

Amendments to the migratory birds bilateral treaties between Australia and China, Japan and Korea

Introduction

4.1 This chapter concerns three proposed treaty amendments:

- *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment (the CAMBA amendments);*
- *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (the JAMBA amendments);* and
- *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes (the ROKAMBA amendments).*

4.2 The proposed treaty actions are being considered together because they involve similar amendments to each of the agreements.¹

1 National Interest Analysis [2014] ATNIA 14, *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment* [2014], ATNIF 16, (hereafter referred to as the CAMBA amendments NIA), para 6.

Background

- 4.3 Migratory waterbirds are species that traverse geographical routes, called flyways, annually. The birds make use of a chain of wetlands along the flyways to rest and feed. These chains of wetlands extend across numerous international boundaries, so efforts to protect migratory waterbird species and their habitats are of necessity international in nature.²
- 4.4 Australia forms part of the East Asian – Australasian Flyway, which extends from Alaska and Siberia to Australia and New Zealand, crossing 22 countries.³

Health of the flyway

- 4.5 Representatives of the Department of Environment advised the Committee that the state of health of the East Asian – Australasian Flyway is generally in decline. Migratory shorebirds in particular are experiencing a significant decline in numbers. Of the 37 species of migratory shorebirds in Australia, two species are considered endangered and a further five are expected to become endangered over the next two years.⁴
- 4.6 The ‘quite severe’ decline in the number of migratory shore birds:
...underlines the importance of international action to protect migratory species...⁵
- 4.7 Recent work by the University of Queensland shows that the decline in numbers mostly affects migratory shorebirds that transit the Yellow Sea, with habitat loss the apparent cause of the decline.⁶
- 4.8 The bilateral treaties with China and the Republic of Korea provide Australia with a forum in which to raise the issue of habitat loss on a regular basis.⁷

2 Department of the Environment, *Partnership for the Conservation of Migratory Waterbirds and the Sustainable Use of their Habitats in the East Asian – Australasian Flyway*, <<http://www.environment.gov.au/system/files/resources/1ff172d0-3277-4c26-956d-7ee69e8e4618/files/partnership-text.pdf>>, accessed 19 August 2014.

3 *East Asian – Australasian Flyway Partnership*, The Flyway, <<http://www.eaaflyway.net/the-flyway/>>, accessed 19 August 2014.

4 Mr Geoffrey Richardson, Assistant Secretary, Protected Species and Communities Branch, Wildlife Heritage and Marine Division, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 6.

5 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 6.

6 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 6.

4.9 A range of international agreements are relevant to the conservation of migratory birds in the East Asian – Australasian Flyway, including (but not limited to):

- the *Convention on Wetlands of International Importance* (the Ramsar Convention), a multilateral treaty with 168 signatories that provides an international framework for the conservation and ‘wise use’ of wetlands. Wise use in this instance means the maintenance of the ecological character of the wetlands;⁸
- the East Asian – Australasian Flyway Partnership, a voluntary group of partners including governments, non - government organisations, and private enterprise.⁹

According to the Partnership, its purpose is:

... to provide a flyway wide framework to promote dialogue, cooperation and collaboration between a range of stakeholders including all levels of governments, site managers, multilateral environment agreements, technical institutions, UN agencies, development agencies, industrial and private sector, academe, non-government organisations, community groups and local people to conserve migratory waterbirds and their habitats.¹⁰

and

- the bilateral conservation treaties like those the amendments to which are being considered here:
 - ⇒ the CAMBA, ratified in 1986;
 - ⇒ the JAMBA, ratified in 1974; and
 - ⇒ the ROKAMBA, ratified in 2006.¹¹

7 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 6.

8 The Ramsar Convention, *The introductory Ramsar brochure, 3rd ed., 2008*, <http://www.ramsar.org/pdf/about/about_brochure_2008_e.pdf>, accessed 19 August 2014.

9 *East Asian – Australasian Flyway Partnership*, <<http://www.eaaflyway.net/>>, accessed 19 August 2014.

10 Department of the Environment, *Partnership for the Conservation of Migratory Waterbirds and the Sustainable Use of their Habitats in the East Asian – Australasian Flyway*, <<http://www.environment.gov.au/system/files/resources/1ff172d0-3277-4c26-956d-7ee69e8e4618/files/partnership-text.pdf>>, accessed 19 August 2014.

11 Department of the Environment, *Migratory Waterbirds*, <<http://www.environment.gov.au/biodiversity/migratory-species/migratory-waterbirds>>, accessed 19 August 2014.

The three treaties

4.10 The three treaties are similar in intent and structure, but are distinct and are not based on a model treaty.

4.11 In general, the treaties require the following:

- except where provided under the laws of each country, the taking of migratory waterbirds listed in each agreement is prohibited. The exceptions include: for scientific purposes; for the protection of persons and property; during designated hunting seasons; and for traditional hunting and gathering;¹²
- each government shall take whatever special measures are appropriate to preserve species which are in danger of extinction;¹³
- each government shall cooperate scientifically with the other government over the protection of migratory waterbirds;¹⁴
- each government shall endeavour to establish sanctuaries for the protection of endangered migratory waterbirds and their environments;¹⁵ and
- each government shall endeavour to: prevent damage to protected environments; control the importation of species that could be hazardous to the birds and their environment; and take measures to control the introduction of animals and plants that could disturb the wetlands ecosystems.¹⁶

4.12 The Australian Government's responsibilities in relation to the three treaties are given effect in the list of migratory species contained in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).¹⁷

4.13 The EPBC Act requires that people must not take action that has or is likely to have a significant impact on these species unless approval has been given by the Minister for the Environment.¹⁸

12 See for example *Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment*, 1981 No. 6, (hereafter referred to as JAMBA), Article II.

