSI meet with the Minister and/or his advisors over this matter?
3. What was the nature and content of this advice? Can we please be provided with a copy of the advice?
4. What actions did the Minister and/or DEWHA taken following receiving this advice? What correspondence was had with HSI? Can we please be provided with copies of this correspondence?

**Answer/s:**

1. The Environmental Defender’s Office (EDO), acting on behalf of Humane Society International (HSI), wrote to the Minister on this matter on 25 September 2009. A copy of this letter is at Attachment A.
2. The HSI did not meet with the Minister or advisers on this matter.
3. The correspondence from the EDO outlined the obligations under s 209 of the Environment Protection and Biodiversity Conservation Act 1999 to list species included on the Appendices to the Convention on Migratory Species (CMS). The correspondence indicated that HSI reserved the right to bring legal action should these species not be listed (refer Attachment A).
4. On 8 October the Department wrote to the EDO advising that it was reviewing the position outlined in their letter of 25 September (refer Attachment B). On 21 October, Minister Garrett wrote to the EDO advising that he had instructed the Department to proceed with listing the species (refer Attachment C). On 21 December 2009 the Minister wrote to Michael Kennedy, Director Humane Society International, advising that the listing instrumentation had been signed (refer Attachment D).

Our Ref: JBW:2003068  
Your Ref: 2009/13085

25 September 2009

The Hon. Peter Garrett AM MP  
Minister for the Environment, Heritage and the Arts  
Parliament House  
Canberra ACT 2600

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**Copy to:**

Mr Anthony McGregor  
Director  
Policy Analysis and Advice  
Department of the Environment, Water, Heritage and the Arts  
GPO Box 787  
Canberra ACT

Dear Minister,

**Listing of the porbeagle, shortfin mako and longfin mako sharks on the migratory species list**

We act for the Humane Society International (HSI).

We refer to the letter dated 10 September 2009 from Mr Nigel Routh of your Department to HSI which states that you have decided not to add the porbeagle, shortfin mako and longfin mako shark species to the national list of migratory species until the review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) has been completed.

The purpose of this letter is to remind you of your legislative obligation under s 209(3)(a)(ii) of the EPBC Act which makes it mandatory for you to list all migratory species that are from time to time included in the appendices to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention). The above listed species of shark were added to Appendix II of the Bonn Convention in December 2008.

A failure to list these species on the migratory species list immediately constitutes a breach of the EPBC Act. Accordingly, our client reserves its right to commence proceedings under s 475 of the EPBC Act for a mandatory injunction requiring you to list the 3 species of shark.

We trust that you will give priority to this matter and we look forward to your response.

Yours faithfully

Environmental Defender's Office Ltd

  
Jessica Wood  
Senior Solicitor





## The Hon Peter Garrett AM MP

Minister for the Environment, Heritage and the Arts

21 OCT 2009

C09/17647

Ms Jessica Wood  
Environmental Defenders Office  
PO Box 212  
LISMORE NSW 2480

Dear Ms Wood

I refer to your letter dated 25 September 2009 regarding listing under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) of porbeagle, shortfin mako and longfin mako sharks following their inclusion on Appendix II of the Convention on Migratory Species (CMS).

I have sought further advice from my Department on this issue. As you are aware, the current requirement under section 209 of the EPBC Act to automatically list species included on the CMS Appendices is under consideration as part of the independent review of the Act. However, without pre-empting the findings of the review and the Government response, I recognise the need to comply with the requirements of the Act as it stands. I have therefore instructed my Department to proceed with preparing the necessary documents to allow me to list the species in question as migratory under section 209 of the EPBC Act.

Thank you for writing on this matter.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Peter Garrett', written over a large, stylized flourish that extends upwards and to the left.

**Peter Garrett**



Australian Government

Department of the Environment, Water, Heritage and the Arts

Our reference: 2009/13085

Your Ref: JBW: 2003068

Jessica Wood  
Senior Solicitor  
Environmental Defender's Office Ltd  
PO Box 212  
Lismore NSW 2480

Dear Ms Wood

I refer to your letter dated 25 September 2009 to the Hon. Peter Garrett AM MP regarding listing under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) following the inclusion of the porbeagle, shortfin mako and longfin mako sharks on Appendix II of the Convention on Migratory Species (CMS). Thank you for raising this matter.

