

Amendments to the Annex to the Agreement with China for the Protection of Migratory Birds and their Environment

Amendments to the Annex to the Agreement with Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment

Introduction

5.1 This chapter reviews two treaty actions that amend existing agreements on the protection of migratory birds and their environment with the Governments of China and Japan. These treaty actions are:

- *Amendments, agreed at Shanghai on 26 May 2006, 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, done at Canberra on 20 October 1986 (CAMBA Amendments); and the*
- *Amendments, agreed at Shanghai on 25 May 2006, 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, done at Tokyo on 6 February 1974 (JAMBA Amendments).*

Background

- 5.2 Australia has led the conservation of migratory birds throughout the East Asian – Australasian Flyway¹ through the Asia Pacific Migratory Waterbird Conservation Strategy 1996-2005² and continues to do so as one of the initiating partners of the WSSD³ Type II Partnership⁴ for Migratory Waterbirds in the East Asian – Australasian Flyway. Australia is in the process of finalising an agreement with the Republic of Korea (ROKAMBA), which is similar to CAMBA and JAMBA.⁵ A representative of the Department of Environment and Heritage (DEH) informed the Committee that ROKAMBA would come before the Committee early in 2007.⁶
- 5.3 In relation to Australia's involvement in the Type II Partnership for Migratory Waterbirds in the East Asian – Australasian Flyway, DEH informed the Committee:

Australia's policy position and philosophy on conservation of migratory birds and migratory shorebirds in particular have been that we need to work cooperatively across the entire range of the migration of these species. In the early nineties we pursued, through the Ramsar convention and also under the two bilateral agreements that are being considered today, a regional cooperative framework which was a very informal framework. It was known as the Asia-Pacific Migratory Waterbird Conservation Strategy. The Australian government has provided some significant funding to that and particularly to work on shorebirds under that. It has had some success. It has certainly been a very useful mechanism, but one of the major limiting factors has been that there has

-
- 1 A flyway is the route that a migratory bird travels, including places where birds rest and feed along their journey. The East Asian - Australasian Flyway extends from within the Arctic Circle through South-east Asia to Australia and New Zealand. Department of the Environment and Heritage, viewed 15 September 2006, <www.deh.gov.au>.
 - 2 This Strategy addresses major migratory waterbird conservation issues in the Asia-Pacific region and broadly covers the breeding, staging and non-breeding areas of migratory birds using its flyways. It covers the Asian continent east of the Ural mountains and Sea of Azov, south to the Caspian Sea and Persian Gulf across all the countries of Asia and the former Soviet Union, to Alaska (USA), Australasia, and island countries and territories of the Pacific Ocean east to the Pitcairn Islands. The Department of Transport and Regional Services, viewed 15 September 2006, <www.daf.gov.au>.
 - 3 WSSD is the World Summit on Sustainable Development.
 - 4 The Type II Partnership is explained in paragraph 5.3.
 - 5 CAMBA National Interest Analysis (CNIA), para. 4 and JAMBA National Interest Analysis (JNIA), para. 3.
 - 6 Mr Jason Ferris, *Transcript of Evidence*, 11 September 2006, p. 10.

been limited government buy-in across the flyway into the work. So when the world summit came along in 2002 we saw an opportunity to marry the sustainable development issues from that summit to the biodiversity work of the flyway. Australia and Japan, working with a non-government organisation, Wetlands International, put forward a proposal for what is called a type II partnership to shift the level of formality, if you like, of the flyway work up just one notch. It is still very much a voluntary arrangement, but at least in this new arrangement, which we hope to have endorsed by the countries of the flyway and up and running later this year, we hope to have government level buy-in and commitment to work on migratory waterbird conservation across the range, from their breeding grounds in Alaska through to Russia, China, down through East Asia and South-East Asia, and through to Australia and New Zealand.⁷

