

Email from Senator Colbeck dated 10 February 2010

Please find below an update on mako sharks from the Federal Coalition spokesman for Fisheries, Senator Richard Colbeck.

To: Australia's Recreational Fishermen

Update on Mako Sharks

There is still some way to go in resolving the mess created by the Federal Government and Environment Minister Peter Garrett relating to the fishing of mako sharks.

While the Minister indicated on January 25 that the Government "would move to introduce legislative amendments" and "the Government will act as a priority, upon the resumption of the Parliament", this has not yet occurred. Officials have not been available for a briefing during the past two weeks of Parliament.

After two weeks of Parliament already, Minister Garrett has yet to introduce any amendments into Parliament. I requested an urgent briefing from Minister Garrett's officials two weeks ago, but this briefing has not yet been set by officials.

This means the earliest the amendments can be introduced into Parliament is February 22. It will take some time after that for the amendments to be passed through both the House of Representatives and the Senate.

I put a number of questions to Environment Department officials at Senate Estimates hearings in Canberra this week. Attached is a full proof transcript of the discussion between Senator Colbeck and DEWHA officials about the mako sharks. Below are a few excerpts of this transcript related to critical matters raised in the hearings.

Critically, DEWHA officials indicated the legislative amendments referred to by Minister Garrett are not exactly as put in Recommendation 17 of the Hawke Review of the EPBC Act. From feedback already received from recreational fishermen, this is a significant concern as it may have a large impact on future listings of marine species. I will certainly be seeking further information on this when I receive a briefing from Minister Garrett's officials.

Additionally, officials, following questioning, indicated the Victorian government was "*not definitive one way or the other*" when asked about the mako shark listing in 2008 and "*their take on things was that the impact was likely to be limited*"; Further, officials disclosed that the Tasmanian Government "*endorsed the listing and suggested that the impact would be negligible*" while the South Australian, Northern Territory and Western Australian Governments "*were fully supportive of the proposals.*"

Should you have any queries or feedback, please do not hesitate to contact my office. I shall keep you up to date with events as they occur on this important matter.

Richard Colbeck

Shadow Parliamentary Secretary for Agriculture, Fisheries and Forestry

Liberal Senator for Tasmania

<<Senate Estimates - Proof Transcript from DEWHA hearings re mako sharks.docx>>

Excerpts from Senate Estimates Hearings with DEWHA officials

Tuesday, 9 February 2010

Officials from the Department of the Environment:

Mr Stephen Oxley, Acting First Assistant Secretary (Marine Division)

Mr Peter Burnett, First Assistant Secretary (Approvals and Wildlife Division)

Consultation prior to the Rome meeting of CMS – December 2008

Mr Oxley—there was consultation undertaken with each of the state and territory governments or their departments that managed fisheries, in particular.

Senator COLBECK—You are not aware of any consultation with any of the recreational sector as part of the process prior to December 2008?

Mr Oxley—I can confidently say that I do not believe that at that time, which was in late 2008, there was consultation with the recreational fishing sector.

Feedback from State Governments

Senator COLBECK—Can you give me an indication of the feedback that you got from the states?

Mr Oxley—I can do that. I would describe the feedback from the states and territories as mixed. It ranged from support without any qualifications from some of the jurisdictions to statements that were not supportive of the listing taking place.

Senator COLBECK—Is it possible for you to give us an indication of which way each state went on that?

Mr Oxley— ...In relation to those that were not supportive of it, **New South Wales and Queensland did not support the proposals.** There were two core reasons. Firstly, there was a concern that the listing could lead to increases in monitoring and stock assessment costs for the fisheries management agencies. The New South Wales government was also concerned that the species would become a no-take species for fishers, so they understood the operation of the EPBC Act prospectively.... **South Australia, the Northern Territory and Western Australia were fully supportive of the proposals,** and the **Victorian government was not definitive one way or the other. I think their take on things was that the impact was likely to be limited...**The notes I have in front of me indicate that **Tasmania endorsed the listing and suggested that the impact would be negligible.**

Involvement of HSI on official delegation to Rome meeting

Mr Oxley— ...one of the environment NGOs did participate on the Australian delegation to the CMS meeting

Senator COLBECK—While that is being prepared so that you can have a look at it I should ask: how was the delegation selected?

Mr Oxley—I do not have information at my disposal that tells me how the delegation was selected, so I will need to take that one on notice.

Senator COLBECK—As we both agreed, Humane Society International is listed as an official member of the delegation. Were their expenses covered as part of that process?

Mr Oxley—No. They participated as a member of the delegation on the basis that they fully met their own expenses and that they abided by the rules of engagement for the delegation.