We appreciate the importance of this issue. Following your letter we are reviewing the position outlined in my letter of 10 September 2009 and will discuss the next steps with Minister Garrett as a matter of priority.

I would appreciate the opportunity to meet with representatives of HSI in the near future to discuss the way forward.

I can be contacted to discuss this matter on (02) 6274 9915.

Yours sincerely

for Nigel Routh  
Assistant Secretary  
Marine Biodiversity Policy Branch

8 October 2009



## The Hon Peter Garrett AM MP

Minister for the Environment, Heritage and the Arts

B09/3153

Mr Michael Kennedy  
Director  
Humane Society International  
PO Box 439  
AVALON NSW 2107

Dear Mr Kennedy

On 21 October 2009 I wrote to Ms Jessica Wood of the Environmental Defenders Office, which was acting on behalf of your organisation, advising that I had instructed my Department to proceed with preparing the necessary documents to allow me to list the porbeagle, shortfin mako and longfin mako sharks as migratory species under the Environment Protection and Biodiversity Conservation Act (EPBC Act).

I have now signed the instrumentation to list the species as migratory under the EPBC Act. The listings will become effective on 29 January 2010 to ensure adequate time for communication with affected stakeholders.

Yours sincerely

A handwritten signature in black ink, consisting of several vertical strokes followed by a large, sweeping flourish that extends to the right and then loops back down.

**Peter Garrett**

21 DEC 2009



**Senate Standing Committee on Environment, Communications and the Arts  
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**Environment, Water, Heritage and the Arts portfolio**

Additional Estimates, February 2010

<b>Outcome:</b>	1	<b>Question No:</b>	61
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	EBPC Hawke review – migratory species		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

On 1 October, AFMA stated in its update:

*“The Minister has decided to allow the review to finalise its assessment prior to consideration of adding Porbeagle, Shortfin Mako and Longfin Mako to the list of migratory species.*

*This will ensure that the Australian Government does not put in place processes that have the potential to be contradictory to the findings of the EPBC Review”.*

The Minister received a copy of the final report from Mr Hawke on 30 October – so was obviously privy to recommendation 17 of the review.

Despite being privy to the recommendation – knowing very well recommendation 17 would completely change the listing of the 3 shark species – and having said before he was waiting for the review to finish before doing anything on the sharks...

1. Why did Minister Garrett effectively approve the listing and allow the NIA to be tabled on November 25 and a listing to go ahead on January 29?
2. What situation occurred between mid 2009 and November 25 for the Minister to change his mind on the listing and its connection with the EPBC review?

**Answer/s:**

A response to this Question was provided at the Estimates hearing on 9 February 2010. Please refer to page ECA 52 of the Proof Committee Hansard for the Environment, Communication and the Arts Legislation Committee of 9 February 2010.

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<b>Outcome:</b>	1	<b>Question No:</b>	62
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	Migratory species listings		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

1. What advice did DEWHA provide to the Minister over the December-January period about the listing? When was this provided? Can we please be provided with a copy of this advice?
2. What advice was provided during this period to DAFF and/or PM&C about the listings and when?

**Answer/s:**

1. It is not normal practice for the department to disclose details of discussions with the Minister or briefing provided to the Minister's Office.
2. The Department of Agriculture, Fisheries and Forestry was kept informed of developments in relation to the listing of the three shark species, and the process for seeking legislative amendments. Several discussions were held with the Department of the Prime Minister and Cabinet on legislative amendment proposals and processes.

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<b>Outcome:</b>	1	<b>Question No:</b>	63
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	Game fishing club - mako shark listing		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

On 5 February, DEWHA wrote to the Mayor of Break O'Day Council, Mr Legge following a letter from him and myself about the fate of the St Helens Game Fishing Club fishing tournament.

This letter effectively stated the Department would not enforce the EPBC Act with respect to activities of the tournament and the mako shark listing.

1. What legal advice did DEWHA receive on this letter?
2. Does DEWHA believe it would be 100% impossible for tournament participants to escape charges as a result of this letter and its content?
3. How many other clubs have written to DEWHA or the Minister seeking similar advice? How many responses have been drafted? What is the advice contained in these responses?
4. What is the status of the listing on State waters? What advice has been provided to or received from State authorities about the listing and its enforcement?
5. What is the status of commercial fishing with respect to by-catch in both State and Commonwealth waters?

