
The Parliament of the Commonwealth of Australia

REPORT 23

Amendments proposed to the International Whaling Convention

Joint Standing Committee on Treaties

August 1999

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ISBN



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Recommendations and conclusion

The Committee recommends that the Minister for the Environment and Heritage prepare a proposal for consideration at the 52nd Annual Meeting of the International Whaling Commission in 2000 to revise the provisions of the *International Convention for the Regulation of Whaling 1946* and its Schedule (paragraph 6.27).

The Committee supports the amendments proposed to paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule to the *International Convention for the Regulation of Whaling 1946*, and recommends that no objection be lodged against these amendments (paragraph 6.28).

The Committee recommends that the Australian Government:

- should lodge an expression of concern about the amendments to paragraph 13(b)(4) of the Schedule to the *International Convention on the Regulation Of Whaling 1946*, proposing the renewal of the whaling quota for the Bequian people of St Vincent and The Grenadines for the years 2000 to 2002, indicating that it will seek to have this quota reconsidered at the International Whaling Commissions' 52nd Annual Meeting in 2000; and
- should request the International Whaling Commission to obtain a detailed needs statement from the Bequian people for consideration at that meeting, but
- should not lodge a formal objection at this time to the quota renewed by the proposed amendments (paragraph 6.31).

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Introduction

Purpose of the Report

- 1.1 This Report contains advice to the Parliament on the review by the Joint Standing Committee on Treaties (the Committee) of the following, proposed treaty actions, tabled in both Houses of the Parliament on 23 June 1999:

Amendments, done at Grenada in May 1999, to the Schedule to the *International Convention for the Regulation of Whaling, 1946* (ICRW).

Availability of documents

- 1.2 The advice in this Report refers to, and should be read in conjunction with, the National Interest Analysis (NIA) prepared for the proposed treaty actions. That analysis was prepared by Environment Australia, the Government agency responsible for the administration of Australia's responsibilities under the ICRW. The NIA was tabled in Parliament as an aid to parliamentarians when considering this proposed treaty action.
- 1.3 A copy of the ICRW, and the NIA prepared for these proposed treaty actions, can be obtained from the Treaties Library maintained on the Internet by the Department of Foreign Affairs and Trade (DFAT) (www.austlii.edu.au/au/other/dfat/), or from the Committee Secretariat.

Conduct of the Committee's review

- 1.4 Our review of the proposed treaty actions considered in this Report was advertised in the national press, and on our web site at: www.aph.gov.au/house/committee/jsct/.¹ A number of submissions were received in

¹ This review of the proposed treaty actions was advertised in *The Weekend Australian* on 26/27 June 1999, p.6.

response to the invitation to comment in the advertisement. A list of those submissions is at Appendix B.

- 1.5 For these proposed treaty actions, we gathered evidence at a public hearing on 28 June 1999. Appendix C lists the witnesses who gave evidence at that hearing.
- 1.6 A transcript of the evidence taken at that hearing can be obtained from the database maintained on the Internet by the Department of the Parliamentary Reporting Staff at: [www.aph.gov.au/hansard/joint/committee/comjoint htm](http://www.aph.gov.au/hansard/joint/committee/comjoint.htm), or from the Committee Secretariat.
- 1.7 Additional material received during our review is listed at Appendix D.
- 1.8 We always seek to consider and report on each proposed treaty action within 15 sitting days of it being tabled in Parliament. In the case of the proposed treaty actions tabled on 23 June 1999, the 15 sitting day period expires on 31 August 1999.²

2 The operation of the provisions of Article V of the ICRW and the 90 day default period are dealt with in Chapter 2.

Background

The International Whaling Commission

- 2.1 The International Whaling Commission (IWC) was set up under the *International Convention for the Regulation of Whaling, 1946* (ICRW). The purpose of the Convention is 'to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.'¹
- 2.2 As set out in the Convention, the IWC's functions are:
- to encourage, recommend, or if necessary, organise studies and investigations relating to whales and whaling;
 - to collect and analyse statistical information concerning the current condition and trend of whale stocks and the effects of whaling on them; and
 - to study, appraise and disseminate information about methods of maintaining and increasing whale populations.²
- 2.3 Among its other activities, the IWC promotes studies into such matters as the 'humaneness of the killing operation.'³
- 2.4 The IWC meets annually and included in its business is consideration of the regulations for the control of whaling that are contained in the Schedule to the ICRW.

1 From the Preamble to the ICRW

2 ICRW, Article IV(1)(a) to (c)

3 Exhibit No 1, p. 3

- 2.5 Although the IWC has had a 'zero catch' limit in place since the 1986 season, some nations continue to catch whales in accordance with the provisions of the ICRW. This can be done in at least three ways:
- through 'scientific' whaling, under the special permits provisions of Article VIII;
 - by a Party objecting to provisions of the ICRW, and the accompanying Schedule, under Article V(3); and
 - by 'aboriginal subsistence' whaling, permitted via quotas set out in paragraph 13(b) of the Schedule and amended from time to time under the provisions of Article V(2).⁴

Existing quotas under the ICRW

- 2.6 The Schedule allocates aboriginal subsistence whaling quotas in paragraph 13(b) from particular stocks, rather than to nominated peoples. In effect, however, the five quotas currently allowed are for:⁵
- the Chukotka people of the Russian Federation, in paragraph 13(b)(1);
 - the Alaskan Eskimo, in paragraph 13(b)(2);
 - the Inuit in Greenland, in paragraph 13(b)(3);
 - the Makah Indians in Washington State, from the allocation in paragraph 13(b)(2);⁶ and
 - the Bequian people in St Vincent and The Grenadines, in paragraph 13(b)(4).
- 2.7 Following the 50th Annual Meeting of the IWC in 1998 (IWC 50), the following, qualified catch limit quotas were allowed:
- for the years 1998 to 2002 (inclusive), 280 bowhead whales can be taken from the Bering-Chukchi-Beaufort Seas stock by aborigines, only when the meat and products of such whales are to be used exclusively for local consumption. For each of those years, the number of strikes shall not exceed 67, but any unused portion of a quota shall be carried forward and added to the quota for subsequent years, provided no more than 15 strikes shall be added to the strike quota for any one year;
 - for the years 1998 to 2002 (inclusive), 620 gray whales can be taken from the Eastern stock in the North Pacific, provided that the number taken in any one year shall not exceed 140. These whales may only be taken
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4 Exhibit No 2, pp. 28-29

5 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, pp. TR6-7

6 But see Pam Eiser, *Transcript of Evidence*, 28 June 1999, p. TR10

by aborigines or a Party, and only when the meat and products of such whales are to be used for local consumption by the aborigines whose traditional subsistence and cultural needs have been recognised;

- the taking by aborigines of minke whales from the West Greenland and Central stocks and fin whales from the West Greenland stock is permitted only when the meat and products are to be used exclusively for local consumption, so that:
 - ⇒ 19 fin whales from the West Greenland stock can be taken for the years 1998 to 2002 (inclusive);
 - ⇒ the number of minke whales from the Central stock shall not exceed 12 in each of the years, except that any unused portion of a yearly quota can be carried forward and added to a subsequent quota provided that no more than three shall be added to the quota for any one year;
 - ⇒ the number of minke whales struck from the West Greenland stock shall not exceed 175 in each of the years 1998 to 2002 (inclusive) except that unused portions of an annual quota shall be carried forward and added to the strike quota of subsequent years, provided that no more than 15 strikes shall be added to the strike quota for any one year; and
- for the seasons 1996/97 to 1998/99, the taking of two humpback whales each season by the Bequians of St Vincent and The Grenadines, but only when the meat and products of such whales are to be used exclusively for local consumption in St Vincent and The Grenadines.⁷

