

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

Introduction

- 2.1 The *Amendments to the schedule to the International Convention for the Regulation of Whaling done at Washington on 2 December 1946* (Ulsan, Republic of Korea, 24 June 2005) (the Amendments) when entered into force will maintain the existing moratorium on commercial whaling for an additional year.¹

Background

- 2.2 The International Convention for the Regulation of Whaling (the Convention) is a multilateral treaty² that establishes an international system for the regulation of whale fisheries to ensure proper and effective conservation and development of whale stocks.³

1 National Interest Analysis (NIA), para. 3; Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 2.

2 NIA, para. 6.

3 International Whaling Convention, viewed 16 November 2005, <www.iwcoffice.org/commission/iwcmain.htm>.

- 2.3 The Convention also establishes the International Whaling Commission (IWC), which is responsible for reviewing and revising measures contained in the Schedule to the Convention. The Schedule to the Convention governs the conduct of whaling throughout the world.⁴
- 2.4 Australia has been signatory to the Convention since it came into force in 1948. Since 1979 with the closure of the last Australian shore-based whaling operation, Australia has strongly supported whale conservation measures. This includes support for IWC's 1982 decision to implement a moratorium on commercial whaling.⁵

Features of the Amendments

- 2.5 The Amendments are made pursuant to Article V of the Convention which provides that the Schedule may be amended periodically to incorporate IWC decisions.⁶
- 2.6 These Amendments make changes to the Schedule to the Convention to maintain the moratorium on commercial whaling for an additional 12 months.⁷ The extension of the moratorium is a requirement of each annual IWC meeting where a decision is not made to lift the ban on commercial whaling.⁸

Implementation and costs

- 2.7 The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the Act) prohibits killing, injury or interfering with whales in Australian waters. The Committee received evidence that the Act provides a higher level of protection for whales than is provided under the Convention.⁹ No further legislation is required to give effect to the Amendments¹⁰ and there are no costs involved in ratification of the proposed treaty action.¹¹

4 International Whaling Convention, viewed 16 November 2005, <www.iwcoffice.org/commission/iwcmain.htm>.

5 NIA, para. 6.

6 NIA, paras 1-2.

7 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 2.

8 NIA, para. 7; Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 2.

9 NIA, para. 9; Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 2.

10 NIA, para. 10.

11 NIA, para. 11; Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 2.

Consultation

- 2.8 The Australian Antarctic Division (AAD) consults via a forum of government organisations and Australian Government departments¹² and meets before and after each annual IWC meeting. Views presented at meetings contribute to the development of Australia's position on proposals considered by IWC.¹³
- 2.9 Following IWC meetings, AAD provides feedback from the Australian delegation to the consultative forum and interested non government organisations, government departments, scientists and institutions.
- 2.10 The consultative forum recently elected two representatives, one each from the Humane Society International and Project Jonah Australia, who formed part of the Australian delegation that attended the 2005 IWC meeting.¹⁴
- 2.11 No specific consultation took place with State and Territory governments, as the Amendments do not affect them.¹⁵

Whaling for scientific research purposes

- 2.12 The Committee received an update on issues it raised in relation to Japan's whaling for scientific research purposes during a recent inquiry.¹⁶
- 2.13 The Committee was informed that Japan is of the view that it has an inherent right to undertake whaling as under Article 8 of the Convention whaling for scientific research is permitted.¹⁷

12 Organisations that attended consultative meetings were: 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 the World Society for the Protection of Animals. NIA, Consultation Annex, para. 1.

13 NIA, Consultation Annex, paras 1 and 2.

14 NIA, Consultation Annex, para. 2.

15 NIA, Consultation Annex, para. 3.

16 Evidence received at the Committee's public hearing of 7 March 2005 is included in Report 65: Treaties tabled on 7 December 2004 (3) and 8 February 2005

17 Ms Gillian Slocum, *Transcript of Evidence*, 7 November 2005, p. 4.

- 2.14 Under the latest Japan Antarctic Research Program-JARPA II, Japan will more than double its harvest of minke whales from 440-harvested last season¹⁸ to 935 this season from Antarctic waters.¹⁹ Japan will also harvest another 10 fin whales annually over the course of the two-year duration of JARPA II. Additionally, at the end of JARPA II, Japan will annually harvest up to 50 fin whales and 50 humpback whales including 935 minke whales.²⁰
- 2.15 In recent weeks the press has reported on the increased whale harvest in Australia's Southern Ocean²¹ and that minke,²² humpback and fin²³ whales are included under the most endangered among animals listed on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).²⁴
- 2.16 CITES²⁵ provides that species listed under its Appendix I are threatened with extinction and generally prohibits commercial international trade in specimens of these species²⁶ with the exception of cases involving scientific research. In such cases, trade may be

18 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 2; Alford P 2005, 'Japan's whalers bite off too much', *Australian*, 8 November, p. 9.

