



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## JOINT COMMITTEE ON TREATIES

**Reference: Amendments to Whaling Convention**

MONDAY, 28 JUNE 1999

CANBERRA

### **CONDITIONS OF DISTRIBUTION**

This is an uncorrected proof of evidence taken before the committee. It is made available under the condition that it is recognised as such.

BY AUTHORITY OF THE PARLIAMENT

## **INTERNET**

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

## **JOINT COMMITTEE ON TREATIES**

**Monday, 28 June 1999**

**Members:** Mr Andrew Thomson (*Chair*), Senator Cooney (*Deputy Chair*), Senators Bourne, Brownhill, Coonan, O'Chee, Reynolds and Schacht and Mr Adams, Mr Baird, Mr Bartlett, Mrs Crosio, Mrs Elson, Mr Laurie Ferguson, Mr Hardgrave and Mrs De-Anne Kelly

**Senators and members in attendance:** Senators Brownhill, Coonan and Cooney and Mr Adams, Mrs Crosio, Mr Laurie Ferguson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Andrew Thomson

### **Terms of reference for the inquiry:**

Amendments to the Whaling Convention



## JOINT COMMITTEE ON TREATIES

Monday, 28 June 1999

**Members:** Mr Andrew Thomson (*Chair*), Senator Cooney (*Deputy Chair*), Senators Bourne, Brownhill, Coonan, O'Chee, Reynolds and Schacht and Mr Adams, Mr Baird, Mr Bartlett, Mrs Crosio, Mrs Elson, Mr Laurie Ferguson, Mr Hardgrave and Mrs De-Anne Kelly

**Senators and members in attendance:** Senators Brownhill, Coonan and Cooney and Mr Adams, Mrs Crosio, Mr Laurie Ferguson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Andrew Thomson

### Terms of reference for the inquiry:

Amendments to the Whaling Convention

### WITNESSES

<b>ATWOOD, Mr John, Principal Lawyer, Office of International Law, Attorney-General's Department.....</b>	<b>1</b>
<b>EISER, Ms Pam Joy (Private capacity).....</b>	<b>1</b>
<b>KAY, Dr David Graham, Assistant Secretary, Wildlife Branch, Biodiversity Group, Environment Australia, Department of the Environment and Heritage.....</b>	<b>1</b>
<b>McNEE, Mr Andrew, Director, Wildlife Management, Biodiversity Group, Environment Australia, Department of the Environment and Heritage.....</b>	<b>1</b>
<b>MASON, Mr David Johnston, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade.....</b>	<b>1</b>



Committee met at 10.04 a.m.

**ATWOOD, Mr John, Principal Lawyer, Office of International Law, Attorney-General's Department, Mr John, Principal Lawyer, Office of International Law, Attorney-General's Department**

**EISER, Ms Pam Joy (Private capacity)EISER, Ms Pam Joy (Private capacity)**

**KAY, Dr David Graham, Assistant Secretary, Wildlife Branch, Biodiversity Group, Environment Australia, Department of the Environment and HeritageKAY, Dr David Graham, Assistant Secretary, Wildlife Branch, Biodiversity Group, Environment Australia, Department of the Environment and Heritage**

**McNEE, Mr Andrew, Director, Wildlife Management, Biodiversity Group, Environment Australia, Department of the Environment and HeritageMcNEE, Mr Andrew, Director, Wildlife Management, Biodiversity Group, Environment Australia, Department of the Environment and Heritage**

**MASON, Mr David Johnston, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade**

**CHAIR**—I declare open this morning's hearing on the amendments to the schedule to the International Convention for the Regulation of Whaling. I welcome the witnesses. Although we do not require evidence to be given on oath, these hearings are the legal proceedings of the parliament and warrant the same respect as the proceedings of either the House of Representatives or the Senate. Dr Kay, would you like to make some introductory remarks before we go to questions?

**Dr Kay**—The amendments before us arise from the annual meeting of the International Whaling Commission, which was held in May this year in Grenada in the West Indies. The amendments to the schedule to the convention, which arose from the meeting, are basically in two sets. One set maintains the moratorium on commercial whaling by changing dates in the schedule. This committee has considered similar amendments on three previous occasions. The other set of amendments deals with the quota under aboriginal subsistence whaling for the Bequian people of St Vincent and the Grenadines. This quota is generally determined for a three-year period. So it is the second time on which the committee has considered amendments of this nature.