2.8 Paragraph 13(b) of the Schedule includes provisions for reviewing each of the allocated quotas:

- for taking bowhead whales from the Bering-Chukchi-Beaufort Seas stock – annually in the light of advice of the IWC’s Scientific Committee, particularly arising from the Comprehensive Assessment in 1998;
- for taking gray whales from the Eastern stock in the North Pacific - annually in the light of advice by the Scientific Committee;
- for taking minke whales from the West Greenland stock - if new scientific data becomes available within the five year period of the

⁷ The quota for the Bequians was agreed at IWC 39 in 1987, for the 1987/88 season: see Environment Australia, *Submission No 5*, pp. 1, 2.

quota. If necessary, this provision will be amended on the advice of the Scientific Committee.⁸

2.9 Paragraph 14 of the Schedule states:

It is forbidden to take or kill suckling calves or female whales accompanied by calves.⁹

Amending the Schedule to the Convention

2.10 Article I provides that the ICRW includes the Schedule that is attached to it. Article V(1) provides that the Schedule may be amended from time to time, but a three-fourths majority of those Parties voting is required (Article III(2)). Article V(2) sets out the allowable amendments to the Schedule.¹⁰

2.11 Article V(3) deals with the date of the effect of such amendments. They shall be effective 90 days after notification to Parties by the IWC, except that:

- if there are objections by a Party to any amendment before the 90 day period expires, that amendment shall not be effective for any Party for an additional 90 days;
- any other Party may then object to that amendment at any time prior to the additional 90 day period expiring, or before the expiration of 30 days from the date of receipt of the last objection received during the additional 90 day period, whichever date is later; and
- thereafter, the amendment shall be effective for all Parties that have not presented objections, but not effective for any Party that has objected until that objection is withdrawn.¹¹

Previous Committee considerations

2.12 There have been three previous considerations by the Committee of amendments proposed to the Schedule to the ICRW:

8 See sub-paragraphs 13(b)(1)(iii), 13(b)(2)(iii) and 13(b)(3)(iii) of the Schedule, respectively. An editorial note to paragraph 13(b)(4) of the Schedule states that the quota for the Bequians will be reviewed each year and amended, if necessary, on the advice of the Scientific Committee.

9 This prohibition is included in the Schedule as one of the conditions for the quotas for bowhead and gray whales for aboriginal subsistence whaling: see sub-paragraphs 13(b)(1)(ii) and 13(b)(2)(ii) respectively.

10 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, p. TR13

11 ICRW, Article V(3)(a) to (c)

- in the previous Committee's 2nd report, tabled on 14 October 1996;
 - in its *Thirteenth Report*, tabled on 6 April 1998; and
 - in our *Report 19*, tabled on 23 March 1999.
- 2.13 In the first of these considerations, the previous Committee supported the amendments under consideration. Because of the default mechanism outlined above, it also suggested procedures for the tabling of future amendments in the Parliament.¹²
- 2.14 The review in *Report 19* supported the amendments proposed, but we also took evidence on:
- the practice of the Japanese Government in issuing permits for 'scientific research' under Article VIII of the ICRW;
 - the rate of increase of whale populations in Australian waters; and
 - Norway's reservation and the withdrawal of Iceland from the ICRW.¹³

Issues in the *Thirteenth Report*

- 2.15 In the *Thirteenth Report*, the previous Committee raised the following issues:
- changes to the context in which the IWC operated, as opposed to 1946 when it was established;
 - the position of Japan and Norway;
 - concerns about the future of the IWC;
 - the need to refine definitions of 'aboriginal' and 'subsistence' whaling;
 - concerns about the methods and the amount of aboriginal whaling;
 - the need to close existing loopholes in the ICRW that allow 'scientific' whaling, and also allow commercial whaling via blanket objections to provisions in the Schedule; and
 - the possibility of a complete revision of the ICRW to resolve a range of contentious issues.
- 2.16 That Committee observed that the IWC might not be able to undertake this revision and still remain acceptable to all current members of the ICRW.¹⁴

12 JSCT, *Treaties Tabled on 10 & 11 September 1996: 2nd Report*, October 1996, pp. 2-3

13 JSCT, *Report 19*, March 1999, p. 27

14 JSCT, *Thirteenth Report*, March 1998, pp. 19-42, especially from p. 39

National Task Force on Whaling

- 2.17 While the previous Committee supported the October 1997 amendments to the Schedule, in the *Thirteenth Report* it also considered the issues raised by the Report of the National Task Force on Whaling: *A Universal Metaphor: Australia's Opposition to Commercial Whaling* (May 1997).¹⁵
- 2.18 The Task Force was established in September 1996 to report to the Minister for Environment on options the Government might pursue to end commercial whaling world-wide. Further, it was asked to recommend the strategy most likely to achieve that end.¹⁶
- 2.19 Its views, and those expressed at meetings of non-government organisations (NGOs) with an interest in relevant matters, are taken into account in developing Australia's position on proposals to be considered by the IWC.¹⁷
- 2.20 Among the principal recommendations of the Task Force were that:
- the Australian Government should take all reasonable steps to bring about a permanent international ban on commercial whaling;
 - the primary focus for achieving that ban should be the IWC;
 - in addition to this primary focus, Australia should take steps in other relevant forums to advance its goal;
 - as a long-term measure, the ultimate objective should be to have the ICRW amended to bring about this ban;
 - the Australian Government should recognise the important role NGOs will play in this initiative;
 - the Australian Government should commit itself to a domestic and international educational campaign;
 - the National Task Force on Whaling should continue; and
 - the Government must be prepared to commit the necessary resources to the recommended strategies, and to place adequate priority on the goals.¹⁸

15 See Exhibit No 2. See also Exhibit No 3 for the response by the Australian Government to the Task Force Report.

16 Exhibit No 2, p. 1

17 National Interest Analysis for Amendments to the Schedule to the *International Convention for the Regulation of Whaling, 1946* (hereafter 'NIA for the ICRW'), p. 4

18 Exhibit No 2, pp. xi-xiv

Proposed treaty actions

Amendments proposed

- 3.1 The proposed treaty actions tabled on 23 June 1999 that are the subject of this review arose from the 51st Annual Meeting of the IWC, held at Grenada in May 1999 (IWC 51).
- 3.2 The first set of amendments was to paragraph 13(b)(4) of the Schedule to the ICRW. This renewed the annual quota, under aboriginal subsistence whaling, to allow the Bequian people of St Vincent and The Grenadines to take two humpback whales per year from the North Pacific stock for each of the three years 2000 to 2002.¹
- 3.3 This set of amendments also added 'some clarifications' to the quota by adding the following:
- It is forbidden to strike, take or kill calves or any humpback whale accompanied by a calf.²
- 3.4 Subject to review by its Scientific Committee in 2000, the IWC also decided that a humpback whale calf is an animal less than eight metres long.³
- 3.5 Evidence was also given that the Government of St Vincent and The Grenadines made the following commitments at IWC 51:
- to review and improve hunting and killing methods;
 - to ensure that the hunt is properly regulated;
 - to ensure that there is cooperation between the hunt and researchers on the population of humpback whales; and

1 NIA for the ICRW, p. 1

2 Dr David Kay, (Environment Australia), *Transcript of Evidence*, 28 June 1999: p. TR1; NIA for the ICRW, pp. 3, 5

3 NIA for the ICRW, p. 3

- to submit a detailed needs statement when the quota is next submitted for renewal.⁴
- 3.6 The second set of proposed amendments arose from the annual requirement to maintain the moratorium on commercial whaling, zero catch limits, by changing dates in paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule to the ICRW. These changes were respectively:
- deleting the 1998/99 pelagic season and inserting the 1999/2000 pelagic season;
 - deleting the 1999 coastal season and inserting the 2000 coastal season;
 - deleting the 1999 season and inserting the 2000 season; and
 - deleting 1999 and inserting 2000.⁵
- 3.7 The latter amendments were seen by Environment Australia as routine changes that maintain the moratorium and the currency of the Schedule.⁶
- 3.8 This is the second time the Committee has reviewed amendments to the Schedule to the ICRW relating to aboriginal subsistence whaling. It has also reviewed dates maintaining the moratorium on commercial whaling in each of the reports listed in Chapter 2.⁷

Obligations imposed by the proposed treaty actions

- 3.9 These sets of amendments impose no new obligations on Australia. At present, the main obligation upon Parties to the ICRW is to adhere to the global moratorium on commercial whaling. Australia does not conduct any whaling.
- 3.10 The provisions of the *Whale Protection Act 1980* provide for the preservation, conservation and protection of whales and other cetaceans in Australian waters, including to the outer limits of the Exclusive Economic Zone (EEZ). It therefore prohibits killing, injuring or interfering with whales in Australian waters and by Australian vessels, wherever they may be. The NIA stated that no legislative action will be required in Australia to implement the proposed amendments.⁸

4 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, p. TR13

5 NIA for the ICRW, p. 1

6 NIA for the ICRW, p. 3. As these amendments are routine, most of this Report will be devoted to examining the proposed renewal of the whaling quota for the Bequian people.

