

**AMENDMENTS, DONE AT ULSAN, REPUBLIC OF KOREA ON 24 JUNE
2005, TO THE SCHEDULE TO THE INTERNATIONAL CONVENTION
FOR THE REGULATION OF WHALING, DONE AT WASHINGTON ON
2 DECEMBER 1946,
[1948] ATS 18**

Documents tabled on 13 September 2005:

**National Interest Analysis 2005 ATNIA 17
with attachment on consultation**

Text of the proposed treaty action

Background information:

Current status list

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Amendments, done at Ulsan, Republic of Korea on 24 June 2005, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946 [1948] ATS 18

Nature and timing of proposed treaty action

1. The Schedule is an integral part of the International Convention for the Regulation of Whaling, 1946 (the Convention). It is amended from time to time, in accordance with the provisions of Article V of the Convention, to take account of decisions of the International Whaling Commission established under the Convention (the Commission). Amendments to the Schedule become effective with respect to each Contracting Government ninety days following the date of notification from the Secretariat of the Commission unless a Contracting Government lodges an objection to the amendments in that period.
2. Should any Contracting Government lodge an objection, the amendments would not enter into force for any of the Contracting Governments for an additional ninety days. Thereafter, the amendments become binding on all Contracting Governments other than those that have lodged objections.
3. The effect of the amendments done at the 57th annual meeting of the Commission is to maintain the moratorium on commercial whaling. Australia does not propose to lodge an objection to these amendments therefore no binding treaty action is required.
4. The Commission notified Contracting Governments on 30 June 2005 of the amendments, advising that, if no objections were lodged, the amendments would come into force generally on 28 September 2005 and that if objections were lodged before 28 September 2005 the amendments would come into force for those countries that had not lodged an objection on 27 December 2005. The amendments will come into force for Australia, therefore, on 28 September 2005 in the former case or 27 December 2005 in the latter case.

Overview and national interest summary

5. The amendments to the Schedule to the Convention extend, by an additional year, the current period of the moratorium on commercial whaling which applies under the Convention. This is in the national interest because Australia is a strong opponent of commercial whaling.

Reasons for Australia to take the proposed treaty action

6 The Convention is a multilateral treaty which regulates the conservation and utilisation of whale stocks. Australia has been a Contracting Government since it came into force in 1948. Although negotiated at a time when the primary focus was to ensure international control of the post-war development of the commercial whaling industry, the Convention and the Commission created by it have proved more recently to be an effective vehicle for some major conservation measures. Australia has been a strong advocate of conservation measures within the Commission since the closure of the last Australian shore-based whaling operation in 1979, including the 1982 decision to implement a moratorium on commercial whaling.

7. The proposed treaty action involves amendments to the Schedule to the Convention. The amendments maintain the moratorium on commercial whaling, and are an automatic requirement at every annual meeting of the Commission which does not decide to lift the ban on commercial whaling.

8. The amendments substitute the dates for the coming year on commercial whale catch limits, all of which are set at zero in accordance with sub-paragraph 10(e) of the Schedule. These amendments are required annually to maintain the moratorium on commercial whaling and the currency of the Schedule. The amendments substitute the dates '2005/2006' for '2004/2005,' and '2006' for '2005' in paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule.

Obligations

9. The amendments to the Schedule will not add to Australia's existing obligations under the Convention. Australia already prohibits whaling. The *Environment Protection and Biodiversity Conservation Act 1999*, which prohibits killing, injuring or interfering with whales in Australian waters, affords a higher level of protection to whales in Australian waters than is afforded under the Convention. The amendments will also continue to bind all Contracting Governments who do not lodge an objection to the catch limits as set out in the Schedule.

Implementation

10. The amendments to maintain zero catch limits for commercial whaling do not require any additional measures by Australia. The *Environment Protection and Biodiversity Conservation Act 1999* prohibits the killing of whales and provides for the preservation, conservation and protection of whales and other cetaceans in Australian waters, including to the outer limits of the Exclusive Economic Zone.

