

**AMENDMENTS, DONE AT BONN, GERMANY ON 24 SEPTEMBER 2002,
TO APPENDICES I AND II OF THE CONVENTION ON THE
CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS,
DONE AT BONN ON 23 JUNE 1979**

Documents tabled on 12 November 2002:

National Interest Analysis

Text of the Proposed treaty action

Current status list

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

Amendments, done at Bonn, Germany on 24 September 2002, to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals, done at Bonn on 23 June 1979

Date of Tabling of Proposed Treaty Action

1. 12 November 2002.

Nature and Timing of Proposed Treaty Action

2. The treaty action concerns amendments to Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention, also referred to as the CMS). The amendments were adopted by the 7th meeting of the Conference of Parties (CoP7) to the Bonn Convention, held in Bonn from 18 to 24 September 2002. The amendments to the Appendices include the listing, on Australia's proposal, of six great whale species (the Antarctic minke, Bryde's, fin, sei, sperm and pygmy right whales), the great white shark and the orca (killer whale).

3. The Acting Assistant Secretary of the Marine Conservation Branch, Environment Australia, sent a letter to the Secretary of the Joint Standing Committee on Treaties (JSCOT) on 9 August 2002 advising of the Government's nomination of the six great whales, the great white shark and the orca to the Appendices of the Bonn Convention and of the nomination of a number of species by other Parties for inclusion in the Appendices.

4. In accordance with paragraph 5 of Article XI of the Bonn Convention, amendments to the Appendices will automatically enter into force for all Parties ninety days after adoption, with the exception of those Parties having made a reservation in accordance with paragraph 6 of Article XI. As Australia does not propose to lodge a reservation to the amendments to the Appendices, entry into force for Australia will automatically occur on 23 December 2002 and no further treaty action is required.

5. The Commonwealth Minister for the Environment and Heritage has written to the Chair of JSCOT providing details of the amendments, together with advice that, due to the automatic entry into force mechanism governing amendments of the Bonn Convention Appendices, entry into force for Australia will occur on this occasion without the usual treaty tabling requirements having been met.

Overview and National Interest Summary

6. The treaty action is the addition of twenty-one species to Appendix I and twenty species to Appendix II of the Bonn Convention, including the eight species nominated by Australia. The proposed treaty action is in the national interest as Australia is committed to international whale protection and conservation. Australia works within the International Whaling Commission (IWC), the principal body for whale conservation, management and research, to seek a permanent global ban on commercial whaling and to establish a South Pacific Whale Sanctuary as part of this strategy. The Bonn Convention complements and supports Australia's efforts in the IWC, in relation to the migrations of great whales. The amendments reinforce Australia's broader campaign to protect migratory whale species.

Reasons for Australia to Take the Proposed Treaty Action

7. The Bonn Convention is a multilateral convention which came into force generally in 1983 and to which Australia has been a party since 1 September 1991. It focuses upon terrestrial, avian and marine species that migrate across or outside national jurisdictional boundaries. The Bonn Convention obliges its parties to protect migratory species of wild animals that live within, or pass through, their jurisdictional boundaries.

8. Article I of the Bonn Convention establishes two categories that define the conservation status of a migratory species - 'endangered' for a migratory species that is in danger of extinction throughout all or a significant proportion of the area of land or water that it inhabits (its range), and 'unfavourable conservation status' where the conditions for a favourable conservation status are not being met. The conservation status of a species will be taken as favourable when:

- (1) population dynamics data indicate that the migratory species is maintaining itself on a long-term basis as a viable component of its ecosystems;
- (2) the range of the migratory species is neither currently being reduced, nor is likely to be reduced, on a long-term basis;
- (3) there is, and will be in the foreseeable future, sufficient habitat to maintain the population of the migratory species on a long-term basis; and
- (4) the distribution and abundance of the migratory species approach historic coverage and level to the extent that potentially suitable ecosystems exist and to the extent consistent with wise wildlife management (Article I, paragraph 1(c)).

9. Appendix I lists migratory species that are endangered and for which Parties are obliged to provide immediate protection. Appendix II lists migratory species with an unfavourable conservation status and which require, or would significantly benefit from, international agreements for their conservation and management.

10. The amendments to the Appendices to the Bonn Convention add twenty-one species to the list of endangered species in Appendix I and twenty species to the list of animals with an 'unfavourable conservation status' in Appendix II. The Bonn Convention provides the most accessible mechanism to facilitate international action for conservation of these migratory species. The amendments to Appendices I and II of the Bonn Convention will facilitate such action in relation to the species listed and will complement actions already taken.