7 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, p. TR1. See paragraphs 2.12 –2.16.

8 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, p. TR1; NIA for the ICRW, pp. 3, 4; John Atwood (Attorney-General's Department, hereafter 'AGs'), *Transcript of Evidence*, 28 June 1999, p. TR1

Date of binding treaty action

- 3.11 As set out in Chapter 2, amendments to the Schedule to the ICRW become effective for each Party 90 days following the date of notification from its Secretariat, unless a Party lodges an objection to a proposed amendment in that period.
- 3.12 The amendments proposed by IWC 51 were notified to Parties to the ICRW by a communication from the IWC Secretariat, dated 11 June 1999. The initial 90 day period therefore expires on 9 September 1999. The NIA for these amendments to the Schedule states that Australia does not propose to lodge an objection to these amendments.⁹

Consultation

- 3.13 The States and Territories were advised of the possibility of this treaty action through the SCOT schedule.
- 3.14 Prior to IWC 51, Australia's National Task Force on Whaling met. Representatives of two NGOs, Project Jonah and Whales Alive, participated as members of the Australian delegation to IWC 51.¹⁰
- 3.15 The NIA for these amendments stated that there was no requirement for further consultation beyond that which had already occurred.
- 3.16 Following each annual meeting, copies of the report of the Australian delegation are sent to Commonwealth, State/Territory Government Departments, scientists and scientific organisations.¹¹

Withdrawal

- 3.17 Under the provisions of Article XI of the Convention, Australia could withdraw from the ICRW by giving notice to the Depositary Government, the United States of America, on or before 1 January of any year. Withdrawal would then take effect on 30 June of the same year.¹²

9 NIA for the ICRW, p. 1. As stated in Chapter 1, the 15 sitting day period for these amendments expires on 31 August 1999.

10 See Chapter 2 for material on Australia's National Task Force on Whaling, and Exhibit No 2 for its May 1997 Report.

11 Unless otherwise specified, material in this section was drawn from the NIA for the ICRW, p. 4. See Exhibit No 5 for the report of the Australian delegation to IWC 51.

12 NIA for the ICRW, p. 4

Proposed renewal of the quota for the Bequian people

Results of the Commission meeting

- 4.1 The NIA for the proposed treaty actions arising from IWC 51 stated that the request for a renewal of the quota of two humpback whales for each of the years 2000 to 2002 was 'somewhat contentious'. This was because of the Bequian custom of taking whale calves and accompanying females.¹
- 4.2 The NIA also stated that Australia and other delegations had put the view to the meeting that a detailed 'needs statement' should be submitted, that hunting methods should be improved to reduce the suffering of the whales, and that the Government of St Vincent and The Grenadines should ensure that hunts were effectively regulated.
- 4.3 While the quota for the Bequian people was renewed under aboriginal subsistence whaling provisions, the Government of St Vincent and The Grenadines undertook:
- to review and improve hunting and killing methods used by the Bequians in the annual hunt for two humpback whales;
 - to ensure that the hunts were properly regulated;

¹ The report of the Australian delegation to the meeting stated that the request was 'highly' contentious: Exhibit No 5, p. 4. See also Environment Australia, *Submission No 5*, p. 2. In Attachment 1 to that submission, information was provided about the location, population and economy of St Vincent and The Grenadines: see *Transcript of Evidence*, 28 June 1999, p. TR9.

- to ensure cooperation in research on the population of humpback whales; and
 - to submit a detailed needs statement when the quota for humpback whales was to be considered next.
- 4.4 In addition, the meeting added to paragraph 13(b)(4) of the Schedule an explicit prohibition on the striking, taking or killing by the Bequians of 'calves or any humpback whale accompanied by a calf'. Such actions were already contrary to paragraph 14 of the Schedule to the ICRW.²

Aboriginal subsistence whaling and the IWC

- 4.5 In its 1997 Report, Australia's National Task Force on Whaling noted that subsistence whaling by Alaskan Eskimos was estimated to have taken place as early as 1500 BC. Aboriginal subsistence whaling had been recognised by international treaty 'for 60 years' as being in some way different to, and having a distinctive character and thus susceptible to other controls than those for, commercial whaling.³
- 4.6 In the late 1970s, the IWC was strengthening its conservation policy by putting new management procedures into effect. At that time, its Scientific Committee was also expressing increasing concern over the trend in catches of bowhead whales by the Alaskan Eskimos. This led to the adoption of agreed definitions, management principles and guidelines for aboriginal subsistence whaling.
- 4.7 In 1981, the IWC accepted three broad management objectives for any aboriginal subsistence whaling:
- to ensure that the risks of extinction to individual stocks were not seriously increased;
 - to enable aboriginal people to harvest whales in perpetuity at levels appropriate to their cultural and nutritional requirements, subject to the other objectives; and

2 Unless specified otherwise, material in this section was drawn from the NIA for the ICRW, pp. 2-3. Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, p. TR13

3 Exhibit No 2, p. 29; Unless specified otherwise, material in this section was drawn from Exhibit No 6, pp. 1-2. This document appears to have been prepared for, and used in part by, the Australian National Task Force on Whaling; see Exhibit No 2, pp. 29-30.

- to maintain the status of stocks at or above the level giving the highest net recruitment, and to ensure that stocks below that level were moved towards it, as far as the environment permitted.
- 4.8 Definitions were also adopted for the following key terms:
- aboriginal subsistence whaling;
 - local aboriginal consumption;
 - subsistence catches; and
 - subsistence use of whale products.
- 4.9 In his evidence, Dr David Kay of Environment Australia, confirmed that, while the ICRW did not include a definition of 'aboriginal', there was a workshop on aboriginal subsistence whaling in the early 1980s. He also confirmed that a number of definitions were adopted and criteria set out for application to this whaling. He said that the IWC had noted the findings of that workshop, and that this material had been the basis of subsequent approvals for the five existing quotas.⁴

Whaling by Alaskan Eskimos, the Bequians and the Makah

- 4.10 According to the provisions of the ICRW, aboriginal subsistence peoples were not required to use traditional methods and had, in fact, been encouraged to develop more humane ways of killing whales. Ms Pam Eiser of Project Jonah Victoria pointed out that, for many whaling peoples, the method of killing was not as important as the need to sustain their culture. Thus, she understood that the Bequians were 'fairly traditional': they still used the boat developed in the 1860s and killed a whale by throwing a hand-held harpoon through the back to the heart.⁵
- 4.11 In the case of the Alaskan Eskimos, Dr Kay said, a highly justified needs statement was put forward on the basis of the size of the population in the whaling villages, their need for protein over time and alternative sources of protein. The needs statement for the Makah's case was less substantial and, at the time, Australia put its view on record that as the need had not been justified, the granting of a quota was not appropriate.⁶

4 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, pp. TR8, 5, 7, 6. Nor are there definitions of terms such as 'subsistence', 'traditional', or 'culture', or of methods of killing whales. The existing quotas are set out at paragraphs 2.6-2.9.