- 5.4 Both CAMBA and JAMBA Amendments oblige Contracting Parties to protect bird species (and their environments), which regularly migrate between Australia and China, and Australia and Japan.⁸
- 5.5 The CAMBA Amendments were agreed upon by Australia and China at the 7th Consultative Meeting on 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, which entered into force on 1 September 1988.⁹
- 5.6 The JAMBA Amendments were agreed upon by Australia and Japan at the 13th Consultative Meeting on 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, which entered into force on 30 April 1981.¹⁰

Purpose of the Amendments

- 5.7 The CAMBA Amendments change the Annex to CAMBA to add the Roseate Tern (*Sterna dougalli*) and remove the Painted Snipe

7 Mr Jason Ferris, *Transcript of Evidence*, 11 September 2006, p. 11.

8 CNIA, para. 7 and JNIA, para. 6.

9 CNIA, para. 1.

10 JNIA, para. 1.

(*Rostratula benghalensis*). The scientific nomenclature of 17 species currently listed in the Annex will also be amended.¹¹ Nomenclature changes to CAMBA are included in Table 1.¹²

Table 1 – CAMBA nomenclature changes

Common name	Current Scientific Nomenclature	Proposed Scientific Nomenclature
Streaked Shearwater	<i>Puffinus leucomelas</i> (<i>Calonectris leucomelas</i>)	<i>Calonectris leucomelas</i>
Cattle Egret	<i>Bubulcus ibis</i> (<i>Ardeola ibis</i>)	<i>Bubulcus ibis</i> (<i>Ardea ibis</i>)
Great Egret	<i>Egretta alba</i>	<i>Egretta alba</i> (<i>Ardea alba</i>)
Lesser Golden Plover	<i>Pluvialis dominica</i>	<i>Pluvialis fulva</i>
Little Curlew	<i>Numenius borealis</i> (<i>Numenius minutus</i>)	<i>Numenius minutus</i>
Common Sandpiper	<i>Tringa hypoleucos</i>	<i>Actitis hypoleucos</i>
Grey-tailed Tattler	<i>Tringa incana</i> (<i>Tringa brevipes</i>)	<i>Heteroscelus brevipes</i>
Terek Sandpiper	<i>Xenus cinereus</i> (<i>Tringa terek</i>)	<i>Xenus cinereus</i>
Latham's Snipe	<i>Capella hardwickii</i> (<i>Gallinago hardwickii</i>)	<i>Gallinago hardwickii</i>
Pin-tailed Snipe	<i>Capella stenura</i> (<i>Gallinago stenura</i>)	<i>Gallinago stenura</i>
Swinhoe's Snipe	<i>Capella megala</i> (<i>Gallinago megala</i>)	<i>Gallinago megala</i>
Sanderling	<i>Crocethia alba</i> (<i>Calidris alba</i>)	<i>Calidris alba</i>
Grey Phalarope	<i>Phalaropus fulicarius</i>	<i>Phalaropus fulicarius</i> (<i>Phalaropus fulicaria</i>)
White-winged Tern	<i>Chlidonias leucoptera</i>	<i>Chlidonias leucopterus</i>
Caspian Tern	<i>Hydroprogne tschegrava</i> (<i>Hydroprogne caspia</i>)	<i>Hydroprogne caspia</i> (<i>Sterna caspia</i>)
Greater Striated Swallow	<i>Hirundo striolata</i>	<i>Hirundo striolata</i> (<i>Hirundo daurica</i>)
Great Reed-warbler	<i>Acrocephalus arundinaceus</i>	<i>Acrocephalus orientalis</i>

11 CNIA, para. 2.

12 CNIA, treaty text.

- 5.8 The JAMBA Amendments change the Annex to JAMBA to add the Roseate Tern (*Sterna dougalli*) and update the scientific nomenclature of 14 species currently listed in the Annex.¹³ Nomenclature changes to JAMBA are included in Table 2.¹⁴

