

**AMENDMENTS, DONE AT BERLIN, GERMANY ON 19 JUNE
2003, TO THE SCHEDULE TO THE INTERNATIONAL
CONVENTION FOR THE REGULATION OF WHALING, DONE
AT WASHINGTON ON
2 DECEMBER 1946
[1948] ATS 18**

Documents tabled on 9 September 2003:

- **National Interest Analysis**
- **Text of the proposed treaty action**

Annexures:

- **Consultations**
- **Current status list**

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

Amendments, done at Berlin, Germany on 19 June 2003, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946 [1948] ATS 18

Date of Tabling of Proposed Treaty Action

1. 9 September 2003.

Nature and Timing of Proposed Treaty Action

2. The Schedule is an integral part of the International Convention for the Regulation of Whaling, 1946 (the Convention). It is amended from time to time, in accordance with the provisions of Article V of the Convention, to take account of decisions of the International Whaling Commission established under the Convention (the Commission). Amendments to the Schedule become effective with respect to each Contracting Government ninety days following the date of notification from the Secretariat of the Commission unless a Contracting Government lodges an objection to the amendments in that period.

3. Should any Contracting Government lodge an objection, the amendments would not enter into force for any of the Contracting Governments for an additional ninety days. Thereafter the amendments become binding on all Contracting Governments other than those that have lodged objections.

4. The effect of the amendments done at the 55th annual meeting of the Commission is to maintain the moratorium on commercial whaling. Australia does not propose to lodge an objection to these amendments, therefore no binding treaty action is required.

5. The Commission notified Contracting Governments on 11 July 2003 (in a Circular dated 2 July 2003) of the amendments made at the 55th annual meeting held in Berlin. If no objections are lodged, the amendments will come into force generally on 30 September 2003. If objections are lodged before 30 September 2003 the amendments will come into force for those countries that have not lodged an objection on 29 December 2003. The amendments will come into force for Australia, therefore, on 30 September 2003 in the former case or 29 December 2003 in the latter case.

Overview and National Interest Summary

6. The amendments to the Schedule to the Convention maintain the moratorium on commercial whaling. This is in the national interest because Australia is a strong opponent of commercial whaling.

Reasons for Australia to take the proposed treaty action

7. The proposed treaty action involves amendments to the Schedule to the Convention to which Australia has been a Contracting Government since it came into force in 1948. The amendments maintain the moratorium on commercial whaling.

8. The amendments substitute the dates for the coming year on commercial whale catch limits, all of which are set at zero in accordance with sub-paragraph 10(e) of the Schedule. These amendments are required annually to maintain the moratorium on commercial whaling and the currency of the Schedule. The amendments substitute the dates '2003/2004' for '2002/2003', and '2004' for '2003' in paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule.

9. The Convention is a multilateral treaty which regulates the conservation and utilisation of whale stocks. Although negotiated at a time when the primary focus was to ensure international control of the post-war development of the commercial whaling industry, the Convention and the Commission created by it have proved more recently to be an effective vehicle for some major conservation measures. These include the 1982 decision to implement a moratorium on commercial whaling and the establishment in 1994 of the Southern Ocean Sanctuary.

10. Australia has been a strong advocate of conservation measures within the Commission since the closure of the last Australian shore-based whaling operation in 1979. The Commission is considered the most appropriate forum for pursuit of international efforts to improve the conservation of whales. This year's amendments accord with Australia's long-held position – to pursue a permanent international ban on commercial whaling.

Obligations

11. The amendments to the Schedule will not add to Australia's existing obligations under the Convention. Australia already prohibits whaling. The *Environment Protection and Biodiversity Conservation Act 1999*, which prohibits killing, injuring or interfering with whales in Australian waters, affords a higher level of protection to whales in Australian waters than is afforded under the Convention.

Implementation

12. The amendments to maintain zero catch limits for commercial whaling do not require any additional measures by Australia. The *Environment Protection and Biodiversity Conservation Act 1999* prohibits the killing of whales and provides for the preservation, conservation and protection of whales and other cetaceans in Australian waters, including to the outer limits of the Exclusive Economic Zone.