5 Pam Eiser, *Transcript of Evidence*, 28 June 1999, pp. TR11

6 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, pp. TR8

- 4.12 The Bequians had tabled a book in support of their case for a quota. Dr Kay said that was ‘essentially a history of whaling’ in that area. It did not analyse in any detail the people’s dietary requirements. It was seen by some at that IWC meeting as an assertion of need, rather than a documented analysis of that need. While that book satisfied the IWC then, he noted that the views of the Commission changed over time. There were now views, he said, shared by Australia, that the quota for the Bequians ‘has not been sufficiently justified’.⁷
- 4.13 Ms Eiser commented that it was not clear how important whaling was to the Bequians. At best, whale meat was a supplement to their diet, adding different food. Whether it met the criteria as being essential to their protein requirements was another matter, as there had been many years when they had not taken any whales.⁸
- 4.14 With reference to the quota for the Makah, she noted that, although a quota of gray whales had been allocated for the Chukotka people, Australia had not recognised the Makah’s need. Although a quota of gray whales was provided for them, from the allocation in paragraph 13(b)(2) of the Schedule, in accordance with the IWC’s practice it did not specify the aboriginal people for whom it was intended. The Schedule did not specifically recognise the Makah as an aboriginal subsistence people.⁹
- 4.15 There had been a debate on the quota for the Makah at IWC 49 in 1997. Ms Eiser said that the then-Chairman of the IWC had commented that the decision to allocate the quota for the Makah had to be seen in the context of the debate at that meeting.¹⁰

Background to the Bequian quota

- 4.16 In the additional information provided to our inquiry, Environment Australia noted that St Vincent and The Grenadines became a member of the IWC in 1981. In 1982, it reported a take of two humpback whales to the Commission’s infractions committee. No quota was sought.¹¹
- 4.17 In 1983, the IWC established an Aboriginal Subsistence Sub-Committee. In 1987, at IWC 39, this Sub-Committee reviewed Bequian whaling activities

7 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, pp. TR9

8 This was confirmed by Environment Australia: see *Submission No 5*, pp. 1, 3

9 See paragraph 2.6

10 Pam Eiser, *Transcript of Evidence*, 28 June 1999, p. TR10

11 Unless specified otherwise, material in this section was drawn from pp. 1-2 of *Submission No 5* from Environment Australia.

and accepted that these were consistent with the IWC's views on aboriginal subsistence whaling. The Schedule to the ICRW was amended to allow the taking of three humpback whales per year for the period 1987/88 to 1989/90, exclusively for local consumption. Other conditions forbade the taking of suckling calves and females accompanied by calves. Australia supported the amendment that established this quota.

- 4.18 In 1989, Australia drew the attention of the IWC to the reservation taken out by the Government of St Vincent and The Grenadines under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) by the Government of St Vincent and The Grenadines. This reservation would have allowed trade in humpback whale products, and contradicted the subsistence nature of the hunt.¹²
- 4.19 In 1990, St Vincent and The Grenadines sought an extension of the quota for the taking of humpback whales, even though none had been taken in the previous two years. Given that low level of takes, Australia expressed reservations about the need to continue the quota. It was argued that the take continued to serve a cultural need for the Bequians who valued the tradition of the hunt. Australia supported the consensus for continuation of this quota on the advice of the IWC's Scientific Committee that the take of three whales was unlikely to harm the stock of humpback whales.
- 4.20 In 1993, when St Vincent and The Grenadines sought continuation of the quota for three humpback whales, Australia expressed reservations about the ongoing need. The IWC noted the stock estimate and the stated continued cultural need of Bequian whalers. A take of two whales per year for two years, reviewed annually, was agreed.
- 4.21 In 1996, a three year renewal of the quota was sought. Australia asked the IWC to examine more closely the nature of the Bequians' take and, in particular, their methods of killing and the possibility of imposing a strike limit. Australia joined the consensus to amend the Schedule and allow the taking of two humpback whales per year for two years, reviewed annually.
- 4.22 At IWC 50 in 1998, Australia again raised reservations about Bequian whaling, noting that there seemed to be increased participation in hunts. This appeared to be inconsistent with earlier information from the Government of St Vincent and The Grenadines that when the single whaler ceased to hunt, because of his age, it would not support

12 The submission gave no indication of the results of the reservation to CITES. The previous Committee reported on amendments to CITES in the *Tenth Report*, September 1997, tabled on 20 October 1997, pp. 27-35.

continuation of the quota. Australia and the United Kingdom sought a more detailed justification for the hunt and a needs statement. These concerns were noted and were to have been taken into account in preparations for IWC 51.¹³

- 4.23 Between 1987 and 1999, six humpback whales were formally declared to have been taken from the quota of three whales per year allowed for each of the years between 1987/88 and 1992/93, and the two whales per year allowed for each of the years from 1993/94 to the present. The IWC's Scientific Committee has consistently advised that the Bequian quota was unlikely to harm the stock of East Caribbean humpback whales.

Issues raised by the quota for the Bequians

- 4.24 The quota for the Bequians raised two issues:
- whether it met the requirements the IWC has adopted for nutritional and cultural needs, and
 - one aspect of their whaling operations.
- 4.25 Ms Eiser stated that whaling in St Vincent and The Grenadines, the Bequians in particular, had only begun whaling in the 1860s, as a commercial proposition to generate income. She said that they did not meet the basic test of nutritional and cultural need required for aboriginal subsistence.
- 4.26 While they have continued to take whales periodically since then, it was only in 1987 that they had applied for a quota under the IWC's aboriginal and subsistence provisions. Prior to that, taking a whale was reported as an infraction under the provisions of Article IX of the ICRW.¹⁴
- 4.27 She noted that whaling by the Bequians had been seen as a dying tradition in the early 1990s. While they did not take any whales from 1994 to 1998, two were taken in each of 1998 and 1999.
- 4.28 Ms Eiser confirmed that the Bequians had traditionally targeted mother and calf pairs. This breach of the provisions of the Schedule led IWC 51 to adopt the proposed addition to paragraph 13(b)(4), prohibiting the taking of humpback whales and calves.

13 Ms Eiser also noted that Bequian whaling operations had been carried out solely by an older man who had been succeeded by his nephew: *Transcript of Evidence*, 28 June 1999, p. TR3.

14 In 1982, the Government of St Vincent and The Grenadines reported the taking of two humpback whales by Bequian whalers to the IWC's infractions committee: see Environment Australia, *Submission No 5*, p. 1. See also Pam Eiser, *Transcript of Evidence*, 28 June 1999, p. TR3.

- 4.29 Referring to the undertakings given by the Government of St Vincent and The Grenadines, Ms Eiser was not convinced as similar statements had been made before and promises had not been kept.¹⁵
- 4.30 Environment Australia pointed out that a number of reservations had been raised since 1987 about the justification for the Bequians' whaling activities, and the submission of a detailed needs statement. In that time, there had not been a broadly supported move to argue that their whaling activities were not aboriginal subsistence whaling for the IWC's purposes.¹⁶

The Australian Government's view

- 4.31 Since at least the late 1970s, Australia has consistently taken a pro-conservation view of whaling. It has supported the commercial ban on whaling, and the Southern Ocean whale sanctuary. With New Zealand, it has proposed a South Pacific Sanctuary.¹⁷
- 4.32 The policy of the Australian Government on aboriginal subsistence whaling has recognised the needs of some aboriginal communities for continued access to whaling and whale products, to meet demonstrated traditional cultural and dietary needs. It has sought to ensure that catch limits were compatible with the recovery of whale populations, were established in accordance with IWC procedures, and that the whaling was carried out as humanely as possible.¹⁸
- 4.33 It has been concerned that the need for aboriginal subsistence whaling was properly documented to allow evaluation, and that hunting methods were improved to comply with the view that calves should not be taken as part of aboriginal subsistence hunts. Where there were continuing traditions, these should be respected if they met the other requirements of the ICRW.¹⁹
- 4.34 Dr Kay said that the IWC had an agreed understanding of what it defined as 'aboriginal subsistence' whaling. Australia has stated on a number of

15 Unless otherwise specified, material in this section was drawn from *Transcript of Evidence*, Pam Eiser, 28 June 1999, pp. TR2-4.