11. Australia submitted proposals to list six great whales (Antarctic minke, Bryde's, fin, sei, sperm and pygmy right whales) and the great white shark in Appendices I and II of the Bonn Convention and the orca in Appendix II. The fin, sei and sperm whales and the great white shark were listed in Appendices I and II of the Convention and the Antarctic minke, Bryde's and pygmy right whales and the orca were added to Appendix II. Australia is a range state for each of the species that it nominated.

12. A range state is defined in the Bonn Convention under Article I 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. Australia has special obligations with regard to the eight species for which it is a range

state. However, such obligations will not extend beyond the protection already afforded to those species under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Great Whales

13. Many whale species have been the subject of whaling in the past, which has significantly reduced their populations, while others are still the target of 'scientific' whaling. However, the threats facing migratory great whales extend beyond whaling. Migrating whales face threats that include shipping strikes, pollution, habitat degradation, unregulated interaction with tourists, climate change, seismic and sonar activities, and entanglement in fishing gear.

Great White Shark

14. It is becoming clearer that the great white shark is migratory. It is also listed under the World Conservation Union's Red List of Threatened Species as Vulnerable, meaning it is classified as facing a high risk of extinction in the wild in the medium-term future. Threats to the migration, and hence the long term survival, of white shark populations include direct and indirect fishing pressure, protective beach meshing, intensified targeted commercial and sports fisheries for trophies, incidental catch of the species in commercial and artisanal fisheries and habitat degradation.

Orca

15. Two populations of the orca are already listed under Appendix II of the Bonn Convention, and this addition completes the listings to cover all populations of this species. Threats to the migration, and hence long term survival, of orca populations include hunting, prey depletion by fisheries, fishing gear entanglement, live trade, unregulated whale watching, organic and noise pollution, oil spills and ship strikes.

16. In addition to the eight species proposed by Australia, a number of other species were added to the Appendices of the Bonn Convention on the proposal of other Parties. However, Australia is not listed as a range state for those other species and therefore does not have to take any further action.

17. The attached list of the additions to the Appendices of the Bonn Convention was prepared by the Marine Species Section, Environment Australia, on the basis of its records of CoP7 in September 2002. The Bonn Convention Secretariat has not yet published formal records of the Conference and revised Appendices.

Obligations

18. All Parties to the Bonn Convention acknowledge the importance of conserving migratory species (Article II, paragraph 1) and the need to take action to avoid any migratory species becoming endangered (Article II, paragraph 2). The Parties also agree to promote, cooperate and support research relating to migratory species (Article II, paragraph 3(a)) and endeavour to provide immediate protection for migratory species included in Appendix I (Article II, paragraph 3(b)). Australia's primary obligations under the amendments to the Bonn Convention stem from the fact that it is a range state for the listed six great whales, the great white shark and the orca.

19. Under Article II of the Bonn Convention, range states for species listed in either Appendix I or Appendix II accept special obligations to conserve those species. Parties that are a range state for migratory species listed in Appendix I must endeavour to:

- a) conserve and possibly restore those habitats which are of importance in removing the listed species from danger of extinction;
- b) prevent, remove, compensate for, or minimise the adverse effects of activities or obstacles that impede or prevent the migration of the listed species; and
- c) prevent, reduce or control factors that are endangering or likely to further endanger the listed species (Article III, paragraph 4).

20. Special obligations also accrue for Parties that are a range state for migratory species listed in Appendix II. Australia as a range state for the six great whales, the great white shark and the orca and other Parties to the Convention who are range states must endeavour to conclude Agreements where these would benefit the species and give priority to those species in an unfavourable conservation status (Article IV, paragraph 3).

21. Each agreement must accord with the guidelines given in Article V of the Bonn Convention. Article V, paragraph 5 provides that where appropriate and feasible, each agreement should provide for (although need not be limited by) certain requirements. While Bonn Convention agreements are not strictly bound to include these requirements, they do form the template for agreements contemplated under the Convention. The specified requirements broadly encompass areas such as habitat conservation, research, information exchange and public education.

22. The Bonn Convention Secretariat, established under Article IX of the Convention keeps a list of range states of migratory species listed in Appendices I and II and keeps the list updated using information it has received from the Parties (Article IV, paragraph 1). Parties are obliged to keep the Secretariat informed of the migratory species listed in Appendices I and II for which they consider themselves to be range states. This includes keeping the Secretariat informed with regard to information on flag vessels engaged outside national jurisdictional limits in taking the migratory species concerned and, where possible, future plans for such taking (Article IV, paragraph 2). Parties which are range states are required to inform the Conference of Parties through the Secretariat at least six months prior to each ordinary meeting of the Conference of measures that they are taking to implement the provisions of the Bonn Convention for these species (Article VI, paragraph 3).

