

Explanatory Statement 4 of 2024

Amendment to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals

Practical and legal effect

1. The minor treaty action is Australia's acceptance of amendments to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals (established in Bonn on 23 June 1979, [1991] ATS 32; 'the Convention') in accordance with the deemed acceptance provision of the Convention. These amendments were adopted at the 14th Conference of Parties ('COP14') to the Convention, held in Samarkand, Uzbekistan, from 12 to 17 February 2024. The Convention seeks to coordinate measures for the conservation and sustainable use of migratory animals and their habitats throughout a migratory range. Under the Convention, the Appendices list migratory species that are endangered (Appendix I species) or have an unfavourable conservation status (Appendix II species).
2. In relation to Appendix I species, the Convention requires range states to endeavour to conserve the species and their habitat; to prevent, remove, compensate for or minimise, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent migration and, to the extent feasible and appropriate, prevent, reduce or control factors that endanger or are likely to further endanger the species (Article III(4)), and prohibit the taking of the species (Article III(5)). The Convention does not affect the rights of Parties to adopt stricter domestic measures concerning the conservation of any listed migratory species.
3. In relation to Appendix II species, the Convention obliges range states to endeavour to conclude agreements where these would benefit the species and give priority to those species having an unfavourable conservation status, in accordance with outlined guidelines.
4. At COP14, amendments were adopted in relation to Appendices I and II to the Convention, regarding listing of 10 additional species of migratory animals in Appendix I of the Convention, and listing of 11 additional species in Appendix II. As seven species were added to both Appendices, the amendments related to a total of 14 separate species.
5. There is negligible practical, legal and financial impact to Australia in complying with the changes to Appendices I and II of the Convention. Australia is a range state for only one of the 14 newly listed species - the Sand Tiger Shark (*Carcharias taurus*). This species is known in Australia as the Grey Nurse Shark and will be referred as such throughout this Explanatory Statement.
6. Entry into force of the species listing of the Grey Nurse Shark will give rise to certain obligations under the Convention for Australia, which are largely already in effect in Australia by virtue of existing domestic legislation as the species is already listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999* ('EPBC Act'). As Australia is not a range state for the other 13 species added to the Appendices at COP14, no international obligations arise under the Convention for Australia from these other listings.

Nature and timing of proposed treaty matter

7. Under Article XI(5) of the Convention, an amendment to the Appendices enters into force for all Parties 90 days after the meeting of the Conference of the Parties at which it was adopted, except for those Parties that make a reservation within that time frame.
8. As the amendments to the Convention Appendices were adopted on 17 February 2024, the amendments will enter into force on 17 May 2024 for all Parties that did not enter a reservation to the amendments. Australia does not intend to enter a reservation to any of the amendments. The obligations in Articles III and IV of the Convention will therefore enter into force for Australia in relation to the populations of the Grey Nurse

Shark in Australian waters with effect from 17 May 2024. It is not anticipated that any other Parties will enter reservations to any of the amendments adopted at COP14.

Reasons for Australia to take the proposed action relating to the treaty matter

9. Acceptance of the amendment is consistent with Australia's commitment to the international protection and conservation of migratory species. The inclusion of the Grey Nurse Shark in the Appendices of the Convention introduces a domestic obligation to include the species in the migratory list under the EPBC Act. The Grey Nurse Shark is already designated as a threatened species under the EPBC Act, which imposes protections within Australian territory at least as strong as those imposed in relation to Appendix I species by the Convention, including the imposition of penalties for contravention. As such, the proposed amendments will not require additional domestic management arrangements to be put in place for commercial and recreational fishing operations that may occasionally interact with Grey Nurse Sharks.
10. The proposed amendments to the Appendices are not expected to impose additional costs on Australia. Australia already has in place a strong protection and conservation management regime for the Grey Nurse Shark, the only species among those in the amendments which occurs in Australia.

Implementing Legislation

11. Section 209 of the EPBC Act provides that the Minister must, by legislative instrument, establish a list of migratory species. Under subsection 209(3)(a) of the EPBC Act, the list must include all species included in any of Appendices I and II to the Convention. Accordingly, the list will need to be updated to reflect the amendments to Appendices I and II to the Convention. The amendments will be made following consideration by the Joint Standing Committee on Treaties.

