

Amendments to the Schedule to the International Convention for the Regulation of Whaling

- 1.1 The International Convention on Whaling (1946) is a multilateral treaty that regulates the conservation and utilisation of whale stocks. Australia has been a Contracting Government to the Convention since it came into force in 1948.¹
- 1.2 The Schedule is an integral part of the Convention, and is amended from time to time in accordance with Article V to take account of decisions of the International Whaling Commission (established under the Convention). Under the Convention, amendments enter into force on the expiration of 90 days after formal notification, except for those parties who have lodged an objection.
- 1.3 At the 54th meeting of the International Whaling Commission (IWC) held in Shimonoseki from 20 to 24 May 2002, the Schedule to the Convention was amended to maintain the moratorium on commercial whaling (in place since 1982) and to renew Aboriginal subsistence quotas. An editorial footnote regarding the Indian Ocean Sanctuary was also inserted. Official notification of the amendments was sent to the Australian Government on 12 June 2002. The Minister for the Environment and Heritage wrote to the Committee on 15 August outlining the particular arrangements. Amendments came into force on 10 September 2002 as no objections were lodged.

¹ Information about the proposed treaty action is taken from the National Interest Analysis, tabled in conjunction with the treaty text on 27 August 2002, and a public hearing held in Canberra on 16 September 2002.

- 1.4 The Committee notes that the changes are minor and in most part do not affect whale populations in Australian waters. Some amendments to the moratorium simply substitute the dates in certain paragraphs of the schedule to apply the zero quota for the coming year. These amendments are required annually to maintain the moratorium on commercial whaling and the currency of the Schedule.²
- 1.5 Amendments to renew the Aboriginal subsistence catch limits require several changes to paragraph 13 of the Schedule.³ Environment Australia summarised the effects of the amendments to the catch limits for indigenous cultures as:
- renewing for five years the shared quota of 620 grey whales taken by the indigenous people of Russia and the United States;
 - renewing for five years the quota of 187 minke whales taken each year by the indigenous people of Greenland; and
 - allowing the take of four humpback whales per year for the next five years by the Bequian people of St Vincent and the Grenadines (in effect doubling the quota from two whales per year), providing that the hunters conduct their activities under appropriate legislation and with the advice of the Scientific Committee.
- 1.6 The second set of amendments arise from the need to review Aboriginal subsistence whaling catch limits of baleen whales, which are set by paragraph 13 of the Schedule. These limits apply to whale populations that do not occur in Australian waters. In two cases (North Pacific grey whales; Greenland minke whales), the Commission agreed by consensus to renew the existing quotas for a further five years, substituting dates from 1997 to 2002 with dates from 2002 to 2007.
- 1.7 The Committee recognised that these amendments are both minor and of little impact to Australia, and sought further general information from Environment Australia about the Convention itself, conservation issues, consultation processes and Australian involvement in the Scientific Committee.
- 1.8 The Committee noted that when the Convention first came into effect in the late 1940s it was a harvesting convention. Mr Mark Tucker, representing Environment Australia, suggested that 'the member parties to the Convention have evolved over time into a more conservation-minded group of people regarding whale harvesting'.⁴ While the treaty

2 As advised in paragraph 8 of the National Interest Analysis.

3 M. Tucker, *Transcript of Evidence*, p.2.

4 *ibid.*

has not been amended to reflect a change in effect from a harvesting treaty to a conservation treaty, the additions of schedules have dictated certain arrangements and it is these amendments which have changed the nature of the Convention. These include the 1982 decision to implement a moratorium on commercial whaling and the establishment in 1994 of the Southern Ocean Sanctuary.

- 1.9 The Committee was advised that 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.
- 1.10 The IWC is considered to be the most appropriate forum for pursuit of international efforts to improve the conservation of whales. There are approximately fifty member countries at the present time.

Aboriginal subsistence whaling

- 1.11 At present catch limits apply to baleen whales whose populations do not occur in Australian waters. The Committee was interested to hear about the nature of indigenous populations and their specific catch limits. Because the Commission meets annually, the countries under the treaty determine each year how many whales can be taken for indigenous purposes and which indigenous cultures are able to take them.
- 1.12 The Committee was advised that indigenous populations who presently undertake Aboriginal subsistence whaling under the control of the IWC are Greenlanders (Denmark), Alaskan Eskimos and the Makah Indian Tribe (USA), Bequian Islanders (St Vincent and the Grenadines), and native peoples of Chukotka (Siberia, Russia).

