

## Amendments to Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979) done at Bergen on 25 November 2011

### Background

- 3.1 The proposed treaty action amends Appendices I and II to the *Convention on the Conservation of Migratory Species of Wild Animals* (the Convention), done at Bonn on 23 June 1979. The proposed amendments were adopted by the 10<sup>th</sup> Conference of the Parties to the Convention, held in Bergen, Norway, from 20 – 25 November 2011.
- 3.2 The Convention includes two appendices listing the species to which the Convention provisions apply. Appendix I lists migratory species which are endangered and Appendix II lists migratory species which have an unfavourable conservation status.<sup>1</sup>
- 3.3 The proposed amendments that are the subject of this treaty action list five additional species of migratory animals in Appendix I and three additional species in Appendix II.<sup>2</sup>

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1 National Interest Analysis [2012] ATNIA 1 with attachment on consultation Amendments to Appendices I and II to the *Convention on the Conservation of Migratory Species of Wild Animals* (Bonn, 23 June 1979) done at Bergen on 25 November 2011 [2011] ATNIF 32, (Hereafter referred to as 'NIA'), para 1.

2 NIA, para 1.

## Operation of the Convention

- 3.4 The Convention entered into force generally on 1 November 1983 and Australia has been a Party since 1 September 1991. The Convention seeks to conserve terrestrial, avian and marine species that migrate across or outside national jurisdictional boundaries. Parties to the Convention must protect migratory species listed on Appendices I and II that live within, or pass through, their jurisdiction.<sup>3</sup>
- 3.5 Article I of the 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 set out in Article I for a 'favourable conservation status are not being met'.<sup>4</sup>
- 3.6 The Convention then goes on to place the following obligations on parties to the Convention:
- **Article II(1&2)** All parties to the Convention must acknowledge the importance of conserving migratory species and the need to take action to avoid migratory species becoming endangered.<sup>5</sup>
  - **Article II(3)** The parties agree to promote, cooperate and support research relating to migratory species and endeavour to provide immediate protection for migratory species included in Appendix I. Parties shall also endeavour to conclude agreements for the conservation and management of individual migratory species listed in Appendix II.<sup>6</sup>
  - **Article III (1, 4 & 5)** parties that are Range States for species listed in Appendix I are required to endeavour to take specific measures to conserve the species and its habitat, to prevent the adverse effects of activities that impede or prevent migration and, wherever possible, to prevent or minimise factors that endanger the species. The taking of Appendix I species is prohibited, subject to limited exceptions.<sup>7</sup>

A Range State is defined in Article I of the Convention as a State that exercises jurisdiction over any part of the range of a migratory species,

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3 NIA, para 4.

4 NIA, para 5. See the full NIA for those conditions.

5 NIA, para 12.

6 NIA, para 12.

7 NIA, para 13.

or a State whose flag vessels take that migratory species outside national jurisdictional limits.<sup>8</sup>

- **Article IV (1 & 3):** This lists the obligations of parties in relation to species listed in Appendix II of the Convention. The principal obligation in relation to species included in Appendix II is that parties must endeavour to conclude agreements where these would benefit the species and give priority to those species having an unfavourable conservation status. **Article V** provides guidelines for such agreements.<sup>9</sup>

3.7 In addition to the obligations in the Convention:

- **Article XII(2):** The Convention does not affect the rights or obligations of any party deriving from any existing treaty or convention.<sup>10</sup>
- **Article XII(3):** The Convention does not affect the rights of parties to adopt stricter domestic measures concerning the conservation of any listed migratory species.<sup>11</sup>

## The Convention and Australia

3.8 Australia is a Range State for two of the species that are the subject of this treaty action: the giant manta ray and the eastern curlew.<sup>12</sup>

3.9 The giant manta ray (*Manta birostris*) is one of a small number of species of ray with a large, flat disk shape. In Australia's range, the giant manta ray is native to the oceans off Western Australia.<sup>13</sup> This amendment to the Convention has listed the giant manta ray in both Appendix I and Appendix II of the Convention.<sup>14</sup>

3.10 The eastern curlew (*Numenius madagascariensis*) is a migratory wading bird that breeds in Siberia and migrates to Australia annually during the northern winter. In Australia, the eastern curlew's range is limited to

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8 *Convention on the Conservation of Migratory Species of Wild Animals* (Bonn, 23 June 1979), Article I.

9 NIA, para 14.

10 NIA, para 15.

11 NIA, para 15.

12 NIA, para 3.

13 International Union for the Conservation of Nature and Natural Resources, *Manta birostris*, <http://www.iucnredlist.org/apps/redlist/details/198921/0>, accessed on 4 June 2012.