**Answer/s:**

1. The general approach was discussed with the Department's internal legal advisers, among others, at the time it was sent out. Specific written legal advice on the exact terms of the letter was not obtained.
2. No.
3. As at 25 February 2010, eight requests have been received by the Department seeking similar advice. Eight responses have been drafted. The advice given is in similar terms to that provided to the Break O' Day Council.

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4. The offence provisions in Part 13, Division 2 of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), which prohibit killing, injuring, taking, trading, keeping or moving listed migratory species in Commonwealth areas, and trading, keeping or moving a listed migratory species that has been taken in a Commonwealth area do not apply in state waters. Part 3 of the EPBC Act, which prohibits actions that have, will have or are likely to have a significant impact on listed migratory species, does apply in state waters. State authorities have been advised of this situation. Enforcement would be a matter for the Commonwealth, not state or territory authorities.
5. The EPBC Act provides an exception to the offence provisions of Part 13, Division 2, where species are caught in accordance with management arrangements accredited under Part 13 of the Act. In order to be accredited, fisheries management arrangements must require fishers to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing.

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**Environment, Water, Heritage and the Arts portfolio**

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<b>Outcome:</b>	1	<b>Question No:</b>	64
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	Other species listings		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

1. Can DEWHA advise on additional marine species that are the subject of potential listing under CMS, CITES or other international convention?
2. What consultations have occurred with the recreational and commercial fishing sectors about these listings and when? And with NGOs?
3. This week I understand the Australian Government has sent representatives to the CMS Sharks III Meeting in Manila. Who is attending as part of the Australian delegation?
4. What other species will be discussed? What positions has the Government taken?
5. What impact will any decisions have on the fishing sector?
6. What consultations occurred with the commercial or recreational fishing sector prior to this meeting?

**Answer/s:**

1. The next Conference of the Parties to the Convention on Migratory Species (CMS), which is the forum for considering potential listings, is expected to be held in 2011. Nominations for possible listing of species under Appendix I or II of CMS close 150 days prior to the next Conference of the Parties.

The next Conference of the Parties to the Convention on International Trade in Endangered Species (CITES) will be held in Doha, Qatar from 13–25 March 2010. Atlantic bluefin tuna has been nominated for listing in Appendix I. Marine species nominated for listing in Appendix II include scalloped hammerhead shark, smooth hammerhead, great hammerhead, sandbar shark, dusky shark, oceanic whitetip shark, spiny dogfish, porbeagle shark and red and pink corals.

Under an Appendix I listing international commercial trade is effectively prohibited. Under an Appendix II listing, trade can continue, subject to assurances that it is not detrimental to the ongoing survival of the species.

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2. In relation to the marine species nominated for listing under CITES, the Department of the Environment, Water, Heritage and the Arts (DEWHA) has consulted with industry, conservation non-government organisations (NGO), federal, state and territory government agencies, and the public generally in formulating Australian Government positions. This has included:
- Correspondence to commercial and recreational fishing industry representative bodies and conservation NGOs in November 2009 inviting comments on the proposals by early January
  - The distribution by the Australian Fisheries Management Authority through its fisheries Management Advisory Committees of information on the proposed listings and an invitation to make comments by early January
  - A notice and invitation to make comments on listing proposals published on the DEWHA website
  - A meeting held with representatives from three conservation NGOs (TRAFFIC, Humane Society International, International Fund for Animal Welfare)
  - A meeting between DEWHA officials and the Australian Southern Bluefin Tuna Industry Association was held in January 2010, which included discussions of marine issues on the agenda for the 2010 CITES Conference of the Parties.

Submissions were received from the Australian Southern Bluefin Tuna Industry Association, Cairns Marine, and the Western Australian Fishing Industry Council. Submissions were also received from several conservation NGOs.

Commercial and recreational fishing representative bodies were also invited, via correspondence, to participate in the Australian delegation. Two individuals associated with the Australian Southern Bluefin Tuna industry have accepted this invitation.