Consultation

- 1.13 The Committee noted that several consultation methods exist for environmental matters, depending on the nature of the treaty action. The Natural Resource Management Ministerial Council is co-chaired by the Ministers for the Environment and Heritage, and for Agriculture, Fisheries and Forestry. Of the standing committees and subcommittees which operate under that Council, the Marine and Coastal Committee has a standing item on international matters, where this treaty was considered. That Committee is also the primary body for formal consultation with relevant agencies.⁵ The Committee noted that states and territories would

⁵ M. Tucker, *Transcript of Evidence*, p.4.

also receive advice on this action via the Commonwealth-States-Territories Standing Committee on Treaties, which meets twice a year.

- 1.14 In addition, Environment Australia consults with other government departments and non-government organisations prior to each meeting of the Commission and a report from the delegation to each annual Commission meeting is made available.
- 1.15 Environment Australia advised the Committee that, as the states and territories would have little interest in these particular amendments, as they apply only to the Northern Hemisphere in terms of the catch limits and they extend a ban which has been in place in Australia since 1979, the normal consultation process has not been followed.

Non-government organisations

- 1.16 The Australian Government also permits non-government representatives to participate in the Australian delegation. In 2002, representatives from Project Jonah and Humane Society International were members of the Australian delegation, while other conservation organisations are able to attend as observers. Nominations are arranged by the groups themselves.⁶ Environment Australia informed the Committee that there are some people who have been regular participants in such delegations for several years and who have 'an extraordinary depth of knowledge'.⁷
- 1.17 The Committee was advised that the Australian Government does not usually fund directly the attendance of non-government members of Australian delegations to international meetings. However, a one-off payment was made to assist with the accommodation costs of the non-government representatives in 2002 due to the financial hardship imposed by the unusual occurrence of two IWC meetings in the one financial year.
- 1.18 The Committee was informed that continuing consultation with non-government organisations relates particularly to their concerns about recurring contentious issues, such as whale harvesting and conservation, and the Australian Government's position on these.

6 M. Tucker, *Transcript of Evidence*, p.6.

7 M. Tucker, *Transcript of Evidence*, p.6.

Scientific Committee

- 1.19 The Committee requested information on the involvement of Australians on the Scientific Committee. The Scientific Committee meets for two weeks prior to Commission meeting each year. The Scientific Committee is comprised of both 'invited participants', generally funded by the IWC, and scientists representing their governments. Environment Australia advised that Australia usually has at least two representatives at the Scientific Committee each year, and a varying number of 'invited participants' depending on the topics to be discussed and what expertise is required. In May 2002 there were three Australian scientists on the Australian delegation and four 'IPs' resident in Australia.
- 1.20 Mr Tucker explained that the Scientific Committee has been working on a revised management scheme which asks, 'in a sense, what would be the basis of sustainable whaling if commercial whaling were to start again.'⁸
- 1.21 No further action is required nor costs imposed as this treaty action essentially maintains the ban on commercial whaling and permits Aboriginal whalers in some parts of the Northern Hemisphere to continue their hunts. The Committee notes that Australia's domestic legislation has stronger protections for whales in Australian waters than those afforded under the Convention.⁹ The Committee was pleased to hear that Australia makes efforts each year to lobby the commission to extend the protection of the convention internationally in order to reflect the Australian standards. Environment Australia advised that other mechanisms that may afford wider international protection are also available, for example, the Convention for Migratory Species and the Convention for the International Trade in Endangered Species, which form part of a 'multipronged approach' internationally for protecting the species.¹⁰
- 1.22 The Committee concurs with the view expressed in the National Interest Analysis that the amendments accord with Australia's long-held position on the banning of commercial whaling and the limited hunting of whales by Aboriginal subsistence cultures to meet demonstrated traditional, cultural and dietary needs.

8 M. Tucker, *Transcript of Evidence*, p.6.

9 The *Environment Protection and Biodiversity Conservation Act 1999* prohibits killing, injuring or interfering with whales in Australian waters 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.

10 M. Tucker, *Transcript of Evidence*, p.4.