The meeting agreed to continue a quota of two whales per year for the years 2000 and 2002, and added some clarifications to the quota concerning the taking of calves and the general supervision of the hunt. The amendments impose no new obligations on Australia. The current provisions of the Whale Protection Act 1980 prohibit killing, injuring or interfering with whales in Australian waters and by Australian vessels wherever they may be. That concludes my introduction.

**CHAIR**—Mr Mason or Mr Atwood, would either of you like to add any comments?

**Mr Mason**—No, I have nothing to add.

**Mr Atwood**—It is correct that the existing legislation does create a broad prohibition on capturing, taking or killing whales and so these amendments to the convention will not require any legislative action in Australia.

**CHAIR**—Ms Eiser, would you like to make an introductory statement?

**Ms Eiser**—I am a committee member of Project Jonah Victoria, and I am authorised to speak on their behalf at this meeting. Thank you for giving me the opportunity to give an NGO perspective on the issues before you. The issue of aboriginal subsistence whaling is one that causes a great deal of anxiety to NGOs for a number of reasons that we have gone through in the past.

Indeed, at my previous appearance before this committee, we dealt with the issue of the Makah Indians in the United States who had requested a quota—which had been a contentious issue at that year's meeting. In fact, just prior to this year's meeting, the Makah did take their first whale, which I must say was a cause of disappointment to organisations that I am involved with in that Australia, and no other party, made any particular intervention or comment about the taking of it.

Turning to the quota renewal for St Vincent and the Grenadines, whilst my organisation has been prepared to accept aboriginal subsistence whaling in particular circumstances, this is one situation where we do not believe that the continuation of this quota is justified.

To go back a little bit to the history of aboriginal subsistence whaling within the International Whaling Commission, whilst whales have been taken since the convention was first negotiated by aboriginal people for subsistence needs, it was really in the late 1970s and early 1980s that attention started to focus on aboriginal subsistence as a particular category. Part of the reason for that was a request from the Alaskan Eskimos for the take of highly endangered bowhead whales. That caused the IWC to look at the various requirements for aboriginal subsistence whaling. It was in the early 1980s that the general criteria for aboriginal subsistence whaling, which the commission uses today against which to judge requests, were adopted by the commission.

The other focus and impetus for aboriginal subsistence whaling was the adoption by the commission of the moratorium on commercial whaling. You had then a situation where no whaling was permitted except that which came under the aboriginal subsistence whaling category. The reason I emphasise this is that it is very important that aboriginal subsistence whaling be truly an exception, meet criteria and not be used as a backdoor way by which countries can circumvent the moratorium on commercial whaling.

As I mentioned, we do have concerns about the continuation of the St Vincent quota. Whilst I am not speaking formally for other NGOs, I would note that, in the pre-briefing meeting that NGOs had with the department prior to this year's International Whaling Commission, there was unanimous agreement among all NGOs present that this quota should not be supported.

There are basically two issues about the quota that I wanted to highlight to explain our position on. The first is the question of need—whether it meets the requirement that the IWC itself has adopted for nutritional and cultural need. The second issue is the one of the methods that have been used in the particular operation. In determining aboriginal subsistence whaling, one of the criteria that the commission has looked at and has required is that, when a request is received for aboriginal subsistence, the peoples involved meet and provide what is called a needs statement, in which it is generally required that they set out both the cultural and nutritional need for the take of these whales under subsistence conditions, and also that they look at the continuing history of the whaling.

St Vincent and the Grenadines, in particular Bequia, started this whaling only in the 1860s. It was very clearly a commercial proposition. It was something that was done as all communities looked at ways to generate income, but there is no question that it started as a commercial proposition and not as part of a longstanding culture. For example, the Alaskan Eskimos who take the bowhead whale have something like an 8,000-year



tradition of taking and utilising whale products. The Bequian situation was something that started with the escalation of whaling in the 1860s that happened on a worldwide basis. St Vincent or the Bequians have continued to take whales periodically over the intervening years. It was only in the mid-1980s that St Vincent, particularly, applied for a quota under aboriginal subsistence whaling. Prior to that, and subsequent to the banning on the taking of humpback whales, if they took a whale, as I understand it, they basically just reported it to the convention each year as it occurred as an infraction or a breach of the rules.

Ever since this quota was given on a formal basis, the question of need and the contentious nature of it has come up again and again. There has never been, in our view, a satisfactory needs statement presented that meets the sorts of criteria that we apply and the standard that we have asked of other aboriginal subsistence hunts. You have fairly cursory documents that just assert, 'It generates excitement when we take a whale. The people eat the whale, and therefore that justifies the need for it.'