3. Mr Nigel Routh (Assistant Secretary, Marine Biodiversity Conservation Branch, DEWHA) was the sole member of the Australian delegation.
4. The meeting concluded negotiations on a global, non-binding Memorandum of Understanding (MOU) on migratory sharks. The Australian Government's position was to support the inclusion in the MOU of all shark species currently included in Appendices to the CMS. There was consensus on this issue at the meeting. Australia's participation at the meeting went towards meeting our international obligations regarding CMS Appendix II listings, which are to endeavour to conclude agreements where these would benefit the species.
5. There will be no direct impacts on the fishing sector as a result of the MOU, which seeks primarily to promote signatory cooperation and information sharing. The instrument is non-legally binding and, as such, does not convey any legal obligations on Australia.

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6. Given the nature of the MOU (as outlined above) and the absence of any impacts on industry, there were no consultations with the commercial or recreational fishing sector. However, extensive consultations were carried out with other relevant Commonwealth Departments, including the Department of Agriculture, Fisheries and Forestry and the Australian Fisheries Management Authority.

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**Environment, Water, Heritage and the Arts portfolio**

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<b>Outcome:</b>	1	<b>Question No:</b>	65
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	UN Convention on the Law of the Sea		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

1. What is the status of the UN Convention on the Law of the Sea Annex 1 – Highly Migratory Species?
2. Are these species likely to be listed on international conventions and thus recognised through the EPBC Act by the Australian Government?
3. Has DEWHA conducted any consultations with any groups about these species – who and when?

**Answer/s:**

1. The United Nations Convention on the Law of the Sea (UNCLOS), including Annex I, entered into force in 1994. Australia has signed and ratified the Convention.

Article 64 of UNCLOS requires coastal states and states whose nationals fish for the highly migratory species listed in Annex I of UNCLOS to cooperate in the conservation and management of the species listed.

This obligation is implemented primarily through the *United Nations Agreement for the Implementation of provisions of UNCLOS related to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995* (the UN Fish Stocks Agreement); as well as through Regional Fisheries Management Organisations/Arrangements (RFMO/As), which are established and governed by agreements and conventions entered into by participating countries. Australia has signed and ratified the UN Fish Stocks Agreement, and participates in several RFMOs in the region that manage several of the species listed in Annex I to UNCLOS.

2. Several of the species listed on Annex 1 to UNCLOS are recognised under Regional Fisheries Management Agreements/Conventions and are accordingly managed through RFMOs. This does not afford any recognition under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The species listed on Annex 1 to UNCLOS could potentially be listed on international environment-related conventions such as the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), and the *Convention on the Conservation of Migratory Species of Wild Animals* (CMS), which would afford recognition under the EPBC Act. However, any such listings would be unrelated as a matter of law and policy to their listing in UNCLOS Annex I.



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3. The Department of Environment, Water, Heritage and the Arts has not consulted with any groups about the inclusion of species in Annex I to UNCLOS. The Annex was established in 1982, when the Convention was opened for signature. The Department of Foreign Affairs and Trade is the lead agency within the Australian Government in relation to UNCLOS.

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<b>Outcome:</b>	1	<b>Question No:</b>	66
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	Marine bioregional planning		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

1. Can you give me an update on the Marine Bio-region process around Australia including the current expected completion dates for each of the regions?
2. Are there still requests for additional time from any of the participating groups?
3. When will drafts be released for each region?
4. What will the process be following the completion of the drafts? Has DEWHA received any feedback on the proposed 60 day period for comment on the drafts?

**Answer/s:**

1. The next major milestone in the program delivery is the release of the East Areas for Further Assessment, which is anticipated to occur shortly. The Department is currently in consultation with the Minister to finalise timelines for completing the marine bioregional planning program, with a view to releasing Draft Plans for the South-west, North and North-west in this calendar year and the East and South-east in early 2011. It is expected that within that timeframe, the South-west will be released first, followed by a joint release of the North and North-west draft Plans and a later, joint release of the draft Plans for the East and South-east (noting that for the South-east region, the network of Marine Protected Areas is already in place and the draft Plan will align the 2004 South-east Regional Marine Plan with the requirements of s176 of the Environment Protection and Biodiversity Conservation Act 1999).
2. Further to our response to Question on Notice 51 of the Supplementary Budget Estimates of October 2009, no further requests for time extension have been received. In November 2009 the Minister wrote to the National Seafood Industry Association to confirm his intent that the process not be rushed, given the importance of providing all stakeholders with opportunity for involvement.
3. See question 1 above.
4. The Department has informed stakeholders that the statutory consultation on draft Plans will have a minimum duration of 90 days. Details of the process, including communication mechanisms, assistance for engagement and processing of submissions, are currently being considered.