Senator COLBECK—Now that you have a copy of the document, by what process would interested parties adjoin themselves to the delegation? This is not necessarily a historical thing. I think it is—

Mr Oxley—No, I will leave the historical context behind because I think we have the evidence in front of us as to what the membership of that delegation was—

Senator COLBECK—That is the membership of the delegation?

Mr Oxley—I believe it is. That would appear to be the case. If I can fast-track forward to now and the upcoming conference and parties for the convention on international trade in endangered species, the department has undertaken a broader consultation process in inviting a range of organisations to nominate to join the delegation. That opportunity went out to conservation NGOs and to a number of fishing industry organisations. In fact we have had the Southern Bluefin Tuna Industry Association put themselves up...as a desired member of the delegation.

I think it would be fair to say that the lesson we learned from the CMS process of 2008 is that it would be best to extend a broader reach out to our stakeholders in order to give them the opportunity to participate in the delegation but also to consult with them on their views in relation to the negotiating position the Australian government would take into any particular conference of the parties under these treaties.

Position taken by the Australian delegation to Rome meeting

Senator COLBECK—Can you give us an indication of the position that we took to the Rome meeting?

Mr Oxley—That we took to the Rome meeting in relation to makos?

Senator COLBECK—In relation to this particular listing, yes.

Mr Oxley—The Australian government position was to support the nomination for listing on appendix II of the CMS. I might add that that position was based on analysis of the nomination proposals that was undertaken by CSIRO. That advice to us indicated that the science was sufficiently strong to support a listing of those species under appendix II.

Hawke Review & Consultation during 2009

Senator COLBECK—My understanding is that indications were given to industry, both commercial and recreational, that the listing would not be proceeded with until after the completion of the review process for the EPBC Act. Can you confirm that or otherwise and then take us to, if that was the case, why the listing proceeded?

Mr Oxley— ...My understanding of the discussions that occurred broadly in the first half of last year is that there was a disposition towards allowing the EPBC Act review to work its way through and for the issues about the non-differentiation under the EPBC Act between appendix I and appendix II listed species to be resolved through any broader set of amendments to the EPBC Act that would be made as a result of the government's consideration of the report of the Hawke review.

That indication was broadly given to stakeholders. Then, as the year progressed, it would be fair to say that there became an increasing level of concern that, given the likely long time frame between the receipt of the Hawke review and the eventual passage of any amendments to the EPBC Act that might flow from it—and I should note that the Hawke review did make some specific findings in relation to the convention on non-migratory species—it was not a sustainable position for the species not to be listed under the EPBC Act given that it was a very black-and-white requirement that that occur and that, if there had been any legal move to force a listing, that would need to have occurred. In those circumstances, our advice to the minister was that the formal listing under the EPBC Act should be moved forward.

Senator COLBECK—Were there any threats to pursue legal action to force the issue?

Mr Oxley—The department or the minister—I cannot recall now which—received one representation from a legal body representing a conservation NGO asking that the listing be progressed.

Senator COLBECK—It was HSI that provided the legal letter, or it was on their representation, to the minister; is that correct?

Mr Oxley—I believe it was on behalf of HSI, yes.

Economic Impact on Recreational Fishing

Senator COLBECK—In the national interest analysis paper that was compiled—and the tabling date that I have got is 25 November—it stated that it is anticipated that the costs for most sectors will be minor. Can I ask where that assessment came from?...If anything stirred up the recreational sector more—apart from the fact that they could not catch a fish when they wanted to—it was the fact that they did not have much of an investment in it. I think they have come out to demonstrate that in terms that you might understand.

Mr Oxley—In those circumstances that assessment would have been based, I presume, on economic cost and I would suggest it would have been focused substantially on commercial fishing impacts. It may not have accounted for recreational impacts but, as I offered, I will take that on notice and come back.

Amendments to EPBC Act

Senator SIEWERT—Could you explain what the process is for that and when the minister is expecting to table the bill?

Mr Burnett—Obviously, the minister has announced the government's intention to introduce an amendment to the EPBC Act to address this matter specifically. The drafting instructions have been issued, so the legislation is being prepared. The government has allocated a high priority to it and we expect that it will be introduced in the very near future.

Senator SIEWERT—Is that specifically related to any species to stop the automatic listing if a species is declared a migratory species?

Mr Burnett—No, it is specifically to deal with this issue about the mako shark.

Senator SIEWERT—So, it is specifically about the mako sharks?

Mr Burnett—Yes, mako sharks.

Senator SIEWERT—It is specifically about that and it decouples that from the process under the EPBC Act?

Mr Burnett—No, it does not change the listing system, so the shark would remain listed but it will amend another provision of the act close by that lists some exemptions, so it will formalise the exemption for this recreational catch and release.

Senator SIEWERT—And that is expected soon?

Mr Burnett—Soon, yes.

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