16 Environment Australia, *Submission No 5*, p. 2

17 *The Age*, 22 May 1999, p. 12, Exhibit No 5, p. 2

18 NIA for the ICRW, p. 2; Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, p. TR5

19 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, p. TR12

occasions that it would like to see this understanding tightened because it does not believe that the IWC's requirements are sufficiently precise.²⁰

- 4.35 He said that the amendment to the Schedule proposed at IWC 51 was on the understanding that calves would not be taken in future. This accepted the commitments given by the Government of St Vincent and The Grenadines at that meeting.²¹
- 4.36 Environment Australia noted that, since it was allowed in 1987, Australia has been 'the most active member' of the IWC in raising reservations about the justification and the ongoing need for the Bequian quota. In raising these concerns, Australia has been actively supported by a limited number of other nations. A number of influential countries generally supportive of Australia's approach to other IWC matters had not entered the debate.²²
- 4.37 Australia's efforts had resulted in a continuing focus on the nature and scale of the Bequians' whaling. IWC 51 saw, for the first time, a consensus outcome committing the Government of St Vincent and The Grenadines to tightened control of whaling, and provision of more detailed information. Environment Australia commented that support for a consensus outcome was more desirable than a nation remaining in a minority position.²³

Project Jonah's views

- 4.38 Ms Pam Eiser was a member of the Australian delegation to IWC 51, and gave evidence to our inquiry as a member of Project Jonah's Victorian Committee. She stated that the issue of aboriginal subsistence whaling had caused NGOs 'a great deal of anxiety', and referred to an appearance before the previous Treaties Committee at which the quota for the Makah had been discussed.²⁴
- 4.39 In its submission, Project Jonah stated that it had been prepared to accept aboriginal subsistence whaling in circumstances where:
- there was a recognised need for particular communities to have continued access for demonstrated cultural and dietary needs; and

20 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, p. 13

21 Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, p. 13

22 Environment Australia, *Submission No 5*, p. 3

23 Environment Australia, *Submission No 5*, p. 3

24 Consideration of this quota is reflected in the previous Committee's *Thirteenth Report*, March 1998, pp. 22, 32-34, 35-38. Unless specified otherwise, material in this section was drawn from *Transcript of Evidence*, Pam Eiser, 28 June 1999, pp. TR2-4, 5

- such whaling would not endanger the whale population involved or impede its long term recovery.²⁵
- 4.40 This submission included considerable information on the quota for St Vincent and The Grenadines. It noted that, 'right from the beginning', this quota had been marked by controversy and concern. Project Jonah was opposed to the renewal of the quota for the Bequian people because it believed that their whaling operations did not meet the IWC's criteria for aboriginal subsistence whaling. It based this belief on the following matters:²⁶
- that the Government of St Vincent and The Grenadines had not established a case for cultural and nutritional need, as required by the IWC;
 - concern at lack of regulation of the hunt;
 - concern at the methods of the hunt and violations of paragraph 14 of the Schedule to the ICRW;
 - the fact that whaling has been for the Bequians an economic, not a subsistence, activity; and
 - the need to ensure that aboriginal subsistence whaling remained an exception to the provisions in the Schedule, not a mechanism to circumvent the moratorium on commercial whaling.²⁷
- 4.41 In her evidence to this inquiry, Ms Eiser gave some of the history of the consideration of aboriginal subsistence whaling in the IWC, noting that whales had been taken by aboriginal peoples for subsistence needs since the ICRW had been negotiated. She also confirmed that it was not until the late 1970s and early 1980s that attention had been focussed on this category of whaling. Discussions in this period resulted in what Project Jonah Victoria asserted were 'generally regarded' as the IWC's criteria for aboriginal subsistence whaling: a demonstrated cultural and nutritional need, and a continued history of whaling.²⁸
- 4.42 There were two reasons for the change of attitude at that time. The first was a request by the Alaskan Eskimos for the taking of the then highly endangered bowhead whales. It was at this time that the IWC had adopted the general criteria now used to consider requests for aboriginal subsistence whaling.
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25 Project Jonah Victoria, *Submission No 6*, p. 1

26 Project Jonah Victoria, *Submission No 6*, pp. 3-4

27 Project Jonah Victoria, *Submission No 6*, pp. 1, 3

28 Project Jonah Victoria, *Submission No 6*, p. 2

- 4.43 The second reason was the adoption by the IWC of the moratorium on commercial whaling in 1982, which took effect in 1986. This created a situation in which no whaling was permitted unless it was for 'scientific' or aboriginal and subsistence purposes.
- 4.44 The IWC's criteria were not included in the Schedule. This had led to debates in recent years as to whether both cultural and nutritional needs had been established, and whether there had been a continuity of traditional dependence on whaling.²⁹
- 4.45 NGOs believed that there had to be a clear and explicit statement that aboriginal whaling was the exception. If there was not such a statement, other communities with a history of whaling could attempt to call themselves 'aboriginal' and apply for a whaling quota under the provisions of paragraph 13 of the Schedule. Ms Eiser said that there had also to be a test of need against the IWC's criteria for aboriginality.
- 4.46 The following issues, none of which were new, were central to consideration of the renewal of the quota for the Bequians at IWC 51:
- the lack of a detailed needs statement supporting this quota;
 - the taking of calves and females accompanied by calves over the last two years; and
 - disquiet over the whaling methods being used.³⁰
- 4.47 In its submission, Project Jonah Victoria referred to the 'flexibility and tolerance' shown to the Bequians. This seemed to have been influenced by the plea to allow the tradition to die out with 'the old whaler'. From the information available, with the use of a second person on the hunt, this is no longer the case.³¹
- 4.48 This submission also stated that a detailed needs statement, establishing the cultural and nutritional needs of the Bequians, of the sort usually required for aboriginal subsistence whaling, 'has never been provided' to the IWC by St Vincent and The Grenadines. In Project Jonah Victoria's view, the document provided to IWC 51 fell 'far short of the standard required of other aboriginal subsistence hunts', for both cultural and nutritional needs.³²

29 Project Jonah Victoria, *Submission No 6*, p. 2

30 Project Jonah Victoria, *Submission No 6*, p. 4

31 Project Jonah Victoria, *Submission No 6*, p. 5. See paragraph 4.22

32 Project Jonah Victoria, *Submission No 6*, p. 5. A copy of this document was attached to the submission from Project Jonah Victoria: see *Submission No 6*, pp. 7-8. Much of it appears to

- 4.49 Project Jonah Victoria believed that the decision at IWC 51 went some way towards addressing some of the contentious issues concerning regulation of the hunt. In particular, the addition to paragraph 13(b)(4) of the prohibition against taking calves/whales accompanied by calves and the definition of the length of a calf removed 'any possible argument about whether paragraph 14 of the Schedule' applied.³³
- 4.50 Finally, this submission quoted from a recommendation from the National Task Force on Whaling that Australia should:
- resist any extension of current aboriginal subsistence whaling provisions;
 - seek to have criteria for this whaling set out clearly in the Schedule; and
 - promote the view that all whaling not classified by the IWC as aboriginal subsistence whaling is commercial whaling.³⁴

Other views

- 4.51 In its submission to the inquiry, the Australian Reform Party (Queensland Branch) stated that, until such time as any and all whale species became a threat to their own survival through natural increase, the "'harvesting" (slaughter)' must cease immediately. This included Japan's whaling for 'scientific' purposes, and the annual taking of two humpback whales by the Bequian people.³⁵
- 4.52 Ms Wendy Dunn, of the Dolphin Research Institute Inc, supported the stand taken by the Australian Government and therefore renewal of the quota for the Bequians, albeit with some reservations. She noted that St Vincent and The Grenadines had given undertakings about:
- the taking of whales accompanied by calves; and
 - monitoring of whale hunts.
- 4.53 She believed that stopping the taking of whales with calves should be a condition for the granting of a quota, and asked how hunts could be independently monitored. She thought that there should be some

have been extracted from the history of whaling in the area referred to by Dr Kay: see Environment Australia, *Transcript of Evidence*, 28 June 1999, p. TR9.

