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Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600

By email to: jsct@aph.gov.au

19 February 2015

Dear Secretary

Re: Inquiry on Treaties tabled on 10 February 2015

Humane Society International (HSI), the world's largest conservation and animal welfare organisation, welcomes the opportunity to provide this submission to the Joint Standing Committee on Treaties inquiry on Treaties tabled on 10 February 2015, on behalf of our 60,000 Australian supporters.

HSI's focus in this submission will be on only one of the three Treaties tabled, the **Amendments to Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979)**.

HSI has a long term interest in the Convention on the Conservation of Migratory Species of Wild Animals (CMS) having attended all the recent Conference of Parties, and actively advocated for the inclusion of 21 shark and ray species at the most recent meeting in Quito in November 2014, including the bigeye thresher shark (*Alopias superciliosus*), common thresher shark (*Alopias vulpinus*), pelagic thresher shark (*Alopias pelagicus*), scalloped hammerhead shark (*Sphyrna lewini*) and the great hammerhead shark (*Sphyrna mokarran*), hereafter referred to as 'thresher and hammerhead sharks'. HSI has a partnership agreement with the CMS Secretariat, and is also a cooperating partner in the CMS *Memorandum of Understanding on the Conservation of Migratory Sharks*.

HSI's activities in the lead up to the November 2014 CMS meeting included international as well as domestic advocacy, correspondence with the Federal Environment Minister before and after the meeting, and participation in the stakeholder meeting undertaken by the Department of the Environment on 27th August 2014. Believing this consultation to be inadequate, HSI also requested a second stakeholder meeting but this was not arranged. We would therefore question whether the stakeholder consultation could be described as 'extensive', as noted in the *National Interest Analysis [2015] ATNIA 1* consultation attachment.

It was at the stakeholder meeting in August 2014 that HSI first learnt of objections to the thresher and hammerhead shark listings raised by recreational fishers. No other concerns from other sectors or held by the Australian Government were noted. HSI sought to obtain further information on the concerns of recreational fishers but this was not forthcoming.

At the meeting in Quito, all 21 shark and ray proposals considered were adopted by consensus by Parties to CMS, including those for the thresher and hammerhead sharks. No objections were lodged despite the Australian Government being an active participant at the meeting. The adoption of these proposals was widely characterised as an unprecedented step forwards for shark and ray conservation worldwide. After the meeting however, HSI became aware of ongoing concern amongst the Australian recreational fishing community regarding the thresher and hammerhead shark listings.

On 16^h December 2014 HSI wrote to the Federal Environment Minister, Greg Hunt MP, thanking Australia for their support for the CMS proposals and noting that these would come into force on 8th February 2015. In this letter, HSI urged Australia to ensure that full protection be provided for thresher and hammerhead sharks through listing of all the shark and ray species present in Australia as migratory under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

At no time during this process did the Government provide any indication that a Reservation to the thresher and hammerhead shark species was under consideration, nor did it advise that there was also concern amongst the commercial fishing or any other sector of the impact of these listings.

Despite this, in mid-January HSI learnt that Australia was in the process of lodging a Reservation to the listing of five species of thresher and hammerhead sharks in Appendix II of CMS.

HSI considers that the lodging of a Reservation demonstrates Australia's lack of willingness to engage in international conservation efforts for these five migratory species. By their very nature as migratory species, thresher and hammerhead shark populations in Australia are shared with our neighbours including (but not limited to) Indonesia. Australia therefore cannot in good faith press for international action in these countries when it has chosen not to take action its own waters.

In 2009 a similar situation occurred after the listing of the porbeagle shark and longfin and shortfin mako sharks in Appendix II of CMS at the 2008 meeting. Following this listing, and concerns raised by recreational fishers, an amendment was made to the EPBC Act to ensure that the species concerned could be listed as migratory but an exemption provided from the strict liability offence of killing, taking or injuring a member of a listed migratory species in a Commonwealth area for these species (this exemption can be found at s212(1)(r) of the EPBC Act). Whilst HSI opposed this option for the thresher and hammerhead sharks in our December 2014 letter, this would have been preferable to the lodging of a Reservation as it would have ensured that the five species could have been included in the EPBC Act as migratory and some additional domestic protection afforded.

HSI considers it inappropriate that this Reservation was lodged by the Executive with the Depositary under the Bonn Convention before the action was scrutinised by the JSCOT. Under the usual procedure a proposed treaty action is tabled in Parliament for 15 days before any action which will bind Australia is taken. HSI suspects that Australia likely gave consideration to a Reservation before the end of the 2014 Parliamentary year, in which case this should have been tabled with Parliament, and discussed with all relevant stakeholders. Three sitting weeks were available for this purpose after the 9th November 2014 conclusion of the CMS meeting, before the end of the 2014 Parliamentary sittings.

HSI believes that under the normal procedure consideration by the JSCOT could have been given to the option of an exemption under the EPBC Act, as opposed to lodging a Reservation under CMS. We consider that the lack of due process in this regard will be to the detriment of shark conservation in Australia, particularly with regards to thresher and hammerhead sharks.

The lodging of these Reservations is especially disappointing given the conservation status of these species. All three thresher sharks are listed as Vulnerable on the IUCN red list and the scalloped hammerhead shark is listed as Endangered on the IUCN red list (the great hammerhead shark is yet to be assessed). Due to the large decline in both scalloped and great hammerhead sharks, it is widely acknowledged that both would qualify for listing under Appendices I and II of CMS, thus being more than deserving of a migratory species listing under the EPBC Act. In addition, both the scalloped and great hammerhead sharks are currently undergoing assessment for listing as a threatened species under the EPBC Act, with a decision due towards the end of 2015. A Department of the Environment consultation on these nominations released in mid-2014 proposed that the species be listed as Conservation Dependent under the EPBC Act, despite qualifying for listing as Endangered. In 2012, NSW protected two of the hammerhead species under the *NSW Fisheries Management Act 1994*, listing the scalloped hammerhead as Endangered and the great hammerhead as Vulnerable.

Given that Australia has not previously sought a Reservation for other Appendix II listed species under CMS, including the silky shark listed in Appendix II at the November 2014 meeting, it is clear that broader political considerations are the main rationale behind the Reservation. HSI has therefore called on the Federal Environment Minister to withdraw the Reservation and we will continue to do so whilst the Reservation remains in force.

HSI would like to thank the Committee for the opportunity to present these views.

Yours sincerely

Alexia Wellbelove
Senior Program Manager