

**AMENDMENTS, DONE AT SORRENTO, ITALY ON 22 JULY 2004,
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 7 December 2004:

- **National Interest Analysis**
- **Text of the proposed treaty action**

Annexures:

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NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

**Amendments, done at Sorrento, Italy on 22 July 2004, to the Schedule to the
International Convention for the Regulation of Whaling, done at Washington on
2 December 1946
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Date of Tabling of Proposed Treaty Action

1. 7 December 2004.

Nature and Timing of Proposed Treaty Action

2. 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.

3. 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.

4. The amendments done at the 56th annual meeting of the Commission maintain the moratorium on commercial whaling, and modify the provisions for aboriginal subsistence whaling in the Northern Hemisphere. Australia does not propose to lodge an objection to these amendments therefore no binding treaty action is required.

5. The Commission notified Contracting Governments on 30 July 2004 of the amendments, advising that, if no objections were lodged, the amendments would come into force generally on 28 October 2004 and that if objections were lodged before 28 October 2004 the amendments would come into force for those countries that had not lodged an objection on 26 January 2005. No objections were lodged with the Commission before 28 October 2004 and, therefore, the amendments came into force for Australia on that date.

Overview and National Interest Summary

6. The amendments to the Schedule to the Convention maintain the moratorium on commercial whaling and modify the provisions for aboriginal subsistence whaling. This is in the national interest because Australia is a strong opponent of commercial whaling, but supports the access of some indigenous communities to whales and whaling to meet demonstrated traditional, cultural and nutritional needs.

Reasons for Australia to take the proposed treaty action

7. The proposed treaty action involves amendments to the Schedule to the Convention to which Australia has been a Contracting Government since it came into force in 1948. The first set of amendments maintains the moratorium on commercial whaling, and is an automatic requirement at every annual meeting of the Commission which does not decide to lift the ban on commercial whaling. The second set of amendments modifies the provisions for aboriginal subsistence whaling in the Northern Hemisphere. This action was proposed by the Russian Federation and accepted by consensus at the annual meeting.

8. The first set of 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 '2004/2005' for '2003/2004,' and '2005' for '2004' in paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule.

9. The Convention is a multilateral treaty which regulates the conservation and utilisation of whale stocks. 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.

10. The second set of amendments modifies the provisions for aboriginal subsistence whaling in the Northern Hemisphere. These amendments are made from time to time to alter the provisions governing the four quotas currently approved by the Commission (for the taking of bowhead whales from the Bering-Chukchi-Beaufort Seas; gray whales from the Eastern stock in the North Pacific; minke whales from the West Greenland and Central stocks; fin whales from the West Greenland stock; and humpback whales from St. Vincent and The Grenadines).

11. These amendments add two new provisions to paragraph 13(a) – which contains the general principles governing all aboriginal subsistence whaling. The new provisions require that all hunts are governed by national legislation, and impose a ban on the taking of calves and accompanying whales / female whales in all cases. There are consequential deletions in the following sub-paragraphs to ensure consistency.

12. The amendments also standardise the provisions on the use of the products of such hunts, by removing the words in sub-paragraph 13 (b)(2), which had restricted the use of the products of the gray whales taken from the Eastern North Pacific stock to peoples "whose traditional aboriginal subsistence and cultural needs have been recognized." The effect of this amendment is that this quota will now be treated the same as the three other quotas: the products may be used by "aborigines," and thus some barter, trade or sharing of whale products could be undertaken with relatives of the participants in the harvest, with others in the local community or with other persons with whom local residents share familial, social, cultural or economic ties.

13. Australia has consistently recognised the needs of some communities for continued access to whaling and whale products to meet demonstrated traditional, cultural and dietary needs in subsistence cultures. Australia's position is that this provision should neither exempt subsistence hunters from scrutiny (on the bases of humaneness and target limits), nor be extended to cater to the commercial interests of non-subsistence cultures. These amendments are consistent with this position.

Obligations

14. 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.

Implementation

15. 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

16. 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.

Consultations (see Annexure 1)

17. The Australian Antarctic Division convenes a number of consultative meetings with non-government organisations and other Government departments prior to each annual Commission meeting, and makes a delegation report available to non-government organisations, government departments, scientists and institutions. Non-government members of 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 2004 annual meeting.

18. The amendments resulting from the 2004 annual Commission meeting do not affect the States and Territories.

Regulation Impact Statement

19. The Office of Regulation Review, Productivity Commission has been consulted and confirms that a Regulation Impact Statement is not required (ORR Ref. 2004/3865).

Future Treaty Action

20. The Schedule may be amended from time to time in accordance with the provisions of Article V of the Convention. Article V provides that a three-quarter majority of the Commission may decide to amend the Schedule where the amendments are 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; are based on scientific findings, do 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 (Article V(2)).

21. 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.

22. 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

23. 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.

24. 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

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

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

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ANNEXURE 1. CONSULTATIONS

1. The Australian Antarctic Division convenes a number of consultative meetings with non-government organisations and other Government departments prior to each annual Commission meeting to canvass views on Commission issues. These meetings were held in September 2003, March 2004 and June 2004, and were attended by representatives of the Department of the Environment and Heritage, Department of Foreign Affairs and Trade, Greenpeace, Humane Society International, International Fund for Animal Welfare, Project Jonah, Royal Society for the Prevention of Cruelty to Animals, Whale and Dolphin Conservation Society and Whale and Dolphin Watch Australia Inc. 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, a report from the delegation is made available to 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 2004 annual meeting.
3. The amendments resulting from the 2004 annual Commission meeting do not affect the States and Territories.

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**ANNEXURE 2. INTERNATIONAL WHALING COMMISSION:
CURRENT STATUS LIST**

As at 1 November 2004:

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