The issue has been brought to St Vincent's attention on many occasions. In the early 1990s, when they were asking for the quota to be reviewed, they basically said to the members of the commission, 'It is a dying tradition within Bequia. There is one lone whaler who is now approaching his 70s. If we make an issue of this, it is likely to generate more interest in it. Let it die out.' A degree of flexibility was given to St Vincent to continue this whaling. There was an understanding that was repeated on other occasions that it was a dying tradition.

This is no longer the case. In fact, the nephew of the whaler has now resumed the hunt and for the last two years has participated in it. For the period from 1994 to 1998, there were no whales taken. In 1998, and again in 1999, they took two whales. In fact, in 1998, Australia itself put on notice to St Vincent that it would require a much more detailed needs statement, given the apparent change in the situation with the hunt at the 1999 meeting.

The other issue that has continually caused concern is the method that has been used to capture these whales. Traditionally, the Bequians have targeted mother and calf pairs. The taking of calves is prohibited under the schedule to the convention. At the 1999 meeting, there was a fairly detailed debate about the issues of whether one paragraph of the schedule referred to another paragraph of it, and this is the reason that some of the clarification of language has come into the proposed amendments at this meeting.

The issue of the infraction, the taking of calves, hopefully has been dealt with to some extent by the amendments that were made at this year's meeting. There were undertakings given by the government of St Vincent about producing detailed needs statements in the future. I have to say that I am not convinced by those, because I have heard similar statements many times in the past, and there have been promises, and they have never eventuated. Given the concern that aboriginal subsistence whaling not become a backdoor way in which people can circumvent the moratorium, given that we believe that it has not met the basic test of nutritional and cultural need that is required for aboriginal subsistence whaling and given the methods used, we do not believe that this quota should be continued.

**Mr HARDGRAVE**—I have a few questions, but I will try to restrict them to one, maybe two. Do we leave ourselves open? What aboriginal subsistence whaling takes place in Australian waters?

**Ms Eiser**—There is none.

**Mr HARDGRAVE**—I asked that because I did not know. You are really saying that we should have educated people out of this particular approach by now. You are saying that this tradition from the 1860s onwards should have been educated out of these people and that Australia should take a stronger stand and perhaps try to ratchet this down and tighten up the hole that is letting such things as Japanese research still take

whales. Is that basically what you are saying?

**Ms Eiser**—Yes. There are a number of issues within the convention itself. You have referred to one again—this loophole that allows for the scientific whaling. I think it is fair to say that the criteria for aboriginal subsistence whaling are not as explicit as I believe they should be within the convention and within the schedule to the convention itself and, therefore, they have allowed a little bit of this slippage, as I see it, that has happened.

It is an issue that was addressed within the National Task Force on Whaling, of which I am also a member. There was a recommendation from that task force that Australia should look to tighten up and have incorporated within the schedule to the convention the sorts of criteria that I have set out—the demonstrated cultural and nutritional need and the longstanding history. That was one of the issues that arose with the Makah where, in fact, they had not killed a whale for over 70 years and were claiming to reinstate it. The other criterion is that it be taken by the aboriginals involved themselves. We had another case with the Eskimo in the Russian Federation where, at one stage at least, the whales were able to be taken by somebody else on behalf of the aboriginal people. So, yes, there are loopholes. I repeat that we are not opposed generally to aboriginal subsistence whaling. There are some NGOs that have a fairly blanket view that there should be no aboriginal subsistence whaling.

**Mr HARDGRAVE**—On this one, it is worth taking a stand and there are no downsides for Australia.

**Ms Eiser**—That is my belief.

**Mr LAURIE FERGUSON**—Ms Eiser, when you were discussing the Bequian people, it seemed that you were speaking of a geographic area within St Vincent and the Grenadines. I think what is important is the degree to which you clarify the extent that they are an aboriginal people. Is it a geographic area? What is the nature of this group?

**Ms Eiser**—It is an island within the St Vincent and the Grenadines group. As I understand, it is part of what is called the Grenadines, which is a series of islands; so this is one island. The issue of what is aboriginal is one of those that is not defined, and I think it is probably one that is fraught with a lot of difficulty in trying to define it.

**Mr LAURIE FERGUSON**—Can any other witnesses clarify that for us?

**Dr Kay**—I am not sure that we can. The convention does not have a definition of 'aboriginal'.

**Mr LAURIE FERGUSON**—Can you see how it would be a concern that—

**Mrs CROSIO**—It does not have a definition of 'aboriginal'?

**Dr Kay**—No.

**Mr LAURIE FERGUSON**—When we think of indigenous aboriginal people, we have certain concepts. To say that perhaps these people are essentially partly African, brought there at some stage, and are not really native Caribbean Indians and that the whaling only started in the 19th century I think does cause some conceptual problems.