33 Project Jonah Victoria, *Submission No 6*, p. 5

34 Project Jonah Victoria, *Submission No 6*, pp. 5-6. For Recommendation 5 of the National Task Force on Whaling in full, see Exhibit No 2, p. xii.

35 Australian Reform Party (Queensland Branch), *Submission No 1*, p. 1

following up of the range of conditions agreed at IWC 51, preferably prior to any further application for a quota by the Bequians.

- 4.54 Finally, Ms Dunn noted with surprise that this quota was granted without submission of a detailed needs statement. She believed that this was an area that needed to be addressed before any further quotas were granted to aboriginal peoples.³⁶
- 4.55 The Australian Conservation Foundation and Animals Australia also supported the views of Project Jonah Victoria.³⁷

36 Dolphin Research Institute Inc, *Submission No 2*, p. 1

37 Australian Conservation Foundation, *Submission No 3*, p. 1 and Animals Australia, *Submission No 4*, p. 1

Weaknesses in the ICRW and the IWC

- 5.1 Our primary focus in this Report must be the sets of amendments to the Schedule to the ICRW that were proposed at IWC 51. They have been the subjects of previous chapters. This is the fourth time this Committee has examined amendments to the Schedule. The examination of the issue, in the *Thirteenth Report*, was quite detailed.¹
- 5.2 In addition to the specific issues raised in connection with the amendments proposed at IWC 51, there are other, more general matters that impact on the operation of the IWC and the ICRW which we believe are worthy of comment.
- 5.3 As IWC 52 is scheduled to be held in Adelaide in June-July 2000, we believe that it is appropriate to make some general comments on the future of the ICRW and the IWC itself.²

Previous considerations

- 5.4 In its 1997 Report, the National Task Force on Whaling argued that, while the IWC had its faults, it still offered the best international forum in which to achieve Australia's aims, and was the international organisation best placed to lead on whaling issues.³
- 5.5 In its *Thirteenth Report*, the previous Committee noted that there were a number of issues facing the IWC. Rather than dealing with these in isolation, that Report suggested that the IWC might have to face the possibility of a complete revision of the ICRW. Whether the IWC would

1 See JSCT, *Thirteenth Report*, March 1998, pp. 19-42, especially from p. 39

2 Exhibit No 5, p. 9

3 Exhibit No 2, p. vii

survive that exercise in a manner acceptable to all States Parties was seen to be another matter.⁴

Aims and provisions of the ICRW

- 5.6 The ICRW was negotiated in 1946 and came into force generally on 10 November 1948, replacing the 1937 *International Agreement for the Regulation of Whaling*.⁵
- 5.7 The ICRW recognised that whales had been over-fished and that they were a great natural resource. It stated that it was in ‘the common interest’ to achieve the optimum level of stocks as rapidly as possible without causing widespread economic and nutritional distress. It sought to establish a system of international regulation to ensure proper and effective conservation and development of whale stocks. The ICRW was to provide for the proper conservation of whale stocks, and make possible the orderly development of the whaling industry.⁶
- 5.8 Two papers among many publications refer to a range of problems in the operation of the ICRW and the IWC.⁷

Knauss' views

- 5.9 In a paper published in 1997, John Knauss saw the ICRW as the culmination of a series of agreements begun in the 1930s to regulate the taking of whales to ensure some level of ‘sustainable yield’. Because of the hunting of some species close to extinction, the need for regulation was obvious. By the 1940s, technology combined with a continuing demand for whale oil had made whaling a growth industry.⁸
- 5.10 Knauss, a US Commissioner to the IWC in 1991 and 1992, argued that neither the ICRW nor the IWC had been very effective in controlling the over-exploitation of whales. Whatever success the IWC had had in developing better population and catch statistics, and in promoting research on whale biology, he believed that it had ‘failed miserably’ in its

4 JSCT, *Thirteenth Report*, March 1998, pp. 41-42

5 *Australian Treaty List, Multilateral* (as at 31 December 1998), Department of Foreign Affairs and Trade, pp. 374, 359

6 ICRW, Preamble

7 Material on whales, whaling and the ICRW/IWC is voluminous. These are but two articles from that literature.

8 Exhibit No 4, pp. 79-80

primary goal of maintaining sustainable populations. He saw the establishment of the moratorium on commercial whaling as necessary, while those concerned rethought how and under what circumstances whaling might be continued.⁹

- 5.11 He also believed that the IWC should strive to reach a compromise. Over the long term, he asserted, it would be much better to allow limited whaling under controlled conditions than to encourage the possibility of competing international agreements or, worse still, anarchy where those who wanted to kill whales would do so without any international rules.¹⁰
- 5.12 Reaching some compromise on this subject would sufficiently strengthen the IWC so that in time its members would gain enough trust in each other to allow it to broaden the Schedule to include small as well as large whales. Knauss concluded his paper by observing that, for those interested in the survival of all the species of these magnificent creatures, 'this is an important consideration.'¹¹

Article in *The Atlantic Monthly*

- 5.13 An article in the May 1999 issue of *The Atlantic Monthly* also raised a number of issues relating to the operation of the ICRW and the ICW. In particular, the authors referred to 'the continuing dysfunction' of the IWC that should concern those with concerns about preserving the natural heritage.¹²
- 5.14 While the IWC was empowered to regulate the whaling industry, it was not granted any authority to amend the ICRW itself. The IWC was therefore always required to follow the Convention's intent. The authors commented that no possible interpretation of the ICRW allowed for ending whaling when credible scientific opinion supported the sustainable use of abundant whale resources.¹³
- 5.15 This article summarised the history of whaling from the early 1930s, stating that the IWC 'started off badly'. For nearly 30 years from 1946, it had tolerated whaling at unsustainable levels so that many of the largest species 'declined so precipitously' that in 1972 the US proposed a ten-year moratorium on commercial whaling. Since the introduction of Australia's

9 Exhibit No 4, pp. 80, 84

10 Exhibit No 4, p. 84

11 Exhibit No 4, p. 84

12 Exhibit No 7, p. 22

13 Exhibit No 7, p. 22

New Management Procedure in 1974, this article stated, 'not one whale population has been jeopardised by a commercial whaling operation'.¹⁴

- 5.16 A majority of the IWC wanted to halt all commercial whaling, regardless of the ICRW. It alleged that, in 1991, the US Commissioner had conceded that, while there was no scientific reason to ban all whaling, the US' position would be defended on 'ethical grounds'. Such an approach was seen plainly to violate both the ICRW and the international rule of law, and was a 'clear warning' to all nations negotiating multilateral environment agreements. Long-standing principles could be given new interpretations, and sanctions could be applied for actions fully complying with the provisions of treaties.¹⁵
- 5.17 This article asserted that, when substitutes for whale oil became available in the 1970s, nations that had hunted primarily for this product stopped whaling. It was different for nations such as Japan and Norway where whaling was an ancient occupation, worthy of respect and support. It stated that anthropologists had long observed the primary role played by traditional foods in the social structure and moral norms of a community. Asking people to give up their customary diet, it observed, was in many ways like asking them to give up part of their identity.¹⁶

IWC voting patterns

- 5.18 As set out in Article III(2), decisions at IWC meetings are taken by a simple majority of those members voting, except that a three-fourths majority of those members voting is required to amend the Schedule. Article V sets out the matters in the Schedule that can be amended.¹⁷
- 5.19 As the report of the Australian delegation to IWC 51 made clear, within the Commission there is group of pro-whaling countries and a larger group of 'conservation countries'. It drew attention to the consequences of decisions by consensus, such as the agreement of packages to secure some progress and scepticism about the extent of change that is likely.¹⁸

14 Exhibit No 7, pp. 22-24

15 Exhibit No 7, p. 24. No further detail is provided on how international law is violated.

16 Exhibit No 7, p. 26

17 The IWC's Rules of Procedure specify that only those Parties that are financial contributors may vote at its meetings. Based on advice from Environment Australia, the list of members of the Commission is at Appendix E.

