Australian Government

Australian Government Response to the

Joint Standing Committee on Treaties report:

Report 149

Treaty tabled on 10 February 2015:

Amendments to Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979) (Quito, 9 November 2014)

November 2015

Government Response to

Report 149 of the Joint Standing Committee on Treaties:

Convention on the Conservation of Migratory Species of Wild Animals

The Government thanks the Committee for its consideration of the *Amendments to Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals*, done at Quito on 9 November 2014, and tabled on 10 February 2015. The Government appreciates the Committee's support for the amendments to the Appendices, and the recognition that it was necessary for the Government to seek a reservation in relation to five shark species.

However, five members of the Committee did not support the Australian Government lodging a reservation and provided a dissenting report. The Government is pleased to provide the following response to the dissenting report.

The report states that lodging the reservation is detrimental to Australia's reputation as a world leader in marine conservation, and that the better approach would be for Australia to amend its domestic legislation to accommodate local requirements or administrative complications. The report also notes that some non-government organisations considered there was inadequate notification or consultation with respect to the Government's decision to lodge the reservation.

As stated in the National Interest Analysis (NIA) tabled in Parliament on 10 February 2015, the Convention on the Conservation of Migratory Species of Wild Animals (CMS) has two Appendices that carry different obligations:

- Appendix I lists migratory species which are in danger of extinction throughout all or a significant proportion of their range. Once a species is listed on Appendix I, Parties are obliged to endeavour to conserve and restore habitats, remove barriers to migration, control factors that are endangering the species and prohibit the taking of the species; and
- Appendix II lists migratory species which are not endangered but have an "unfavourable conservation status", and which require international agreements for their management, and species with a conservation status that would benefit from international cooperation. Once listed on Appendix II, Parties are obliged to endeavour to conclude agreements where these would benefit the species.

Once listed on either Appendix of the Convention, the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) obliges the Minister to include that species on the list of migratory species established under the Act. It is important to note that the EPBC Act does not distinguish between species listed on Appendix I and Appendix II of the Convention. Once listed as a migratory species under the Act, irrespective of whether it is listed on Appendix I or II of the Convention, it becomes an offence under the Act to kill, injure, take or move the species in Commonwealth waters.

Accordingly, Australia's domestic measures go well beyond that required by the Convention for Appendix II listed species. Under the Convention, once a species is included in Appendix II, Range States are merely required to endeavour to enter into agreements. In contrast, under the EPBC Act, a listing on Appendix II enlivens the prohibition of killing, injuring, taking or moving the species.

Whilst the Government submitted a reservation with regard to five species of shark that were added to Appendix II of the CMS in November 2014, Australia continues to fulfil CMS requirements under Appendix II, namely the obligation to endeavour to conclude agreements

where these would benefit the species. Australia is a signatory to the CMS Memorandum of Understanding on the Conservation of Migratory Sharks, and the recent shark additions to the Convention Appendices will be forwarded to this MOU for consideration for inclusion under its auspices. Australia will be supportive of their inclusion under this instrument to facilitate information exchange and cooperative research work. However, due to the restrictive domestic management arrangements that would have been required if these species were included on the migratory species list under the Act, entering a reservation for these particular listed species allows Australia to reflect our international obligations accurately and not be bound to the consequential, stricter domestic measures required by current legislation.

With regard to the consideration by some non-governmental organisations of inadequate notification or consultation with respect to the Government's decision to enter a reservation, it should be noted that the Government undertook extensive stakeholder consultation in the lead-up to the CMS Conference of Parties in November 2014. As outlined in the NIA, the Department of the Environment conducted consultation with relevant Commonwealth Government departments, State and Territory environment and primary industries counterpart agencies, 12 environmental non-government organisations and ten commercial and recreational fishing stakeholders. This consultation occurred over a five month period and provided the Government with comprehensive stakeholder views on the potential listings under the CMS Appendices, as well as stakeholder positions with regard to management options considered following the listings.