



**Joint Standing Committee on Treaties  
Public Hearing Program, Monday 9 December 2002**

**Response to questions taken on notice by Mr Mark Flanigan, A/g Assistant Secretary,  
Marine and Water Division, Environment Australia**

**Transcript Page TR11:**

*Regarding the exact phrasing of the precautionary principle as the basis for decision making by the Minister and Department of the Environment and Heritage under the EPBC Act.*

Part 16 of the *Environment Protection and Biodiversity Conservation Act 1999* states that the Minister must consider the precautionary principle in making a number of decisions. Relevant examples of such decisions include whether an action referred to the Commonwealth is a "controlled action", whether to grant a permit for research on cetaceans or for actions that may interfere with cetaceans, and about making a recovery plan for a threatened species.

Section 391 (2) provides the following definition: "The precautionary principle is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible damage."

**Transcript Page TR16:**

*Regarding the blue whale and which species of baleen whales are covered by the ICRW.*

The International Whaling Commission (IWC) originally set quotas based on the Blue Whale Unit. This unit counted whales according to the average quantity of oil that an individual member of the species could yield once slaughtered, relative to the largest whale, the blue whale. This method of calculation made it impossible to limit the catch for any particular species, and led to massive over-exploitation. The latest version of the Schedule makes no mention of the Blue Whale Unit, as the IWC abolished the system in 1972, and henceforth expressed quotas as numbers of individual whales per species.

The *International Convention for the Regulation of Whaling 1946* does not define which whales are covered by the IWC, or by its protective measures and catch limits – this was left to Parties to determine over time, in the Schedule to the Convention. The Schedule defines a baleen whale broadly, as "any whale which has baleen or whale bone in the mouth, i.e. any whale other than a toothed whale." A toothed whale is defined as "any whale which has teeth in the jaws." The Interpretation section lists the common name for ten baleen species and five toothed whale species, being those species that were at some stage subject to commercial harvest and for which the IWC had set catch limits. Nothing in the Schedule states that this list is exhaustive, nor that it would preclude the addition of other species in future.

Due to the moratorium on commercial whaling, all ten of the baleen whale species the Schedule lists are currently subject to commercial catch limits of zero. Tables 1 and 2 of the Schedule set a zero limit for the following baleen species: sei, minke, fin, blue, right, bowhead, humpback, pygmy right, gray and Bryde's whales.