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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION
AMENDMENT (RECREATIONAL FISHING FOR MAKO AND
PORBEAGLE SHARKS) BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Environment, Heritage and the Arts,
the Honourable Peter Garrett AM MP)

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (RECREATIONAL FISHING FOR MAKO AND PORBEAGLE SHARKS) BILL 2010

OUTLINE

The Environment Protection and Biodiversity Conservation Amendment (Recreational Fishing for Mako and Porbeagle Sharks) Bill 2010 (the Bill) amends the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to allow recreational fishing of longfin mako, shortfin mako, and porbeagle sharks in Commonwealth areas, notwithstanding the offence provisions in Part 13, Division 2 of the EPBC Act, which prohibit killing, injuring, taking, trading, keeping or moving listed migratory species in Commonwealth areas, and trading, keeping or moving a listed migratory species that has been taken in a Commonwealth area. The Bill is not intended to override the effect of any State or Territory laws prohibiting recreational fishing of longfin mako, shortfin mako or porbeagle sharks.

In December 2008 longfin mako, shortfin mako, and porbeagle sharks were listed on Appendix II of the Convention on the Conservation of Migratory Species of Wild Animals (CMS) primarily due to concerns about populations of these species in the northern hemisphere. Under the EPBC Act is a legal requirement that both Appendix I and Appendix II CMS species be listed as migratory. Accordingly, these species were listed as migratory species under the EPBC Act on 29 January 2010.

The effect of the listing of the species under the EPBC Act is that it is an offence to kill, injure, take, trade, keep or move a longfin mako, shortfin mako, or porbeagle shark in a Commonwealth area, or to trade, keep or move a member of these species that has been taken in a Commonwealth area.

Mako sharks are a highly prized sportfish and are targeted by some recreational fishers. Porbeagles, while not targeted, are difficult to distinguish from makos and are occasionally taken by recreational fishers and, in many cases, are misidentified as makos. The listing of these species, and in particular the subsequent application of the offence provisions of Part 13 of the EPBC Act, has significant implications for recreational fishing. These implications cannot be addressed effectively either administratively or by regulation. The implications for commercial fisheries will be addressed through accreditation processes under the EPBC Act.

The Independent Review of the EPBC Act (the Hawke Review) examined the provisions of the EPBC Act relating to migratory species, and found that the clear intention of the CMS is to differentiate between Appendix I and Appendix II species and the level of protection required. The Hawke Review recommends changes to the provisions in Part 13 of the EPBC Act. The Bill is an interim response to the issues identified by the Hawke Review as they apply to mako and porbeagle sharks while the Government develops and implements its formal response to the Hawke Review.

Financial Impact Statement

The Bill will have no financial impact.

NOTES ON CLAUSES

Clause 1 - Short title

1. This clause provides for the Act to be cited as the *Environment Protection and Biodiversity Conservation Amendment (Recreational Fishing for Mako and Porbeagle Sharks) Act 2010*.

Clause 2 - Commencement

2. This clause provides that the Act will commence on the day after it receives Royal Assent.

Clause 3 – Schedule(s)

3. This clause provides that the items specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule, and other items in a Schedule have effect according to its terms.

Schedule 1 – Amendment of the *Environment Protection and Biodiversity Conservation Act 1999*

Item 1 – Section 212

4. This item is a technical amendment to include a subsection reference which is required as a consequence of Item 3.

Item 2 – After paragraph 212(q) (Exception to Part 13, Division 2 offences)

5. This item inserts paragraph 212(1)(r) which is a new exception to the offences under Part 13, Division 2 of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) (sections 211, 211A, 211B, 211C, 211D and 211E) which prohibit killing, injuring, taking, trading, keeping or moving listed migratory species in Commonwealth areas, and trading, keeping or moving a listed migratory species that has been taken in a Commonwealth area.
6. The exception will apply only to an action that is taken in the course of 'recreational fishing' and the action consists of, or involves, taking, trading, keeping, or moving, or results in the death or injury of, a longfin mako, shortfin mako, or porbeagle shark.
7. Ordinarily, a fisher who sells their catch would not be engaged in 'recreational fishing'. However, in limited circumstances, under State or Territory law, a recreational fisher may sell some or all of their catch in the course of recreational fishing - for example, section 37A of the *Fisheries Management Act 1994* (NSW) allows for permits to be issued authorising sale of fish for charitable purposes. The reference to 'trading' in new subparagraph 212(r)(i) is therefore included to ensure that such conduct is also covered by the new

exception, but only to the extent that the sale of the longfin mako, shortfin mako, and porbeagle sharks is in the course of recreational fishing. The reference is not intended to override any State and Territory laws that regulate sale (or trade) of mako and porbeagle sharks taken in the course of recreational fishing.

Item 3 – At the end of section 212 (Definition of ‘recreational fishing’)

8. A fishing activity within the ordinary meaning of ‘recreational fishing’ will be covered by the definition (for example, fishing of longfin mako, shortfin mako, or porbeagle sharks by an individual person from their private boat for personal use).
9. This item provides a definition of ‘recreational fishing’ for the purposes of the exception in new paragraph 212(1)(r) to clarify that ‘recreational fishing’ also includes (but is not limited to) the following types of fishing:
 - fishing from a charter boat (within the meaning of the *Fisheries Management Act 1991*), including fishing by the person in charge of the boat, the crew of the boat or any other person on the boat;
 - fishing in a fishing competition (whether or not in a professional capacity); and
 - fishing that is undertaken primarily for inclusion on a website, or in a film, video, television program or radio program, or for description or representation in a magazine, newspaper, book or other such document.

Item 4 – At the end of paragraph 214(1)(b) (Offence for failing to notify taking of a listed migratory species)

10. Section 214 establishes a requirement for a person to notify the Secretary within 7 days of an action, which involved killing, injuring, taking, trading, keeping or moving a listed migratory species, that does not constitute an offence under Part 13, Division 2 of the EPBC Act because an exception under section 212 of the EPBC Act applies to the action.
11. This item amends paragraph 214(1)(b) of the EPBC Act so that the requirement to notify the Secretary does not apply in relation to an action covered by the new exception for recreational fishing of longfin mako, shortfin mako and porbeagle sharks.

Item 5 – Section 528 (Definition of longfin mako shark)

12. This item inserts a definition into section 528 of the EPBC Act to clarify that a reference to a ‘longfin mako shark’ means the species with scientific name *Isurus paucus*. This is the scientific name of the species as listed on the Convention on the Conservation of Migratory Species of Wild Animals.

Item 6 – Section 528 (Definition of porbeagle shark)

13. This item inserts a definition into section 528 of the EPBC Act to clarify that a reference to a ‘porbeagle shark’ means the species with scientific name *Lamna nasus*. This is the scientific name of the species as listed on the Convention on the Conservation of Migratory Species of Wild Animals.

Item 7 – Section 528 (Definition of shortfin mako shark)

14. This item inserts a definition into section 528 of the EPBC Act to clarify that a reference to a ‘shortfin mako shark’ means the species with scientific name *Isurus oxyrinchus*. This is the scientific name of the species as listed on the Convention on the Conservation of Migratory Species of Wild Animals.