Costs

13. The proposed treaty action is not expected to impose any additional costs to Australia. The amendments to the Schedule will not require any new domestic agencies or management arrangements to be put in place, as the amendments simply maintain the existing moratorium on commercial whaling.

Consultation

14. Environment Australia convenes a number of consultative meetings with non-government organisations and other Government departments prior to each annual Commission meeting, and makes a delegation report available to non-government organisations, government departments, scientists and institutions.

15. The amendments resulting from the 2003 annual Commission meeting, to maintain the moratorium on commercial whaling, do not affect the States and Territories.

Regulatory Impact Statement

16. The Office of Regulatory Review, Productivity Commission has been consulted and confirms that a Regulatory Impact Statement is not required.

Future Treaty Action

17. The Schedule may be amended from time to time in accordance with the provisions of Article V of the Convention. Article V provides that a three-quarter majority of the Commission may decide to amend the Schedule where the amendments are such as are necessary to carry out the objectives and purposes of the Convention and to provide for the conservation, development, and optimum utilisation of whale resources; are based on scientific findings, do not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory ship or land stations; and take into consideration the interests of consumers of whale products and the whaling industry (Article V(2)).

18. Amendments are usually, but not necessarily, made at meetings of the Commission (Article III(2)). The Rules of Procedure provide that between meetings of the Commission or in the case of emergency, a vote may be taken by post, or other means of communication. Any future amendments to the Schedule would have to be agreed by the Commission and would be subject to further treaty action under the Convention.

19. There are no current proposals for the development of additional Protocols, which would require a Conference of Governments outside the normal Commission meetings.

Withdrawal or Denunciation

20. Australia may lodge an objection to any amendment to the Schedule within ninety days of notification from the Commission. Thereafter such an amendment will not become binding on Australia.

21. Australia may withdraw from the Convention, of which the Schedule is an integral part, by giving notice to the Depository Government (Government of the United States of America) on or before 1 January of any year, whereby the withdrawal becomes effective as of 30 June following the notification.

Contact Details

Policy and Coordination Branch
Australian Antarctic Division
Environment Australia

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ANNEXURE 1. CONSULTATIONS

1. Environment Australia convenes a number of consultative meetings with non-government organisations and other Government departments prior to each annual Commission meeting to canvass views on Commission issues. These meetings were held in October 2002, February 2003 and May 2003, and were attended by representatives of Environment Australia, Department of Foreign Affairs and Trade, Australian Conservation Foundation, Greenpeace, Humane Society International, International Fund for Animal Welfare, Project Jonah, Royal Society for the Prevention of Cruelty to Animals, Whale and Dolphin Conservation Society and Whale and Dolphin Watch Australia Inc. The views expressed at the meetings are taken into account in developing Australia's position on the proposals to be considered by the Commission.
2. Following each annual meeting of the Commission, a report from the delegation is made available to non-government organisations, government departments, scientists and institutions. The consultative forum elected representatives of two non-government organisations (Project Jonah and Humane Society International) to participate as members of the Australian delegation at the 2003 annual meeting.
3. The amendments resulting from the 2003 annual Commission meeting, to maintain the moratorium on commercial whaling, do not affect the States and Territories.

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ANNEXURE 2. INTERNATIONAL WHALING COMMISSION: CURRENT STATUS LIST

As at 7 August 2003:

Antigua and Barbuda	Republic of Guinea	Palau
Argentina	Iceland	Panama
Australia	India	Peru
Austria	Ireland	Portugal
Belize	Italy	Russian Federation
Benin	Japan	Saint Kitts and Nevis
Brazil	Kenya	Saint Lucia
Chile	Republic of Korea	Saint Vincent and The Grenadines
People's Republic of China	Mexico	San Marino
Costa Rica	Monaco	Senegal
Denmark	Mongolia	Solomon Islands
Dominica	Morocco	South Africa
Finland	Netherlands	Spain
France	New Zealand	Sweden
Gabon	Nicaragua	Switzerland
Germany	Norway	UK
Grenada	Oman	USA

[Source: IWC website: <http://www.iwcoffice.org/iwc.htm#Members>]