13 See for example *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds*, [2007] ATS 24, (hereafter referred to as ROKAMBA), Article IV.

14 See for example CAMBA, Article III.

15 See for example CAMBA Article IV.

16 See for example JAMBA Article VI.

17 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 5.

18 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 5.

Overview and national interest summary

- 4.14 The amendments being considered are related to the annexes of the three bilateral treaties. These annexes contain lists of waterbird species to which each treaty applies. The amendments involve the addition and removal of species from each annex.¹⁹
- 4.15 The NIAs indicate that the amendments are in Australia's interest because they enable Australia to maintain its international reputation for the protection of migratory species, and because the changes will ensure the accuracy of the agreements and the list of migratory species required to be kept under the EPBC Act.²⁰
- 4.16 According to the Department of the Environment, changes to the Annexes of the three treaties are necessary because:
- Improved accuracy of the lists following those amendments will reduce administrative costs in both the public and private sectors. This saving will mostly occur by removing current confusion caused by non-migratory species unnecessarily triggering referral of proposed actions to the Minister of the Environment under the EPBC Act.²¹
- 4.17 As indicated above, the three treaties being amended are only similar in terms of their obligations. Both the text and the lists of species in the annexes of the agreements are different. The following discussion will deal with each proposed treaty action separately.

The CAMBA amendments

- 4.18 The CAMBA amendments will:
- add ten new species to the CAMBA Annex on the grounds that these species regularly migrate between China and Australia.²² Seven of these species are already listed in the EPBC Act as protected migratory waterbirds;²³

19 National Interest Analysis [2014] ATNIA 15, *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment* [2014], ATNIF 17, (hereafter referred to as the JAMBA Amendments NIA), para 2.

20 See for example the CAMBA Amendment NIA, paras 5 and 6.

21 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 5.

22 CAMBA Amendment NIA, para 8.

23 CAMBA Amendment NIA, para 11.

- remove 28 species from the CAMBA Annex on the grounds that these species do not migrate between China and Australia;²⁴ and
- update the common and scientific names of 18 species listed in the CAMBA Annex on the grounds of advances in taxonomy.²⁵

The JAMBA amendments

4.19 The JAMBA amendments will:

- add ten new species that regularly and predictably migrate between Australia and Japan to the JAMBA Annex.²⁶ Five of these species are already listed in the EPBC Act as protected migratory waterbirds;²⁷
- remove 13 species from the JAMBA Annex that do not migrate between the two countries. One of those being removed is the Wandering Albatross, a particularly endangered species. This Albatross will remain protected under the *Convention on the Conservation of Migratory Species of Wild Animals* (the Bonn Convention);²⁸ and
- update the common and scientific names of 21 species listed in the JAMBA Annex.²⁹

The ROKAMBA amendments

4.20 The ROKAMBA amendments will:

- remove eight species from the ROKAMBA Annex on the basis that these species do not migrate between the two countries;³⁰
- update the common and scientific names of 24 species listed in the ROKAMBA Annex;³¹ and
- add three species to the ROKAMBA Annex.³²

Implementation and costs

4.21 Implementing the amendments to the three bilateral agreements will require an update to the list of migratory species maintained under the EPBC Act.

24 CAMBA Amendment NIA, para 9.

25 CAMBA Amendment NIA, para 10.

26 JAMBA Amendment NIA, para 8.

27 JAMBA Amendment NIA, para 11.

28 JAMBA Amendment NIA, para 9.

29 JAMBA Amendment NIA, para 10.

30 ROKAMBA Amendment NIA, para 9.

31 ROKAMBA Amendment NIA, para 10.

32 ROKAMBA Amendment NIA, para 11.

- 4.22 The NIAs indicate that the amendments will not result in any additional costs to the Australian Government because the range of habitats that require protection will not change.³³

Conclusion

- 4.23 These changes clearly represent an improvement in the quality of the bilateral treaties protecting migratory waterbirds in the East Asian – Australasian Flyway.
- 4.24 However, as noted by representatives of the Department of Environment, the health of the flyway continues to decline. The Committee hopes the treaties will in the near future begin to fulfil their intended purpose in protecting species using the flyway.
- 4.25 The Committee recommends that binding treaty action be taken in relation to all three amending treaties.

Recommendation 3

The Committee supports the ratification of the Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment and recommends that binding treaty action be taken.

Recommendation 4

The Committee supports the ratification of the Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment and recommends that binding treaty action be taken.

33 See for example the ROKAMBA Amendment NIA, paras 20 - 22.

Recommendation 5

The Committee supports the ratification of the *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes* and recommends that binding treaty action be taken.