14 NIA, para 3.

coastal areas across the whole of Australia.<sup>15</sup> This amendment to the Convention has listed the eastern curlew in Appendix I of the Convention.<sup>16</sup>

- 3.11 Domestically, species listed on Appendices I and II are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). As 'migratory' species under the EPBC Act, it becomes an offence to kill, injure, take, trade, keep or move the species in Commonwealth waters. The EPBC Act specifies that the list of migratory species must include all species that are 'from time to time included in the Appendices to the Convention and for which Australia is a Range State under the Convention'. As a result of the listing of the giant manta ray on Appendices I and II to the Convention, the list of migratory species pursuant to section 209 of the EPBC Act needs to be amended to include this species. An amendment to the list of migratory species contained in the EPBC Act is an amendment of a legislative instrument.<sup>17</sup>
- 3.12 As a Range State, Australia must endeavour to take specific measures to conserve the giant manta ray species and habitat, to prevent the adverse effects of activities that impede or prevent migration, and, to the extent feasible and appropriate, to prevent or minimise factors that endanger the species.<sup>18</sup>
- 3.13 Australia must also cooperate in the development of multilateral conservation agreements where this will benefit the giant manta ray species listed. Australia is a signatory to the Memorandum of Understanding (MoU) on the Conservation of Migratory Sharks, which was developed under the Convention. Including the giant manta ray as part of that MoU may be considered by signatories in the future.<sup>19</sup>
- 3.14 All provisions of the EPBC Act relevant to 'listed migratory species', in particular Parts 3 and 13, will apply to both the giant manta ray and the eastern curlew once the list has been amended to include the giant manta ray. Currently, those Parts already apply to the eastern curlew.<sup>20</sup>

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15 International Union for the Conservation of Nature and Natural Resources, *Numenius madagascariensis*, <http://www.iucnredlist.org/apps/redlist/details/106003014/0>, accessed on 4 June 2012.

16 NIA, para 3.

17 NIA, para 18.

18 NIA, para 16.

19 NIA, para 17.

20 NIA, para 19.

- 3.15 The proposed amendments to the Appendices are not expected to impose any additional costs on Australia in terms of meeting its obligations under the Convention. Australia already has a strong protection and conservation management regime in place for migratory species included in Appendices I and II. The proposed amendments will not require any additional domestic management arrangements to be put in place for commercial and recreational fishing operations that may occasionally interact with the giant manta ray. Commercial fishers will be required to report any interactions that may occur with giant manta rays, as they are currently required to do for any listed migratory species.<sup>21</sup>
- 3.16 In early February 2012, the Minister for Sustainability, Environment, Water, Population and Communities, the Hon Tony Burke MP, wrote to the Committee noting that the amendments to the Appendices of the Convention relating to the eastern curlew and the giant manta ray would enter into force 90 days after the Conference of the Parties that adopted them concludes. As such, the amendments entered into force on 23 February 2012.<sup>22</sup>
- 3.17 As the Minister acknowledged, the Australian parliamentary calendar precluded the Committee's consideration of the amendments before they came automatically into force. The Minister indicated, however, in the same correspondence that he would delay the concomitant amendments to the list of migratory species under the EPBC Act until the Committee had reviewed for itself the amendments to the Convention Appendices. The Committee notes the unfortunate timing of events but has reviewed the amendments to the Convention Appendices nonetheless.

## Conclusion

- 3.18 The Committee concurs with the NIA's assertion that the proposed treaty action is in the national interest as Australia is committed to the international protection and conservation of migratory species and to the national protection of such species whilst they are located in, or pass through, areas within Australia's jurisdiction.<sup>23</sup>

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21 NIA, para 20.

22 Correspondence, Minister for Sustainability, Environment, Water, Population and Communities, the Hon Tony Burke, MP, to the Chair JSCOT, Mr Kelvin Thomson MP, dated 3 February 2012.

23 NIA, para 3.

- 3.19 The Committee welcomes advice from the Department of Sustainability, Environment, Water, Population and Communities that broad support has been provided by state and territory agencies, conservation organisations and commercial and recreational fishing stakeholders for the inclusion in the Convention Appendices of the eastern curlew (now to Appendix I) and giant manta ray (Appendix I and II).<sup>24</sup> This agreement was sought before Australia supported the listing of the endangered eastern curlew and the giant manta ray.
- 3.20 Australia has long been active in international agreements to protect endangered species. In addition to being a Party to the Convention, Australia helped establish the East Asian-Australasian Flyway Partnership and has entered bilateral agreements with Japan, China and South Korea to help protect migratory birds.<sup>25</sup> The challenge will be to protect endangered species in the territories or from the fishing fleets of those countries which are not parties to the Convention or other conservation agreements.

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## **Recommendation 2**

**The Committee supports the Amendments to Appendices I and II to the *Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979)* done at Bergen on 25 November 2011 and recommends that binding treaty action be taken.**

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24 Mr Nigel Routh, Assistant Secretary, Marine Biodiversity Policy Branch, Marine Division, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 1 June 2012, p. 5.

25 Mr Nigel Routh, Assistant Secretary, Marine Biodiversity Policy Branch, Marine Division, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 1 June 2012, p. 6.