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<b>Outcome:</b>	1	<b>Question No:</b>	67
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	Marine bioregional planning – age of data		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator COLBECK asked:**

1. What is the age of data being used in the marine bioregional process? Is it true that some data goes back to 2001?
2. Will industry be given access to data sets used to make decisions to assess their viability, currency, etc?
3. What funding does DEWHA project will be required to manage all of the MPAs following implementation?

**Answer/s:**

1. A range of data, including biological, physical and socio-economic, is used in the planning process. In all cases, the Department strives to obtain and use the latest available data. The age of the most recent data available varies from 2001 to 2010 for different data sets.
2. The Department makes available to stakeholders all data used in the planning process for which the Department has full usage rights. For data not owned by the Department and for which the Department does not have data sharing capability, the Department refers stakeholders to the relevant agency and contact.

A primary objective in undertaking the stage of non-statutory consultation on the Areas for Further Assessment has been the validation of historic data (i.e. from log book reporting) and the gathering of contextual information that can assist in interpreting the data for the purpose of designing minimum-impact reserves and assessing impacts of proposed reserves. This stage of consultation has now been completed for the South-west, North and North-west regions and is expected to commence shortly in the East region.

3. The question of funding for the management of Marine Protected Areas is currently under consideration. This process will be informed further once the draft networks for each marine region are finalised.

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<b>Outcome:</b>	1	<b>Question No:</b>	68
<b>Program:</b>	1.2		
<b>Division/Agency:</b>	Marine Division		
<b>Topic:</b>	Whaling		
<b>Hansard Page ECA:</b>	Written Question on Notice		

**Senator BIRMINGHAM asked:**

1. How many whales have been slaughtered by Japanese whalers since 20 November 2007?
2. How are the policies of this Government in regard to whaling different to those of the Howard Government?
3. Is the Department aware of any reports detailing whaling activities in the Australian Whale Sanctuary? What action has been taken in regard to these reports?
4. How has the Government monitored whaling vessels operating in Australian waters considering the absence of the Oceanic Viking from normal operations for much of this year's whaling season? How has the Government monitored whaling activities in the Southern Ocean this year?

**Answers:**

1. Between 20 November 2007 and 9 February 2010 a total of 1,932 whales have been reported killed by Japan in the Southern Ocean and the northern Pacific Ocean. Figures for the current Southern Hemisphere whaling season are unlikely to be available until later this year.
2. The Government is focused on the reform of the International Whaling Commission (IWC) and the International Convention on the Regulation of Whaling (ICRW) through active engagement in the future of the IWC process. While the Government is maintaining its constructive engagement in IWC discussions, it has clearly stated that if we are unable to make progress diplomatically, the Government will take legal action. The current Government has also allocated \$32 million over six years to 2013-14 for non-lethal whale research which includes \$14 million to establish the Southern Ocean Research Partnership, a multilateral non-lethal whale research program, and \$15 million for the Australian Marine Mammal Centre.

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3. On 12 November 2009 the Government of Japan unilaterally issued a permit to hunt up to 935 minke whales, 50 fin whales and 50 humpback whales in the Southern Ocean, ostensibly under Article VIII of the ICRW. The Government of Japan subsequently announced that it would not hunt humpback whales in the Southern Ocean this season while discussions on the future of the IWC were underway. As in previous seasons, the area of operations covered by the permit includes the Australian Whale Sanctuary in the exclusive economic zone adjacent to the Australian Antarctic Territory. The Australian Government has not, as a matter of practice, enforced Australian legislation against foreign nationals or foreign vessels in Antarctica or Antarctic waters. This is consistent with the established practice among Antarctic Treaty Parties that, as a part of the cooperative management of the continent, the Parties take responsibility for their own nationals in Antarctica. The Government is continuing intense efforts to bring an end to commercial whaling and so-called 'scientific' whaling, including whaling in the Southern Ocean.
4. The Australian Government monitored the Japanese whaling fleet in the Southern Ocean in the 2007/08 season to gather evidence for potential use in a legal challenge. The exercise was successful and sufficient evidence was gathered for use in any potential legal action. The Government has not undertaken monitoring of whaling activities in the Southern Ocean this season, given that it has already collected the evidence that it requires.