**Dr Kay**—I am not sure enough of the cultural history of that particular island to be able to say whether there is any remnant Caribbean Indian tradition.

**Mr LAURIE FERGUSON**—In regard to Australia's policy, that causes me concern. You might say there is no definition, but I would think that most people would have a concept of aboriginal indigenous people, and to say that Australia, in signing this, is unaware as to the nature of these people is a worry.

**Dr Kay**—It is not an issue that we have specifically addressed. Australia's policy on aboriginal subsistence whaling recognises the need for some communities to continue access to whaling and whale products to meet demonstrated traditional cultural and dietary needs in some cultures. We did have quite a number of concerns about the St Vincent hunt—the way in which the negotiations and decisions were arrived at. Australia made a decision not to withhold the consensus, notwithstanding that we had some residual concerns.

**Mr LAURIE FERGUSON**—Ms Eiser, on a few occasions you have used the expression 'backdoor'. You are probably not saying this because of the numbers involved—only two whales, et cetera—but, given Japan's tradition of hiring impoverished Caribbean countries as essentially hired guns for them in international whaling debates, do you have some wider concerns about this move in regard to the Japanese?

**Ms Eiser**—There is a general concern among many NGOs that, unless there is a very clear and explicit enunciation of what the exception is, if it is a grey area then it is one that has potential to be utilised as a backdoor method. It was certainly one of the major concerns in many people's minds about the Makah situation. You could actually see in the room the ticking over of minds as people thought, 'How close is this getting to, for example, some of the Japanese communities coming back and saying, "Well, we've hunted whales for several hundred years. Why can't we be called aboriginal and be given an aboriginal subsistence quota"?' It is not so much the fact that we are talking about two whales; it is as much that it is an exception and, therefore, does have a test that it should meet. That test does need to be applied or else you are giving signals to Japan and anybody else. There are probably other countries that can cite local populations that have killed whales for a number of centuries perhaps.

**Mrs CROSIO**—I have a couple of questions. Can I come back to you, Dr Kay, on Mr Ferguson's question. On your national interest analysis, I had originally marked that amendment to paragraph 13(b)(4)—and you have just quoted it. It says:

Australian Government policy on aboriginal subsistence whaling recognises the needs of some communities  
...

How many communities are we talking about? I have heard the Eskimo mentioned. I have heard about the Bequian people.

**Dr Kay**—I am hesitating because I am not quite sure how to define 'community'.

**Mrs CROSIO**—How many aboriginal groups?

**Dr Kay**—There is a quota for the Chukotka people of the Russian Federation. There is a quota for the Alaskan Eskimo.

**Mrs CROSIO**—Can I interrupt there. With quota, are you saying two whales?

**Dr Kay**—No, different numbers. There is a quota for the Inuit in Greenland, a quota for the Makah in Washington State and a quota for the Bequian in St Vincent.

**Mrs CROSIO**—So that is five, is it?

**Dr Kay**—Yes, five.

**Mrs CROSIO**—Five quotas. Why wouldn't we then—and I am reading from the national interest analysis again—as countries that have put this together name the particular groups?

**Dr Kay**—To some extent, they are named in the schedule, but there is a provision in the convention which has been interpreted in such a way that it is inappropriate to name particular groups. I am just trying to find which one it is. Article V, paragraph 2 of the convention provides for the setting of quotas.

**Mrs CROSIO**—It sets the quotas. Where does it name the groups?

**Dr Kay**—The paragraph says:

. . . shall not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory ship or land station or to any group of factory ships or land stations . . .

It is a consequence of the history of the convention which was initially negotiated to set global quotas, which were then negotiated between the various commercial whaling operations—if you like, industry self-regulation within the established quota.

**Mrs CROSIO**—I still have a concern, regardless of article V that you are referring to. I have a concern listening to Ms Eiser. As a nation, we are signing amendments now to an agreement that has been in for some time, recognising the world's concern over some of the areas and yet acknowledging the right of certain aborigine groups. We are not prepared, in any of the nations, to say, 'It can only be this one, this one and this one.' Surely then it would take away the scientific whaling by Japan. It is a question I am not happy with in my own mind. In other words, if we are not prepared to spell it out, we are creating a loophole which a tank can be driven through, aren't we?

**Dr Kay**—I do not think that is the case. Paragraph 13 of the schedule deals specifically with aboriginal subsistence quotas and identifies the stocks of whales which can be used and, to an extent, the aboriginal peoples who can access the stocks.