23. In order to meet the international obligations that arise for Australia as a range state for migratory species listed in Appendix II under the Bonn Convention, Australia must cooperate in the development of multilateral conservation agreements where these will benefit the species listed. As the nominating Party of the six great whales, Australia will be expected to take a leading role in coordinating development of a regional memorandum of understanding for marine mammal conservation in the South Pacific region.

24. The provisions of the Bonn Convention do not affect the rights or obligations of any Party deriving from any existing treaty or convention (Article XII, paragraph 2). The Bonn Convention also does not affect the rights of Parties to adopt stricter domestic measures concerning the conservation of any listed migratory species (Article XII, paragraph 3).

Implementation

25. The EPBC Act enables Australia to give domestic effect to its obligations arising out of amendments to the Appendices. The obligations imposed by the listings of species for which Australia is a range state will not extend beyond the protection already afforded to those species under the EPBC Act.

26. The EPBC Act provides for protection of cetaceans, including the orca, as well as providing for the protection of the great white shark. Division 3 of Part 13 of the EPBC Act provides for the preservation, conservation and protection of whales and other cetaceans in Australian waters, including to the outer limit of the Exclusive Economic Zone. The great white shark is listed in the vulnerable category of listed threatened species under Part 13 of the EPBC Act.

27. As a result of the listing of the six great whales, the great white shark and the orca in the Appendices of the Bonn Convention, Australia will be required 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 Bonn Convention and for which Australia is a Range State under the Convention'.

Costs

28. The amendments to the Appendices are not expected to impose any additional costs on Australia in terms of meeting its obligations under the Bonn Convention. Australia already has a strong protection and conservation management regime in place for the great whales and other migratory species, such as the great white shark. The amendments will not require any domestic agencies or management arrangements to be put in place and therefore no additional costs in this regard are anticipated.

29. The development of multilateral conservation agreements for the protection of these migratory species will require some resourcing, however the costs associated with the implementation of such agreements are likely to be negligible.

Consultation

30. The Minister for the Environment and Heritage wrote to his counterparts in the States and Territories seeking their views on the amendments to the Appendices to the Bonn Convention. A generally favourable response was received from all jurisdictions in relation to the great whales and the great white shark, although support varied for the listing of the orca.

31. The amendments to the Appendices were strongly supported by non-government conservation and environmental organisations, including Greenpeace, the Humane Society International, the International Fund for Animal Welfare, Project Jonah, the RSPCA and the Whale and Dolphin Conservation Society.

Regulation Impact Statement

32. No Regulation Impact Statement is required for the proposed treaty action.

Future Treaty Action

33. The Bonn Convention works on the assumption that Appendices I and II will be added to and amended as required to meet the conservation needs of migratory species which are endangered, become endangered or are subject to an unfavourable conservation status. Moreover, it is also envisaged that migratory species may be removed from the Appendices once their conservation needs have been met. Any future amendments or additions, of this or any other kind, to the Appendices will constitute a separate treaty action and be subject to the usual domestic treaty making process including the tabling of a National Interest Analysis.

34. In accordance with paragraph 5 of Article XI of the Bonn Convention, amendments to the Appendices will automatically enter into force for all Parties ninety days after adoption, with the exception of those Parties having made a reservation in accordance with paragraph 6 of Article XI. Any Party may make a reservation by notification in writing to the Depositary (the Government of Germany) within the ninety days provided. That Party will then not be considered a Party to the Bonn Convention in regard to the subject of that reservation.

35. As noted above, range state Parties are obliged to endeavour to conclude multilateral conservation agreements that would benefit the species and to give priority to those species with an unfavourable conservation status. It is envisaged that Australia will pursue further international action on conservation of the six great whales, great white shark and orca in accordance with the Bonn Convention. Australia will begin consultations with our South Pacific neighbours to develop a regional memorandum of understanding for marine mammal conservation.

Withdrawal or Denunciation

36. Once amendments have entered into force for a Party, the only way to withdraw from them would be by denouncing the Bonn Convention. Article XIX provides that a Party to the Bonn Convention may denounce it by written notification to the Depositary at any time. Such denunciation would take place twelve months after the Depositary has received the notification and would be subject to the usual domestic treaty process including the tabling of a National Interest Analysis.

Contact details

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