18 Exhibit No 5, pp. 1, 4, 10

- 5.20 The delegation's report also pointed out that voting patterns at IWC 51 had shown that it would be 'extremely difficult' to secure the three-fourths majority needed to amend the Schedule.¹⁹

Perceived loopholes in the ICRW

- 5.21 The principal loopholes seen in the ICRW are:
- the ability of nations to lodge an objection under Article V to evade the obligations in the Convention; and
 - the use of Article VIII's special permit system for scientific research.²⁰
- 5.22 In particular, provisions for aboriginal subsistence whaling are largely undefined and there is a lack of any sort of criteria against which any proposals can be assessed. Such needs statements as are prepared vary in both quality and size. In such situations, there is always the possibility of the exploitation of stocks of particular species of whales.²¹
- 5.23 In her evidence, Ms Eiser referred to concerns of NGOs that, unless there was 'a very clear and explicit' statement about quotas for aboriginal whaling, it could be used as a means of avoiding the provisions of the ICRW. This point had been raised previously in connection with the quota for the Makah. It raised the possibility that Japanese communities could seek quotas on the basis of their 'history' of whaling, combined with claiming aboriginal status. Given the lack of definitions for some terms, and tests to be met against agreed criteria, the concerns of the NGOs are understandable. It is not surprising that some believe that no subsistence whaling should be allowed.²²
- 5.24 In her submission, Ms Dunn of the Dolphin Research Institute Inc raised the issue of monitoring the actions of those allocated quotas for aboriginal subsistence whaling to ensure adherence to conditions agreed by the IWC.²³

Possible consequences of change

- 5.25 While the moratorium on commercial whaling had allowed numbers of some species to recover, Japan and Norway had continued to kill whales

19 Exhibit No 5, p. 10

20 Pam Eiser, *Transcript of Evidence*, 28 June 1999, p. TR4

21 See Pam Eiser, *Transcript of Evidence*, 28 June 1999, pp. TR2-3; Dr David Kay (Environment Australia), *Transcript of Evidence*, 28 June 1999, p. TR8

22 Pam Eiser, *Transcript of Evidence*, 28 June 1999, pp. TR5-6, 4

23 Dolphin Research Institute Inc, *Submission No 2*, p. 1

within the provisions of the ICRW: Japan via 'scientific' whaling and Norway by means of its objection to the moratorium. The recovery of some species had been used to argue that the ban on commercial whaling was no longer necessary.²⁴

- 5.26 Before IWC 51, there was a media report that Iceland intended to resume commercial whaling and, following it, that Japan and Norway 'have threatened to abandon' the IWC. The latter nations were reported as stating that regional groups might be better suited to regulate commercial whaling. The President of a pro-whaling group was also reported as asserting that: 'The Commission is running the risk of becoming a social club for whale lovers'.²⁵
- 5.27 Such reports draw attention to tensions inherent in the way the IWC has been operating since the ban on commercial whaling began in 1986. As mentioned in the previous Committee's *Thirteenth Report*, revision of the provisions of the ICRW, and hence the way the IWC operated, could well result in the loss of some members.²⁶

24 *The Age*, 31 May 1999, p. 10

25 *The Age*: 7 April 1999, p. 3, 31 May 1999, p. 10

26 JSCT, *Thirteenth Report*, March 1998, p. 42

Conclusions and recommendations

Australian attitudes

- 6.1 As the previous Committee observed in its *Thirteenth Report*, Australia's position on whaling was clear before the passing of the *Whale Protection Act 1980*. By then, the last shore-based whaling operations in this country had closed. Since the early 1980s, activities such as whale watching have continued to grow in popularity.¹
- 6.2 There is even some continuing media coverage of general whaling issues, including the annual meetings of the IWC that are far-removed from the daily concerns of most Australians.²
- 6.3 We re-affirm the previous Committee's view that continuation of whaling, in any form and by any nation or group, is repugnant to many Australians. We note that the *Thirteenth Report* stated that it was difficult to see how the conservation of whales would be advanced without the IWC. It also stated that Australia should continue to support that body, and do all in its power to influence countries such as Japan and Norway to abandon whaling.³
- 6.4 At the same time, we are aware that these views are not shared by all members of the IWC. Within that body, Australia is seen as one of the nations most in favour of conserving whale stocks. It does not have any aboriginal subsistence whaling, and is therefore in a relatively detached position on the issue of whaling.

1 See, for example, *The Sydney Morning Herald*, 27 August 1998, p. 8, *The Age*, 7 April 1999, p. 3 and *The West Australian*, 25 May 1999, p. 19.

2 ISCT, *Thirteenth Report*, March 1998, p. 39

3 ISCT, *Thirteenth Report*, March 1998, pp. 39-40

- 6.5 We accept that, particularly at IWC 51, Australia's efforts have contributed to the Government of St Vincent and The Grenadines giving undertakings about whaling operations by the Bequians. If these are honoured, and further actions taken, this quota for aboriginal subsistence whaling may give less causes for concern in the future. Its continuation remains a cause of concern to interested NGOs.

Quotas for aboriginal subsistence whaling

- 6.6 Five quotas are presently allocated by the IWC for aboriginal subsistence whaling. Although the Schedule includes a number of definitions in paragraph 1, the ICRW does not define any key words or concepts. Needs statements in support of these quotas vary in quality. Nonetheless, at successive annual meetings of the IWC, such quotas have been renewed.
- 6.7 We believe that aboriginal subsistence quotas should continue to be allocated to those groups with a history of such whaling, actually using the products of their hunts. This view assumes that a range of factors have been taken into account, such as the ability of the targeted species to cope with a quota without survival being endangered.
- 6.8 The Schedule did not require groups seeking a quota to provide detailed information to support serious analysis of their claim. In the case of the quota for the Bequians, what should be regarded as adequate information seems never to have been put forward.
- 6.9 In view of the custom of taking calves and accompanying adults, it is hardly surprising that an additional prohibition of this practice, specifically directed at the Bequians, was one of the agreed amendments at IWC 51.

The future of the ICRW and its Schedule

- 6.10 The ICRW came into operation generally on 10 November 1948. The Schedule is an integral part of this Convention which can be amended by meetings of the IWC with the support of a three-fourths majority of Parties voting. While opinions on the effectiveness of the ICRW vary, attitudes to whales and to whaling have changed greatly in many countries in the 51 years of its operation.
- 6.11 We believe that the support given to the IWC process by various Australian governments reflects the concern of the Australian people to

conserve whale stocks. This has been done by such measures as the ban on commercial whaling and establishment of the Southern Ocean Sanctuary.

- 6.12 The report of the Australian delegation to IWC 51, together with the previous Committee's considerations and the Report of the National Task Force on Whaling, have all made it clear that the ICRW is continuing to operate but with some difficulties. In addition to aboriginal subsistence whaling, there are concerns about the use of loopholes in the ICRW text that could be used to circumvent the moratorium on commercial whaling. There are also references to problems caused by decisions by consensus, the balance between whaling and conservation nations on the IWC and the 'scientific' permit system.
- 6.13 It is never the 'right' time to reform an international agreement, or to revise the various operational matters set out in a document such as the Schedule to the ICRW. Apart from arguments such as 'a new treaty for a new century', there are good reasons for considering re-drafting of the ICRW and beginning this process as soon as practicable.
- 6.14 IWC 52 is scheduled to be held in Adelaide in June-July 2000. This meeting could be an appropriate time to begin a thorough examination and revision of the text of the ICRW and the Schedule. While we do not possess the wealth of technical and other expertise required to undertake all aspects of the task we are recommending, we believe that the following suggestions would be useful.