**Mrs CROSIO**—I have not got 13. You have an advantage over me. I am sorry, Dr Kay. You said 13?

**Dr Kay**—Paragraph 13 of the schedule to the convention.

**Mrs CROSIO**—Have we got a copy of that?

**Dr Kay**—It deals specifically with aboriginal quotas, and it is that paragraph of the schedule which is being amended on this occasion to change the dates to continue an existing quota and add some additional conditions to that quota. The issue of scientific whaling is quite separate. There is an article in the convention which effectively permits any government to issue permits to take whales for scientific purposes. Those numbers are not in any way controlled by the commission.

The issues of scientific whaling and aboriginal whaling are quite separate, relying on different sections of the convention in the schedule, so I do not think that there is a confusion between them. On the issue of who can take whales for aboriginal subsistence, there are specific decisions of the commission which approve quotas and, shall we say, identify those peoples who have demonstrated a need.

**Mrs CROSIO**—How do they demonstrate a need? We have heard in evidence this morning that they have

not put up any particular standard of need as far as culture, dietary or other areas are concerned. How do we actually say that they have complied?

**Dr Kay**—Their request and, therefore, their need has been approved in the past by the commission.

**Mrs CROSIO**—Under what criteria?

**Dr Kay**—Whatever the commission chose to adopt at that time. Most of these go back to the mid-eighties, which is before my involvement.

**Mrs CROSIO**—So if it was approved in the mid-eighties, are we just automatically carrying forward any amendments we do now?

**Dr Kay**—It is carrying forward. It is continuing the quota.

**Mrs CROSIO**—We do not question it? We just carry it forward?

**Dr Kay**—We have questioned it. On a number of occasions, Australia has made the point that, in its view, the need has not been adequately demonstrated.

**Mr HARDGRAVE**—What criterion did you apply?

**Dr Kay**—The fact that they have not put what we would see as an appropriate needs statement to the commission.

**Mr HARDGRAVE**—So you understand some of the criteria that have been put, and yet you are telling us that you do not. I am sorry to cut in, but I think Mrs Crosio has raised an interesting point: you are telling us on one hand that you do not understand the criteria that applied under the commission, and yet Australia can put a case that it is not happy with the criteria that have been applied. Can you get your story straight on this?

**Dr Kay**—I think you are misrepresenting what I said.

**Mr HARDGRAVE**—Possibly. Justify why you think that.

**Dr Kay**—In the early eighties, there was a workshop on aboriginal subsistence whaling which adopted a number of definitions and defined what it saw as the criteria that should be applied. The findings of that workshop were noted by the commission.

**Senator COONAN**—I would like to add another wrinkle to this particular line of questioning. Is need simply asserted? How is it evaluated? Anyone can come within a criterion if they are clever enough and they set it all out. Is there any independent evaluation or any expert advice on whether these asserted needs are in fact real?

**Dr Kay**—Let us take the Alaskan Eskimo as a case in point. The needs statement is done on the basis of the size of the population in the whaling villages, their protein need over time and alternative sources of protein. A highly detailed justification of the need was put forward for the Alaskan Eskimo and the quota—

**Senator COONAN**—What about the Makah, for instance?

**Dr Kay**—The Makah put forward a needs statement about that thick, from memory.

**Senator COONAN**—They have got by without the protein input for about 80 years.

**Dr Kay**—There was considerable debate about the needs statement. At the time, Australia put on record its view that that need had not been justified and that a quota for that group was not appropriate. But the commission accepted the statement and, depending on your legal interpretation, the Makah have a quota which they are now accessing. In the case of the quota of St Vincent and the Grenadines, a published book was tabled. The book is essentially a history of the whaling operations in that area. It does not analyse in any detail the dietary requirement. In the view of a number of people, it was an assertion of need rather than a documented analysis of that need. At the time of the initial allocation of a quota for these people, that satisfied the commission. The views in the commission change over time. There are now views—and Australia shares those views—that this particular quota has not been sufficiently justified.

**CHAIR**—Can I ask you to pause there for Mrs Kelly to put some questions to you.

**Mrs DE-ANNE KELLY**—Firstly, a very ignorant question: where are the Grenadines? I am sure you mentioned that at the beginning but I was late, and I apologise.

**Ms Eiser**—In the Caribbean.

**Dr Kay**—In the West Indies—they are the group of small islands immediately north of Grenada before the main island of St Vincent.

**Mrs DE-ANNE KELLY**—What other economic base do the people in the Grenadines have? Is this going to impact on them to a great extent? If they were denied the opportunity to hunt, what other economic base do they have? Is this crucial to their economy or is it simply very much a fringe activity?

