

Amendments, done at Nairobi, Kenya on 25 November 2005, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals

Introduction

- 2.1 The *Amendments, done at Nairobi, Kenya on 25 November 2005, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals* (the Amendments) add 11 species to Appendix I and 16 species to Appendix II to the *Convention on the Conservation of Migratory Species of Wild Animals* (CMS).

Background

- 2.2 CMS entered into force generally in 1983 and for Australia in 1991. It obliges its Parties to protect migratory species of wild animals that live within, or pass through, their jurisdictional boundaries.¹
- 2.3 Appendix I lists migratory species that are endangered and for which Parties are obliged to provide *immediate* protection.²

1 National Interest Analysis (NIA), para. 7.

2 NIA, para. 9

- 2.4 Appendix II lists migratory species with an unfavourable conservation status and which require, or would significantly benefit from, international cooperation for their conservation and management. This would be achieved by an international agreement.³

The Amendments

- 2.5 The Amendments to Appendix I (listed by their common name) consist of the: Gorilla; Short-beaked Common Dolphin; Bukhara Deer; Henderson Petrel; Balearic Shearwater; Madagascar Squacco Heron; Madagascar Pond-heron; Red Knot; Basra Reed Warbler; Spotted Ground Thrush; Basking Shark; Atlantic, Common, Baltic, German or European Sturgeon.
- 2.6 The Amendments to Appendix II (listed by their common name) consist of: Natal Clinging Bat; Large-eared Free-tailed Bat; Straw-Coloured Fruit Bat; Striped Dolphin; Short-beaked Common Dolphin; Bukhara Deer; Rock or White-collared Pratincole; African Skimmer or Scissorbill; Strange-tailed Tyrant; Cock-tailed Tyrant; Chestnut Seedeater; Rufous-rumped Seedeater; Marsh Seedeater; Narosky's or White-collared Seedeater; Saffron-cowled Blackbird; Basking Shark.
- 2.7 Of particular interest, the Basking Shark was jointly nominated by Australia and the United Kingdom for inclusion in both Appendices.⁴ Australia is a Range State for the Basking Shark.⁵
- 2.8 A Range State is defined under Article I of the CMS as any State that exercises jurisdiction over any part of the range of that migratory species, or a State, the flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species.⁶
- 2.9 Under Article II of the CMS, Range States accept special obligations towards those species for which it is a Range State. Under Article III(4) this includes a prohibition against taking species listed in Appendix I (with some exceptions) and endeavouring to conserve those species listed in Appendix II.⁷

3 NIA, para. 9.

4 NIA, para. 5.

5 NIA, para. 5.

6 NIA, para. 12.

7 NIA, para. 17.

Implementation

- 2.10 Australia's obligations under CMS are implemented through the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (the EPBC Act). The National Interest Analysis states that the obligations imposed by the listing of species for which Australia is a Range State will not extend beyond the protection already afforded to those species under the EPBC Act.⁸
- 2.11 As a result of the listing of the Basking Shark, Australia will need to update the list of migratory species pursuant to Division 2 of Part 13 of the EPBC Act. Section 209(3)(a) specifies that the list of migratory species must include all species that are 'from time to time included in appendices to the CMS and for which Australia is a Range State under the Convention'.

Entry into force

- 2.12 Amendments to the CMS automatically enter into force for all Parties 90 days after adoption unless a Party has made a reservation in accordance with Article XI(6). Australia has not lodged a reservation and the Amendments automatically entered into force on 23 February 2006.⁹ The Minister for the Environment and Heritage wrote to the Chair of the Joint Standing Committee on Treaties providing details of the Amendments and their entry into force prior to their tabling in the Parliament.¹⁰

Consultation

- 2.13 A number of Federal and State agencies were consulted regarding the nomination of the Basking Shark for listing in Appendices I and II.¹¹

8 NIA, para. 25.

9 NIA, para. 3.

10 NIA, para. 4. Senator the Hon Ian Campbell, Minister for the Environment and Heritage, letter, 11 January 2006.

11 This includes the Department of the Environment and Heritage, Australian Fisheries Management Authority, Department of Agriculture, Fisheries and Forestry, Department

The Department of Agriculture, Fisheries and Forestry and the Australian Antarctic Division supported the nomination and no other agency consulted raised any objections.¹²

Conclusion

- 2.14 The Committee supports efforts to protect endangered species and appreciates the international cooperation and coordination required to protect endangered *migratory* species. Furthermore, the Committee supports Australia's joint nomination of the Basking Shark as a continuation of its efforts to protect sharks as well as a continuation of its broader efforts to protect migratory species.

of Primary Industries (NSW), Department for Environment and Heritage (SA), Department of Primary Industries, Water and Environment (Tas), Department of Primary Industries (Vic), Department of Conservation and Land Management (WA) and the Department of Fisheries (WA).

12 NIA 'Consultation', para. 2.