Amending the Schedule

- 6.15 In 1981, the IWC accepted broad management objectives for aboriginal subsistence whaling, and adopted definitions of some key terms. Any revisions to the Schedule should include such features as:
- definitions of key words and concepts, such as 'aboriginal', 'subsistence', 'cultural', 'tradition', 'products' and 'local consumption'; and
 - agreed criteria for the application of such words and concepts which could then be used to determine whether whaling quotas should be allocated to particular groups of people.
- 6.16 The Schedule allocates a quota of whales from a particular stock, rather than specifying the group of people that should receive it. This reflects an appropriate scientific approach and should continue.
- 6.17 This opportunity could also be used to seek deletion from the Schedule of any material that is no longer relevant.

- 6.18 The provision permitting the Schedule to be amended by meetings of the IWC recognises the requirement to change that text in accordance with the needs of the Parties. The present structure should be retained so that, while the Convention stands, the detailed provisions of the Schedule can be amended as required.
- 6.19 Such a revision of the Schedule probably would not solve all the problems with the operation of the ICRW. It might go some way, however, towards removing the uncertainties, and possible loopholes, currently associated with aboriginal subsistence whaling. It would also make the allocation of quotas for aboriginal subsistence whaling more transparent. More importantly, it would give both definitions and criteria treaty status while allowing them to be amended, with or without difficulty, as and when required.

Amending the ICRW

- 6.20 Re-negotiation of the ICRW is another and altogether more complicated matter. It may not be possible to remove the provisions some nations use to evade the intentions of the document without some Parties denouncing the Convention. In this situation, the Parties would have to decide how far any revision of the text could proceed without unduly reducing either the membership or the effectiveness of the IWC.
- 6.21 Some of the provisions from the middle 1940s could be replaced to reflect more adequately the views of the late-1990s on whales and whaling. In particular, the Preamble to the ICRW states that its purpose is to 'properly regulate' whaling. While this approach is still required, there have been significant changes, technological and others, since 1946 that have had impacts on whales and whaling.
- 6.22 For at least the last 15 years, a principal focus of the IWC has been on the conservation of various species of whale stocks. Neither the ICRW nor its Schedule, however, reflect the moratorium on commercial whaling, in operation since 1986. Nor do they include any reference to the Southern Ocean sanctuary. A revision of the ICRW might be able to strengthen the conservation position within the text.

Conclusions

- 6.23 The amendments proposed to paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule to the ICRW are not controversial. The amendments to paragraph 13(b)(4) of the Schedule, proposing to renew the annual quota for the Bequian people of St Vincent and The Grenadines, are contentious.

While we support legitimate aboriginal subsistence whaling, we are concerned that this quota has been renewed and believe that this concern needs to be expressed in an effective way.

- 6.24 The simplest and most predictable way of registering this concern would be to lodge an objection, under the provisions of Article V(3) of the ICRW, to the first set of proposed amendments from IWC 51. Because decisions within the IWC are by consensus, and because of the process set out in Article V, this would have little effect on their adoption. Moreover, as has already been pointed out, the proposed amendments will have no effect on Australia.
- 6.25 We also believe that both the ICRW and its Schedule are in need of revision.

Recommendations

- 6.26 The opportunity IWC 52 presents is too valuable to lose, and the intervening period should be used to prepare a proposal to amend the ICRW and its Schedule for consideration at that meeting. We believe that, even if they cannot be updated entirely, some revision could make them more relevant. If this chance is not taken up, there may not be any prospect of the necessary changes being made for the foreseeable future.

Recommendation 1

- 6.27 **The Committee recommends that the Minister for the Environment and Heritage prepare a proposal for consideration at the 52nd Annual Meeting of the International Whaling Commission in 2000 to revise the provisions of the *International Convention for the Regulation of Whaling 1946* and its Schedule.**

Recommendation 2

- 6.28 **The Committee supports the amendments proposed to paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule to the *International Convention for the Regulation of Whaling 1946*, and recommends that no objection be lodged against these amendments.**

- 6.29 We are not convinced that the amendment proposed to renew the quota allowing the Bequian people of St Vincent and The Grenadines to take two humpback whales in each of the years from 2000 to 2002 has been sufficiently justified.
- 6.30 We accept that 'an expression of concern' may not seem to have the same force as objecting to a proposed amendment, under the provisions of Article V of the ICRW. In fact, from Australia's position, such an expression may be harder to dismiss than an objection, and thus more effective.

Recommendation 3

- 6.31 **The Committee recommends that the Australian Government:**
- **should lodge an expression of concern about the amendments to paragraph 13(b)(4) of the Schedule to the *International Convention on the Regulation Of Whaling 1946*, proposing the renewal of the whaling quota for the Bequian people of St Vincent and The Grenadines for the years 2000 to 2002, indicating that it will seek to have this quota reconsidered at the International Whaling Commissions' 52nd Annual Meeting in 2000; and**
 - **should request the International Whaling Commission to obtain a detailed needs statement from the Bequian people for consideration at that meeting, but**
 - **should not lodge a formal objection at this time to the quota renewed by the proposed amendments.**

ANDREW THOMSON MP

Committee Chairman

10 August 1999



Appendix A – Extract from Resolution of Appointment

The Joint Standing Committee on Treaties was reconstituted in the 39th Parliament on 9 December 1998.

The Committee's Resolution of Appointment allows it to inquire into and report upon:

- (a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- (b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- (c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



Appendix B – Submissions

Submission No	Organisation/Individual
1	Australian Reform Party (Queensland Branch)
2	Dolphin Research Institute Inc
3	Australian Conservation Foundation
4	Animals Australia
5	Environment Australia
6	Project Jonah Victoria



Appendix C – Public Hearing Witnesses

Monday, 28 June 1999, Canberra

Attorney-General's Department

John Attwood, Principal Lawyer, Office of International Law

Department of Foreign Affairs and Trade

David Mason, Executive Director, Treaties Secretariat

Department of the Environment and Heritage

Dr David Kay, Assistant Secretary, Wildlife Branch, Biodiversity Group,
Environment Australia

Andrew McNee, Director, Wildlife Management, Biodiversity Group,
Environment Australia



Appendix D – Exhibits

1. International Whaling Commission: Information Paper
2. *A Universal Metaphor: Australia's Opposition to Commercial Whaling*, Report of the National Task Force on Whaling, May 1997
3. Media Release, Senator the Hon Robert Hill, Minister for the Environment: *Hill to push for Global Whale Sanctuary* (20 October 1997)
4. 'The International Whaling Commission – Its Past and Possible Future' by John A Knauss, *Ocean Development & International Law*, 28, 1997, pp. 79-87
5. *Delegation Report: 51st Meeting of the International Whaling Commission, Grenada: 25-29 May 1999*
6. *Aboriginal Subsistence Whaling: Background Paper*
7. 'Flouting the Convention' by William Aron, William Burke and Milton Freeman, *The Atlantic Monthly*, Vol 283, No 5, May 1999, pp. 22-29



Appendix E – Members of the International Whaling Commission

Antigua & Barbuda	Mexico
Argentina	Monaco
Australia	Netherlands
Austria	New Zealand
Brazil	Norway
Chile	Oman
People's Republic of China	Peru*
Costa Rica*	Russian Federation
Denmark	St Kitts and Nevis
Dominica	St Lucia
Finland	St Vincent & The Grenadines
France	Senegal*
Germany	Solomon Islands
Grenada	South Africa
India*	Spain
Ireland	Sweden
Italy	Switzerland
Japan	United Kingdom
Kenya*	United States of America
Republic of Korea	Venezuela*

*: No voting rights at present