**Dr Kay**—I do not think we have the data to answer that question. Two whales per year would not satisfy the annual dietary requirement for protein for the islanders. It is a very small island.

**Mrs CROSIO**—What is the population of the island? Do you roughly know—a guesstimate—how many would call themselves the aborigines of this particular island?

**Dr Kay**—I am sorry. I do not have information on the population of the island. From memory, the population of the whole of the St Vincent and the Grenadines—the country—is in the order of only 100,000.

**Mr HARDGRAVE**—There are at least two that we know of—the whaler and the nephew.

**Senator COONEY**—I think the problem that we are facing—

**Mrs DE-ANNE KELLY**—We really do not know how many people are dependent on this, which makes it a little difficult because we live a long way from there. I often find it offensive when people from the other side of the world tell us what to do. Ms Eiser, could I just ask you about the dugong in Australia. Obviously, our indigenous people are allowed to take a certain number of dugong. Were we to not support this amendment, could that come back on our own indigenous people, or do you think that that is an entirely different argument?

**Ms Eiser**—My view is that it is a different argument. For the Australian Aboriginal people, it is a longstanding part of their culture to take dugong—it goes back many hundreds of years and more—and it is part of their ceremonial requirements. That is my understanding. I am not an expert on dugongs, so I am a little hesitant to comment on that; but, in terms of the sorts of criteria that I would look at as an intricate part of the

culture of the people and something that has been done over many centuries even, there is a distinction between the two.

While I have the floor, could I respond to your question on how important it is as part of the diet of the Bequians. I think it is correct to say that we do not really know that. What we do know is that at best it is a supplement to the diet and it adds a different sort of food to the diet, but whether that meets the same criteria as being essential to the nutritional protein requirements of a people is a different situation. Again, we have had the situation where there have been many years where the whales have not been taken. I think they would maintain that it is a supplement to the diet and it provides a different food source. Just as anybody would get bored with eating roast beef every day, they would say it provides something different.

**Mrs DE-ANNE KELLY**—Do you have objections to any of the other four groups or is this the one that you are specifically concerned about?

**Ms Eiser**—We do not accept the need of the Makah people either. I would like to clarify something that Dr Kay said. The quota has never been allocated for the Makah. It comes back to the issue that was raised earlier about the way it is set out in the schedule that there is a quota allocated for grey whales. Australia's statement at the time was very specific: we recognised the need of the Russian Chukotka people for grey whales but we did not recognise that a need had been established for the Makah. So you have a situation where there is a quota allocated and then people whose need has been recognised can access that quota. Where the debate has come in, in large part, with the Makah is that there is nowhere in the schedule that says specifically that the Makah are recognised as aboriginal subsistence people. There was a debate in 1997 and at that time the chair made the comment that the quota and the decision to allocate the quota needed to be taken in the context of the rest of the debate of the meeting.

**Mrs DE-ANNE KELLY**—I am intrigued by article 1 of the protocol to the international convention which details whale catchers as a helicopter, an aircraft or a ship. That does not sound terribly traditional to me. Is that only for scientific purposes—it does not seem to be—or can those methods be used by any of these people? And what sort of method do the Bequian use to hunt their two whales?

**Mr ADAMS**—May I add to that question?

**Mrs DE-ANNE KELLY**—Certainly.

**Mr ADAMS**—Is it a traditional hand harpoon or is it an exploded harpoon? Could you give us some knowledge of that?

**Ms Eiser**—The reference to what is stated in the convention and the protocol applies generally to whaling but more specifically to commercial whaling. Those are the sorts of methods that would be utilised in commercial whaling.

**Mrs DE-ANNE KELLY**—I guess what I am asking is: do traditional people with a subsistence or cultural or nutritional argument use traditional methods? Are they required to?

**Ms Eiser**—They are not required to use traditional methods. In fact, I think it would be fair to say they have been encouraged to develop more humane methods of killing whales. The dichotomy is that, if you are going to allow whales to be killed, you are also looking to see that they are killed in the quickest and most humane way possible. So many organisations—my own included—have been prepared to accept the change from utilising some of the traditional methods. For many of the people, in terms of their culture, it is not the method of killing the whale that is important to their culture, it is the fact of killing the whale that is the

important thing that is needed to sustain the culture.

**CHAIR**—You could go on for hours about this, but these are very specific questions and they require some specificity in their answers.

**Ms Eiser**—In terms of the Bequian hunt, my understanding is that the sailboat that was developed by the Bequians in the 1860s is still used. It is still essentially the same sailboat design that was used back then. I think the method of killing is a gun—it is not an explosive harpoon—and then they use a hand-held harpoon to actually kill the whale, which is traditionally exerted through the back in order to reach the heart of the animal. So it is still fairly traditional.