Costs

11. The proposed treaty action is not expected to impose any additional costs to Australia. The amendments to the Schedule will not require any new domestic agencies or management arrangements to be put in place, as the amendments simply maintain the existing moratorium on commercial whaling.

Regulation Impact Statement

12. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

13. The Schedule may be amended from time to time in accordance with the provisions of Article V of the Convention. Article III(2) provides that a three-quarter majority of the Commission voting is required to amend the Schedule. As provided for in Article V(2), these amendments shall: be such as are necessary to carry out the objectives and purposes of the Convention and to provide for the conservation, development, and optimum utilisation of whale resources; be based on scientific findings, not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory ship or land stations; and take into consideration the interests of consumers of whale products and the whaling industry.

14. Amendments are usually, but not necessarily, made at meetings of the Commission (Article III(2)). The Rules of Procedure provide that between meetings of the Commission or in the case of emergency, a vote may be taken by post, or other means of communication. Any future amendments to the Schedule would have to be agreed by the Commission and would be subject to further treaty action under the Convention and would be subject to Australia's domestic treaty process, including tabling and consideration by the Joint Standing Committee on Treaties.

15. There are no current proposals for the development of additional Protocols, which would require a Conference of Governments outside the normal Commission meetings.

Withdrawal or denunciation

16. Australia may lodge an objection to any amendment to the Schedule within ninety days of notification from the Commission. Thereafter, such an amendment will not become binding on Australia.

17. Australia may withdraw from the Convention, of which the Schedule is an integral part, by giving notice to the Depository Government (Government of the United States of America) on or before 1 January of any year, whereby the withdrawal becomes effective as of 30 June following the notification.

Contact details

Antarctic and International Policy
Policy and Coordination Branch
Australian Antarctic Division
Department of the Environment and Heritage

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CONSULTATION

1. The Australian Antarctic Division convenes a number of consultative meetings with non-government organisations and other Australian Government departments prior to each annual Commission meeting to canvass views on Commission issues. These meetings were held in September 2004, November 2004, March 2005 and May 2005, and were attended by representatives of the Department of the Environment and Heritage, Department of Foreign Affairs and Trade, Australians for Animals, Australian Whale Conservation Society, Greenpeace, Humane Society International, International Fund for Animal Welfare, Project Jonah Australia, Royal Society for the Prevention of Cruelty to Animals, Whale and Dolphin Conservation Society and World Society for the Protection of Animals. The views expressed at the meetings are taken into account in developing Australia's position on the proposals to be considered by the Commission.
2. Following each annual meeting of the Commission, feedback from the delegation is provided to the consultative forum and interested non-government organisations, government departments, scientists and institutions. The consultative forum elected representatives of two non-government organisations (Humane Society International and Project Jonah Australia) to participate as members of the Australian delegation at the 2005 annual meeting.
3. The amendments resulting from the 2005 annual Commission meeting, to maintain the moratorium on commercial whaling, do not affect the States and Territories.

BACKGROUND INFORMATION

CURRENT STATUS LIST

of the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946

The list of Contracting Governments (66) to the Convention is as follows (as at 25 July 2005):

Antigua and Barbuda	Guinea, Republic of	Oman
Argentina	Hungary	Palau, Republic of
Australia	Iceland	Panama
Austria	India	Peru
Belgium	Ireland	Portugal
Belize	Italy	Russian Federation
Benin	Japan	St. Kitts and Nevis
Brazil	Kenya	St. Lucia
Cameroon	Kiribati	St. Vincent and The Grenadines
Chile	Luxembourg	San Marino
China, People's Republic	Korea, Republic of	Senegal
Costa Rica	Mali	Slovak Republic
Côte D'Ivoire	Mauritania	Solomon Islands
Czech Republic	Mexico	South Africa
Denmark	Monaco	Spain
Dominica	Mongolia	Suriname
Finland	Morocco	Sweden
France	Nauru	Switzerland
Gabon	Netherlands	Togo
The Gambia	New Zealand	Tuvalu
Germany	Nicaragua	United Kingdom
Grenada	Norway	United States of America