Table 2 – JAMBA nomenclature changes

Common name	Current Scientific Nomenclature	Proposed Scientific Nomenclature
Cattle Egret	<i>Ardeola ibis</i>	<i>Bubulcus ibis</i> (<i>Ardea ibis</i>)
Great Egret	<i>Egretta alba</i>	<i>Egretta alba</i> (<i>Ardea alba</i>)
Oriental Plover	<i>Charadrius veredus</i>	<i>Charadrius veredus</i> (<i>Charadrius asiaticus veredus</i>)
Lesser Golden Plover (Pacific Golden Plover)	<i>Pluvialis dominica</i>	<i>Pluvialis fulva</i>
Sanderling	<i>Calidris alba</i>	<i>Calidris alba</i> (<i>Crocethia alba</i>)
Grey-tailed Tattler	<i>Tringa brevipes</i>	<i>Heteroscelus brevipes</i>
Wandering Tattler	<i>Tringa incana</i>	<i>Heteroscelus incanus</i>
Common Sandpiper	<i>Tringa hypoleucos</i>	<i>Actitis hypoleucos</i>
Terek Sandpiper	<i>Tringa terek</i>	<i>Xenus cinereus</i>
Grey Phalarope	<i>Phalaropus fulicarius</i>	<i>Phalaropus fulicarius</i> (<i>Phalaropus fulicaria</i>)
South Polar Skua	<i>Stercorarius maccormicki</i>	<i>Catharacta maccormicki</i>
Long-tailed Jaeger	<i>Stercorarius longicauda</i>	<i>Stercorarius longicaudus</i>
White-winged Tern	<i>Chlidonias leucoptera</i>	<i>Chlidonias leucopterus</i>
Caspian Tern	<i>Hydroprogne caspia</i>	<i>Hydroprogne caspia</i> (<i>Sterna caspia</i>)

- 5.9 Australia proposed the addition of the Roseate Tern following a bird banding and colour flagging study, which demonstrated that it regularly and predictably migrates between Swain Reef,

13 JNIA, para. 1.

14 JNIA, treaty text.

Queensland¹⁵ and Chinese Taipei and Swain Reef and Okinawa, Japan.¹⁶

- 5.10 Australia proposed the removal of the Painted Snipe from the CAMBA Annex following a taxonomic study that revealed that Painted Snipe found in Australia are a different species to those found in Asia. Therefore, the species does not migrate between Australia and China and should not be included under CAMBA. The Painted Snipe is already protected and included as a threatened species under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Its removal from CAMBA will not lessen the protection afforded to the species and its habitat.¹⁷
- 5.11 Changes to nomenclature reflects taxonomy progress since CAMBA and JAMBA entered into force, and ensures that the scientific names of the species reflect the scientific names currently recognised by Contracting Parties for all species in the Annexes.¹⁸
- 5.12 Collectively, the Amendments ensure the accuracy of the Annexes to CAMBA and JAMBA and the accuracy of the list of migratory species under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).¹⁹

Obligations

- 5.13 Under both CAMBA and JAMBA, Contracting Parties are prohibited to take, sell, purchase or exchange migratory birds or their eggs, except in the following cases:
- for scientific, educational, propagative or other specific purposes not inconsistent with the objectives of the Amendments
 - for the purpose of protecting persons and property
 - during hunting seasons established in accordance with Article II(3) and

15 The Swain Reef is located at the southern end of the Great Barrier Reef system and is located about 10 nautical miles offshore with the closest mainland town being Gladstone or Rockhampton. Mr Jason Ferris and Dr Anna Lashko, *Transcript of Evidence*, 11 September 2006, p. 9.