**Mrs DE-ANNE KELLY**—You are opposed to the adoption of these amendments. Is that correct?

**Ms Eiser**—We do not believe that there is a case for the continuation of the Bequian hunt, no.

**Mr ADAMS**—There is an allocation of grey whales to indigenous people. Is the grey whale under threat? What is its status in world terms?

**Dr Kay**—The quota is set for the North Pacific grey whale, which has just been taken off the US endangered species list and downgraded to 'vulnerable'. Populations are recovering from past whaling activities reasonably well.

**Mr ADAMS**—Is that the one the Norwegians take, the grey whale?

**Dr Kay**—No. The Norwegians take the minke whale from the north-west Atlantic.

**Mr ADAMS**—Have the Norwegians ever argued a cultural tradition of whaling?

**Dr Kay**—The simple answer would be yes.

**Mr ADAMS**—Because traditionally they have taken whales for a long time, haven't they?

**Dr Kay**—Yes.

**Mrs CROSIO**—They have certainly got it all over their markets.

**Mr ADAMS**—That is what I wanted—thanks.

**Senator COONEY**—The big dispute seems to be not so much over the issue of principle. As I understand it, you say that if this were a traditional matter that went back for centuries, you would have no objection, but it is not a tradition and you do not classify it as an aboriginal activity. What does everybody else say? Do we agree with them? Is there any dispute about that, or does the department agree that the analysis Ms Eiser made is correct?

**Dr Kay**—We have not focused on that issue. I do not believe there is a government policy on how long a tradition needs to exist to be considered. Our concern has been more that the need be properly documented to allow us to evaluate it, and that the method of hunting be improved to comply with the view that calves should not be taken as part of aboriginal subsistence hunts.

**Senator COONEY**—From what you just said, the impression I have is that Australia does not particularly



care whether the people who take them are aboriginal or not; it is more the method of taking.

**Dr Kay**—There needs to be argued a continuing tradition and a subsistence dependence. The term 'aboriginal' is a difficult one. As far as we are aware, it has no definition internationally, and yet it is used in this convention. So if there is a longstanding tradition, a continuing tradition and a subsistence dependence, I think Australia's view would be that that met the requirement.

**Senator COONEY**—What Ms Eiser is saying—and you do not seem to contradict her—is that the activities carried on by these people are no more traditional than commercial whaling. In effect, this is commercial whaling on a smaller scale. That is the tradition, which would seem to be quite contrary to it being aboriginal. The message the department seems to be delivering is, 'Yes, that's all right. That's how the system works.' If that is how the system works, that is how it works, I suppose. But it is certainly not the picture that Ms Eiser has given, and I have not heard any evidence to the contrary.

**Dr Kay**—You are probably correct: that is how the system works. The phraseology used is 'subsistence dependence and tradition'. The Australian government policy acknowledges that there are continuing traditions and that these should be respected where they meet the rest of the requirements of the convention.

**Senator COONEY**—It seems to me that we are really saying that that is a good way around the problem. We can call this aboriginal whaling and it enables these people to get two whales and that accommodates everything, rather than the way Ms Eiser was arguing, which was to say, 'Look, if there is a certain set of principles, you then apply those principles to the facts.' You have not done that at all here. You have simply said, 'Look, we've got some difficulties here. Let's colour up some phrases to accommodate the position.' If that is the way it is done, that is the way it is done, but it is certainly not done according to a set of criteria.

**Dr Kay**—The commission has an agreed understanding—I am not sure you would call them a set of principles—of what it defines. Australia may not agree with that. Australia has said on a number of occasions that we would like to see those tightened. We believe that the requirements are not sufficiently precise. But if the commission internationally is operating on those, we are constrained to do likewise.

**Senator COONEY**—But what Ms Eiser says is accurate. We cannot contradict what she says.

**CHAIR**—That is a pretty pithy explanation.

**Mrs CROSIO**—If you are constrained, the vote is not consensus. You can object and it still goes through. It is majority rule, isn't it?

**Dr Kay**—Yes, a three-quarters majority is needed to amend the schedule. The view was taken that, rather than vote against it, we would explain our position and our ongoing reservations and not call a vote.

**Mrs CROSIO**—So what does that do to us? It makes us feel good and gets it off our chest. We feel good then, we have explained our position, but we are not calling a vote.

**Dr Kay**—I suppose it is a tactical decision when you know which way the decision is going to go, and you are going to be in a minority of one or two, whether you chose to vote or whether you let it go through.