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International Environment, Reef and Ocean Division
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NOTIFICATION TO THE PARTIES

AMENDMENTS TO THE APPENDICES OF THE CONVENTION

ANNEX 1: Species added to the Appendices of the Convention by COP14

Scientific name	Annotation	Appendix / Appendices
MAMMALIA		
<i>Lynx lynx</i>		Inclusion in Appendix II
<i>Lynx lynx balcanicus</i>	Using Kitchener et al. (2017) "A revised taxonomy of the Felidae. The final report of the Cat Classification Task Force of the IUCN/SSC Cat Specialist Group" as the taxonomic reference.	Inclusion in Appendix I
<i>Felis manul</i>		Inclusion in Appendix II
<i>Lama guanicoe</i>	Corresponds to <i>Lama glama</i> in Wilson and Reeder 2005, and applies only to wild populations.	Inclusion in Appendix II
<i>Tursiops truncatus</i> <i>gephyreus</i>		Inclusion in Appendix I & II
<i>Phocoena phocoena</i>	Baltic Proper population	Inclusion in Appendix I
AVES		
<i>Pelecanus thagus</i>		Inclusion in Appendix I & II
<i>Pluvianellus socialis</i>		Inclusion in Appendix I
<i>Gypaetus meridionalis</i> <i>barbatus</i>	Southern African population	Inclusion in Appendix I
PISCES		
<i>Carcharias taurus</i>		Inclusion in Appendix I & II
<i>Glaucostegus cemiculus</i>		Inclusion in Appendix II
<i>Glaucostegus cemiculus</i>	Mediterranean Sea population	Inclusion in Appendix I
<i>Aetomylaeus bovinus</i>		Inclusion in Appendix II
<i>Aetomylaeus bovinus</i>	Mediterranean Sea population	Inclusion in Appendix I
<i>Rhinoptera marginata</i>		Inclusion in Appendix II
<i>Rhinoptera marginata</i>	Mediterranean Sea population	Inclusion in Appendix I
<i>Brachyplatystoma rousseauxii</i>		Inclusion in Appendix II
<i>Brachyplatystoma vaillantii</i>		Inclusion in Appendix II

ANNEX 2: Nomenclature changes adopted by COP14

Scientific name	Annotation	Appendix / Appendices	Comments
MAMMALIA			
<i>Otaria byronia</i>		II	Replacing <i>Otaria flavescens</i>
<i>Platanista gangetica</i>		I / II	Replacing <i>Platanista gangetica gangetica</i>
AVES			
<i>Grus vipio</i>		I / II	Replacing <i>Antigone vipio</i>
<i>Antigone</i> spp.		II	Delete <i>Antigone</i> spp., as listed as a higher taxon (<i>Grus</i> spp.)
<i>Eulacestomatidae</i> spp.		II	Replacing <i>Eulacestomidae</i> spp.
PISCES			
<i>Acipenser baerii</i>	(regional population of the Lake Baikal and its tributaries)	II	Replacing <i>Acipenser baerii baicalensis</i>
<i>Mobula alfredi</i>		I / II	Replacing <i>Manta alfredi</i>
<i>Mobula birostris</i>		I / II	Replacing <i>Manta birostris</i>
<i>Mobula eregoodoo</i>		I / II	Replacing <i>Mobula eregoodootenkee</i>

Annex 3: Taxonomic changes adopted by COP14

Scientific name	Annotation	Appendix / Appendices	Comments
MAMMALIA			
<i>Halichoerus grypus</i>		II	Replacing <i>Halichoerus grypus</i> (only Baltic Sea populations)
<i>Cephalorhynchus commersonii</i>		II	Replacing <i>Cephalorhynchus commersonii</i> (South American population)
<i>Sousa plumbea</i>		II	Species split of <i>Sousa chinensis</i> (listed in Appendix II) to <i>Sousa plumbea</i> , <i>Sousa chinensis</i> , <i>Sousa sahalensis</i>
<i>Sousa sahalensis</i>		II	Species split of <i>Sousa chinensis</i> (listed in Appendix II) to <i>Sousa plumbea</i> , <i>Sousa chinensis</i> , <i>Sousa sahalensis</i>
PISCES			
<i>Acipenser baerii</i>	(regional population of the Lake Baikal and its tributaries)	II	Replacing <i>Acipenser baerii baicalensis</i>
<i>Mobula japonica</i>		I / II	Species merger, <i>Mobula japonica</i> was merged with <i>Mobula mobular</i>
<i>Mobula rochebrunei</i>		I / II	Species merger, <i>Mobula rochebrunei</i> was merged with <i>Mobula hypostoma</i>
<i>Squalus suckleyi</i>	(northern hemisphere population)	II	Species split of <i>Squalus acanthias</i> (listed in Appendix II) to <i>Squalus acanthias</i> and <i>Squalus suckleyi</i>