16 CNIA, para. 11 and JNIA, para. 8; Mr Jason Ferris, *Transcript of Evidence*, 11 September 2006, p. 9.

17 CNIA, paras 9 and 10.

18 CNIA, para. 5 and JNIA, para. 4.

19 CNIA, para. 6 and JNIA, para. 5.

- to allow the hunting and gathering of specified migratory birds or their eggs by the inhabitants of specified regions who have traditionally carried on such activities for their own food, clothing or cultural purposes, provided that the population of each species is maintained in optimum numbers and that adequate preservation of the species is not prejudiced.²⁰
- 5.14 Contracting Parties are obliged to protect the species listed in the Annexes to CAMBA and JAMBA and to take measures to preserve and enhance the species' environment.²¹
- 5.15 Contracting Parties are obliged to undertake joint research programs and to exchange data and publications relating to species listed on the Annexes to CAMBA and JAMBA.²²

China and Japan's obligations under the Conventions

- 5.16 The Committee was interested to understand how China and Japan would fulfil their obligations under CAMBA and JAMBA. In relation to CAMBA DEH stated:

... these are birds that are found in sandy caves and areas that are not frequented by humans. In fact, the on-ground actions that are required to achieve the requirements of the agreement for this particular species are very limited. Australia will not be doing much because we have a population that is secure on Swain Reef and, apart from continuing our research effort to understand what is going on with that population and its movements, there is not much that we need to do in terms of protecting that population. I understand that the situation is similar in China.²³

I think there is probably still some take of migratory birds in China, but I do not know that we have any data on the level of take.²⁴

- 5.17 In relation to JAMBA, DEH stated:

20 CNIA, para. 17 and JNIA, para. 12.

21 CNIA, para. 18 and JNIA, para. 13.

22 CNIA, para. 19 and JNIA, para. 14.

23 Mr Jason Ferris, *Transcript of Evidence*, 11 September 2006, p. 12.

24 Mr Jason Ferris, *Transcript of Evidence*, 11 September 2006, p. 13.

We have close contact with our Japanese colleagues in particular and they have national plans for migratory waterbird conservation and they have done some very high profile work for some of their migratory birds that do not come to Australia – for instance, cranes, which have iconic status, are used very effectively to achieve the communication messages about conservation of migratory birds.²⁵

Other issues

- 5.18 DEH informed the Committee about the type of research that is undertaken in respect to the Roseate Tern:

The Japanese put bands on about 8,000 birds and 97 of those have been recovered in Australia. Referring to the publication on this work that Dr Paul O'Neill published in the journal *Emu*, he reports that they did their first work in 1999 and then each year. They have captured some 3,731 birds, which includes the foreign-marked birds.²⁶

- 5.19 In addition, DEH stated:

We have been aware of there being large numbers of roseate terns in the Swain Reef during the summer months for quite a while. But nobody had been capturing or banding them to know where they might be coming from. I think the first trip where they captured roseate terns was only in 2001; that trip was when the first birds that had been banded in Japan were captured.²⁷

- 5.20 In relation to the number of birds that migrate annually, DEH informed the Committee:

We have reasonable numbers for some of the species of shorebirds, but with seabirds like terns it is much more difficult. Marking a large number of the population gives us the ability to estimate the likely size of the population, but I do not believe that the data is there yet to estimate the roseate tern population that has migrated.²⁸

25 Mr Jason Ferris, *Transcript of Evidence*, 11 September 2006, p. 13.

26 Mr Jason Ferris, *Transcript of Evidence*, 11 September 2006, p. 10.

27 Dr Anna Lashko, *Transcript of Evidence*, 11 September 2006, p. 14.

28 Mr Jason Ferris, *Transcript of Evidence*, 11 September 2006, p. 11.

- 5.21 The Committee was also interested to learn about the capacity of migratory birds to carry avian influenza. DEH informed the Committee:

There is some capacity, but the main species of concern elsewhere in the world are ducks, geese and swans. They are considered to be the natural reservoirs of avian influenza viruses generally. Their role in acting as a vector for the H5N1 highly pathogenic avian influenza is not well known; there is only circumstantial evidence of their acting as vectors for that particular subtype of the disease. Fortunately, we do not have large movements of ducks, geese and swans in and out of Australia, so our migratory shorebirds, which are the ones you have just mentioned, are a group that, while they do carry avian influenza viruses, carry the viruses at a much lower level and are therefore considered a much lower risk.²⁹

Consultation

- 5.22 The Australian Government consulted with Commonwealth, State and Territory agencies³⁰ in relation to the Annexes to CAMBA and JAMBA.³¹
- 5.23 The Department of the Environment and Heritage consulted with the Natural Resource Management Wetlands and Waterbirds Taskforce³² (the Taskforce) and provided a paper to the Taskforce meeting in November 2004 summarising the state of affairs for Australia's bilateral migratory bird agreements. This paper included the proposed amendments to the Annexes to CAMBA and JAMBA.³³

29 Mr Jason Ferris, *Transcript of Evidence*, 11 September 2006, p. 10.

30 These agencies are: Land Water and Coasts Division, Australian Government Department of the Environment and Heritage, Department of Primary Industries Water and Environment (Tasmania), Department of Primary Industries (Victoria), Department for Environment and Heritage (South Australia), Department of Conservation and Land Management (Western Australia), Department of Environment and Conservation (New South Wales), Department of Infrastructure, Planning and Natural Resources (New South Wales), Environmental Protection Agency (Queensland), Department of Natural Resources, Environment and the Arts (Northern Territory), and Environment ACT.

31 JNIA and CNIA, Consultation Annex, para. 1.

32 The task force comprises the agencies listed.

33 JNIA and CNIA, Consultation Annex, para. 2.

- 5.24 The Queensland Environmental Protection Agency supported the addition of the Roseate Tern to the Annexes to CAMBA and JAMBA and was responsible for the research used to determine that Roseate Terns regularly migrate between Australia and Chinese Taipei and Australia and Japan. No agencies raised any concerns regarding the CAMBA and JAMBA Amendments.³⁴

Costs

- 5.25 No additional costs are expected for Australia to meet its obligations under the CAMBA and JAMBA Amendments.³⁵

Legislation

- 5.26 The EPBC Act will be amended to update the list of migratory species pursuant to Division 2 of Part 13 of the EPBC Act.³⁶

Entry into force and withdrawal

- 5.27 The Amendments will enter into force 90 days after the date upon which each Party informs the other through diplomatic notes that it accepts the Amendments.³⁷
- 5.28 Further amendment to the Annexes would require agreement between Contracting Parties. The Annexes may be amended by the addition of species where there is reliable evidence of migration of a species between Australia and China and Australia and Japan. The removal of species from the Annexes would require evidence that a species does not migrate between Australia and China or Australia and Japan.³⁸
- 5.29 Either party may give 12 months written notice to terminate CAMBA or JAMBA at the end of the initial 15-year period or at any time thereafter.³⁹
-

34 JNIA and CNIA, Consultation Annex, paras 2 and 3.

35 CNIA, para. 24 and JNIA, para. 18.

36 CNIA, para. 22 and JNIA, para. 16.

37 CNIA, para. 3 and JNIA, para. 16.

38 CNIA, para. 26 and JNIA, para. 22.

39 CNIA, para. 28 and JNIA, para. 23.

Conclusion and recommendations

- 5.30 The Committee believes that the changes to the annexes to CAMBA and JAMBA incorporate and reflect current scientific research in relation to certain species and more broadly allow Parties to continue to protect species of birds that migrate between their territories.

Recommendation 5

The Committee supports the Amendments, agreed at Shanghai on 26 May 2006, 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, done at Canberra on 20 October 1986 and recommends that binding treaty action be taken.

Recommendation 6

The Committee supports the Amendments, agreed at Shanghai on 25 May 2006, 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, done at Tokyo on 6 February 1974 and recommends that binding treaty action be taken.