19 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 2.

20 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 2.

21 Alford P 2005, 'Japan's whalers bite off too much', *Australian*, 8 November, p. 9; Trute P 2005, 'Whale killing season begins', *Daily Telegraph*, 8 November, p. 10; Johnson C 2005, 'Use courts to stop whale kill: Professor', *West Australian*, 8 November, p. 6; Johnson C, Dortch E 2005, 'Whales face scientific slaughter', *West Australian*, 9 November, p. 12; Greimel H 2005, 'Japan lifts whale target', *Adelaide Advertiser*, 9 November, p. 36.

22 CITES lists the Southern minke whale by its scientific name of *Balaenoptera bonaerensis*, Convention on International Trade in Endangered Species of Wild Fauna and Flora, <www.cites.org>.

23 CITES lists the fin whale by its scientific name of *Balaenoptera physalus*, Convention on International Trade in Endangered Species of Wild Fauna and Flora, <www.cites.org>.

24 Alford P 2005, 'Japan's whalers bite off too much', *Australian*, 8 November, p. 9; Trute P 2005, 'Whale killing season begins', *Daily Telegraph*, 8 November, p. 10; Convention on International Trade in Endangered Species of Wild Fauna and Flora, <www.cites.org>.

25 CITES is a multilateral environmental treaty that regulates international trade in specimens of wild fauna and flora. CITES provides for different degrees of regulation of trade, resulting in different levels of protection for each species. The level of protection is determined by the Appendix listing of the species. Trade is defined as export, re-export, import and introduction from the sea. Joint Standing Committee on Treaties, Report 65: Treaties tabled on 7 December 2004 (3) and 8 February 2005, p. 49.

26 Article II, Convention on International Trade in Endangered Species of Wild Fauna and Flora, <www.cites.org>.

authorised through the granting of an export or import permit.²⁷ Both Australia and Japan are Member States of CITES.²⁸

- 2.17 Representatives from the Australian Antarctic Division informed the Committee that Japan brought forward its proposal for further whaling for scientific research at the recent IWC meeting at Ulsan.
- 2.18 JARPA II will focus on a number of different areas. This includes the population dynamics and biology of the whales being researched, and the relationships between minke whale populations and the recovery of other whale populations.²⁹
- 2.19 A large majority of IWC's scientific committee considered Japan's proposal and were highly critical of it.³⁰ At that meeting, Australia led the charge in raising serious concerns about the scientific merit, scope, and intention of Japan's proposal. A large group of scientists also lodged a paper that raised the same concerns. Further, Australia brought forward a motion that was agreed to, requesting Japan to defer from proceeding with JARPA II until the IWC scientific committee was able to assess the results of the previous 18 year long JARPA.
- 2.20 Japan noted IWC's resolution regarding JARPA II, but is proceeding with its whaling for scientific research program, which commenced in November 2005.³¹ Under the Convention, Japan is required to provide the results of its whaling for scientific research to the IWC's scientific committee annually.³²
- 2.21 The Committee received evidence that Australia has developed a range of non-lethal methods for scientific research on whales, which Japan has openly rejected:

Japan would argue that its research requires lethal activity.
[Australia] would argue strongly to the contrary. [Australia]
and a number of other pro-conservation countries would
argue that there is no basis for scientific whaling of this scale

27 Article III, Convention on International Trade in Endangered Species of Wild Fauna and Flora, <www.cites.org>.

28 Convention on International Trade in Endangered Species of Wild Fauna and Flora, <www.cites.org>.

29 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 3.

30 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 3.