**Mrs CROSIO**—Could I just follow that, Dr Kay. You have already said that, when the Bequian people published that book, Australia was not satisfied that it showed a cultural or subsistence reason as to why they should be doing the whaling. And yet we let that go through, and we are going to continue until the year 2003 to let the catching of these two whales go through—which does not seem a lot in the overall scheme of things, but

isn't it a matter of principle?

**Dr Kay**—It may be, but the commitments made by St Vincent and the Grenadines, in the context of the decision, we felt would address our concerns. The amendment was passed on the understanding that calves would not be taken in the future.

**Mrs CROSIO**—And no suckling females.

**Dr Kay**—The government of St Vincent and the Grenadines will review and improve hunting and killing methods, ensure that the hunt is properly regulated, ensure that there is cooperation between the hunt and people interested in doing research on that population of whales and ensure that they will submit a detailed needs statement when the quota is next considered for renewal. Those were commitments expressed in the commission and, on that understanding, the decision was made not to oppose a consensus.

**Mrs CROSIO**—I have one more question. I have been to Norway and seen the whales cut up all over their fish markets—if that is what they want to call them. What do the countries do about Norway? We just ignore them, do we?

**Dr Kay**—I am not sure that you can say we ignore them.

**Mrs CROSIO**—But they are doing it.

**Dr Kay**—There is nothing within the convention that countries can do. When the moratorium on commercial whaling was agreed in 1982, Norway entered a reservation which enables it, under international law, to continue to harvest whales. Norway is exercising that international right that it expresses to have under the convention. The commission has repeatedly passed resolutions requesting Norway to desist from exercising that right and to abide by the majority view of the commission to maintain the moratorium until such time as a new management arrangement is in place. Norway chooses to ignore the resolutions of the commission and all other representations on the issue.

**Senator COONEY**—But it is not a right—following on from what Mrs Crosio says—it is a power that they exercise, isn't it? They have the ability to do it. From what I can gather from what you are saying, there is no right under any treaty that enables them to do it.

**Dr Kay**—I will look to my international legal advisers.

**Mrs CROSIO**—You just said that Norway was exercising their right under that international convention.

**Mr Mason**—My understanding is that there is a provision that enables any country to lodge an objection within a certain period. If it lodges that objection with other countries having an opportunity to then lodge ones of their own, and if a certain number of days expire, then the country that lodged that objection is exercising its right not to be bound by the provision. That is, in fact, what Norway is doing in this case.

**CHAIR**—There is a Latin maxim for that: if you exercise a right not to be bound, you are not bound. Or is it the opposite? It is a positive maxim: if you enter a treaty you are bound by its obligations. What is that called?

**Mr Mason**—That is right, but this treaty quite specifically sets out that right to object. It is an objection right, and it is set out in the international convention.

**Mr ADAMS**—Several species were coming off the endangered list. I am wondering what the overall picture is? Has the commission met recently?

**Dr Kay**—The commission meets annually.

**Mr ADAMS**—What month does it meet?

**Dr Kay**—It met in May this year.

**Mr ADAMS**—What was the general feeling there? There was a push from some of the countries to maybe look at increasing the quota, and the Norwegians were looking at doing things.

**Dr Kay**—The commission is essentially the political body. There is a meeting of a scientific committee which precedes that which does the detailed analysis of all whale stocks and data that has been generated during the year. Norway sets its quota unilaterally.

**Mr ADAMS**—But it gives some consideration to scientific information, doesn't it?

**Dr Kay**—It is doing it essentially in line with the procedures that have been developed by the scientific committee and agreed to by the commission.

**Mr ADAMS**—Scientific work has been done that says some species have increased in population. Is there any move to increase what is taken from those changes?

**Dr Kay**—No, not directly. The Norwegians are taking only minke whale, which has never been classed as endangered. Generally, the recovery of the large whales, let us say, is patchy. There is no evidence that species like the blue whale or the Northern Hemisphere right whale populations are recovering. There is good evidence that populations, such as those around Australia, of humpbacks and Southern right whales are recovering quite well.

**Mr ADAMS**—Are there good figures on those?

**Dr Kay**—We have reasonable data around Australia. There is less good data in other parts of their range.

**Mr ADAMS**—There have been a lot more sightings around?

**Dr Kay**—Yes. The recovery figures are between five and 10 per cent per year.

**CHAIR**—We will have a draft report which we will consider in August. Thank you kindly for your attendance today.

Resolved (on motion by **Senator Cooney**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

**Committee adjourned at 10.59 a.m.**