31 Ms Gillian Slocum, *Transcript of Evidence*, 7 November 2005, pp. 2-3.

32 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 3.

or for the nature and scope of the scientific whaling that Japan proposes to conduct, and [Australia] would certainly argue that the lethal aspects of that scientific whaling are not necessary. [Australia has] developed a range of non-lethal methods by which [to] conduct and acquire the same data on whales in the areas that Japan is interested in. [Australia has] been promoting those methods to Japan, but at this stage Japan will still proceed with a lethal whaling program. It is not something Australia would support.³³

2.22 The Committee was also informed that the IWC is polarised with approximately half of the 66 Member States either pro-whaling or pro-conservation of whales. However, the balance is shifting away from Australia's stance of pro-conservation towards a potential majority of Member States who are pro-whaling.³⁴ The Committee was informed that a three quarter majority of members present and voting at an IWC meeting would be required to overturn the current moratorium on commercial whaling.³⁵

2.23 Both Australia and Japan are actively recruiting additional members to support their respective positions. Australia is also continuing to make representations to Japan to stop whaling, in particular in the Antarctic.³⁶

There is certainly vigorous activity on the pro-whaling side and on the pro-conservation side to recruit new members to the commission, in order to bolster numbers. We are aware of the allegations that have been made in media reports. Those are scrutinised each time they arise. Our approach has been to work actively with the members of the IWC to bring to them very clearly our perspective and the perspectives of like-minded countries and, through our arguments and our diplomatic action, to convince them of the merits of whale conservation. That is the way we tackle that problem. We have an active campaign with other pro-conservation countries throughout the world.³⁷

33 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 3.

34 Ms Gillian Slocum, *Transcript of Evidence*, 7 November 2005, p. 4.

35 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 5.

36 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 5.

37 Mr Jonathon Barrington, *Transcript of Evidence*, 7 November 2005, p. 6.

Public comment on the Amendments

- 2.24 The Committee received two submissions in relation to the Amendments, both of which supported the proposed treaty action.³⁸ The Uniting Church in its submission stated:

We welcome the Australian Government's efforts to ensure the security of the Antarctic whale sanctuary, maintain the ban on commercial whaling, and seeking to restrain Japan from expanding its 'scientific' whaling quota.³⁹

Entry into force and withdrawal

- 2.25 These Amendments automatically enter into force 90 days following the date of notification from the IWC Secretariat,⁴⁰ unless a contracting government lodges an objection.⁴¹
- 2.26 Should an objection be lodged, a further 90 days is provided for other contracting governments to also lodge any objections. Once this time period has elapsed, all contracting governments become bound by the Amendments except those that have lodged an objection.⁴²
- 2.27 IWC Secretariat notified contracting governments of the Amendments on 30 June 2005 and advised that providing no objections are lodged, the Amendments would enter into force on 28 September 2005.⁴³

38 The Australian Patriot Movement, *Submission 1* and The Uniting Church in Australia, Synod of Victoria and Tasmania, Justice and International Mission Unit, *Submission 2*.

39 The Uniting Church in Australia, Synod of Victoria and Tasmania, Justice and International Mission Unit, *Submission 2*.

40 NIA, para. 1.

41 Article 5(3) of the Convention provides that within 90 days of notification of a decision, a contracting government can object to any decision which it considers to seriously affect its interests. International whaling Convention, viewed 16 November 2005, <www.iwcoffice.org/commission/iwcmain.htm>.

42 NIA, para. 2; International Whaling Convention, viewed 16 November 2005, <www.iwcoffice.org/commission/iwcmain.htm>.

43 NIA, para. 4.

- 2.28 Should a contracting government lodge an objection to the Amendments before 28 September 2005, then the Amendments would enter into force for non objecting contracting parties on 27 December 2005.⁴⁴ Australia does not propose to lodge an objection to the Amendments.⁴⁵
- 2.29 Australia may withdraw from the Convention by giving notice to the Depository Government (the United States of America) before 1 January of any year. Withdrawal would become effective from 30 June following notification.⁴⁶

Conclusion

- 2.30 The Committee understands that the Amendments maintain the moratorium on commercial whaling and supports the Amendments and Australia's continued participation in the IWC.
- 2.31 In addition, the Committee strongly supports Australia's tireless efforts in promoting the conservation of whales to the international community and its lobbying of Japan and other pro-whaling countries to end all forms of whaling.

44 NIA, para. 4.

45 NIA, para. 3.

46 NIA, para. 17.