

**AMENDMENTS, DONE AT ST KITTS AND NEVIS, IN THE CARIBBEAN ON 20 JUNE
2006, 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 17 October 2006

**National Interest Analysis 2006 ATNIA 40
with attachment on consultation**

Text of the proposed treaty action

Background information:

Current status list

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Amendments, done at St Kitts and Nevis, in the Caribbean on 20 June 2006, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946 [1948] ATS 18

Nature and timing of proposed treaty action

1. 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 (the Commission) established under the Convention. 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 to the Contracting Government, unless a Contracting Government lodges an objection to the amendments in that period.
2. 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. During this second ninety day period, or within 30 days of receipt of the last objection (whichever being later), Contracting Governments may lodge an objection. Upon the expiry of this period the amendments become binding on all Contracting Governments other than those that have lodged objections.
3. The effect of the amendments done at the 58th annual meeting of the Commission is to maintain the moratorium on commercial whaling for another year. Australia does not propose to lodge an objection to these amendments and therefore no binding treaty action is required.
4. The Commission notified Contracting Governments on 7 July 2006 of the amendments, advising that, if no objections were lodged, the amendments would come into force generally on 4 October 2006.

Overview and national interest summary

5. The amendments to the Schedule to the Convention extend by one year the moratorium on commercial whaling which applies under the Convention. The moratorium will apply to the 2006/2007 pelagic season (austral summer), the 2007 (northern hemisphere) coastal season and the 2007 season.
6. This is consistent with Australia's strong opposition to commercial whaling.

Reasons for Australia to take the proposed treaty action

7. The Convention is a multilateral treaty which regulates the conservation and utilisation of whale stocks. Australia has been a Contracting Government since it came into force in 1948. 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 become an effective vehicle for major conservation measures. 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, including the 1982 decision to implement a moratorium on commercial whaling.

8. The proposed treaty action involves amendments to the Schedule to the Convention. The amendments maintain the moratorium on commercial whaling, and are required at every annual meeting of the Commission in order to continue the ban on commercial whaling.

Obligations

9. 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 a range of acts directed at cetaceans including 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. The amendments will also continue to bind all Contracting Governments that do not lodge an objection to the catch limits as set out in the Schedule.

10. A government can 'object' to any decision provided it is done within 90 days of notification of the decision. The government or governments that object are not then bound by that particular decision.

11. The amendments are of a routine nature and maintain the zero catch limits for commercial whaling pursuant to sub-paragraph 10(e) of the Schedule in the coming year. These amendments are required annually to maintain the moratorium on commercial whaling and the currency of the Schedule. This year's amendments substitute the dates '2006/2007' for '2005/2006,' and '2007' for '2006' in paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule. The amendments do not create new or alter existing obligations.

12. In 1982, the Commission took a decision, which came into force for the 1986 northern hemisphere coastal and 1985/86 southern hemisphere pelagic seasons, that catch limits for all commercial whaling would be set to zero. Several contracting governments lodged objections within the 90 days to the relevant items in the Schedule, and some of those objections have since been withdrawn. Presently Norway and the Russian Federation are not bound by the 1982 decision. The Commission has previously passed a non-binding resolution calling on Norway to halt all whaling activities under its jurisdiction.

Implementation

13. 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. The *Environment Protection and Biodiversity Conservation Act 1999* applies to all vessels to the outer limits of the Australia's

Exclusive Economic Zone (within the Australian Whale Sanctuary) and also to Australian citizens, permanent residents and people on Australian vessels beyond the Exclusive Economic Zone (outside the Australian Whale Sanctuary). The *Environment Protection and Biodiversity Conservation Regulations 2000* provide that additional acts are regulated within the Australian Whale Sanctuary, including approaching whales in a vessel, swimming with whales, and feeding and touching whales.

Costs

14. 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.

Regulation Impact Statement

15. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

16. The Schedule may be amended from time to time in accordance with the provisions of Article V of the Convention. Article III (2) requires a three-quarter majority of the members voting at the Commission to amend the Schedule.

17. Any future amendments to the Schedule would have to be agreed to in accordance with the Convention and its Rules of Procedure and would be subject to Australia's domestic treaty process, including tabling and consideration by the Joint Standing Committee on Treaties.

18. There are no current proposals for the development of additional Protocols, which would require a Conference of Governments outside the normal Commission meetings. 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 any other means of communication.

Withdrawal or denunciation

19. 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.

20. Australia may withdraw from the Convention, and thereby from the Schedule which forms an integral part of the Convention, by giving notice to the Depository Government (the Government of the United States of America) on or before 1 January of any year. The withdrawal becomes effective as of 30 June of that year (Article XI).

Contact details

Cetacean Policy and Recovery Section
Marine Division
Department of the Environment and Heritage

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CONSULTATION

1. The Department of the Environment and Heritage convenes three consultative forums a year with non-government organisations to canvass views on Commission issues. The views expressed at the meetings are taken into account in developing Australia's position on the proposals to be considered by the Commission. This year the consultative forum elected representatives of two non-government organisations (Humane Society International and Project Jonah Australia) to participate as members of the Australian delegation at the 2006 annual meeting. The Department of the Environment and Heritage also consults with other Australian Government Departments, particularly the Department of Foreign Affairs and Trade regarding Australia's international commitment to whale conservation.

Whale Consultative Forum Meetings:

11 August 2005

Organisations Consulted:

Department of Foreign Affairs and Trade (DFAT), Humane Society International (HSI), Project Jonah, International Fund for Animal Welfare (IFAW), Whales and Dolphin Conservation Society (WDCS), World Society for the Protection of Animals (WSPA), Australian Conservation Foundation (ACF), Whale and Seal Foundation, Australian Whale Conservation Society, Australian Marine Conservation Society

20 January 2006

Organisations Consulted:

DFAT, HSI, Project Jonah, IFAW, WSPA, ACF, Whale and Seal Foundation, WDCS, Greenpeace

8 May 2006

DFAT, WDCS, WSPA, HSI, IFAW, Project Jonah, Greenpeace, Whale and Seal Foundation

2. The result of the consultative forums with non-government organisations regarding Australia's participation at this year's meeting of the IWC was to continue Australia's policy on the international protection of whales.

3. Following each annual meeting of the Commission, feedback from the delegation is provided to the consultative forum and interested non-government organisations, government departments, scientists and institutions. Feedback from IWC 58 was given at an NGO forum which was held on 15 August 2006.

4. The amendments resulting from the 2006 annual Commission meeting, to maintain the moratorium on commercial whaling, do not affect the States and Territories.

BACKGROUND INFORMATION

CURRENT STATUS LIST

Of the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946

The list of Contracting Governments (70) to the Convention is as follows (as at 7 July 2006):

Antigua & Barbuda	Argentina	Australia
Austria	Belgium	Belize
Benin	Brazil	Cambodia
Cameroon	Chile	People's Republic of China
Costa Rica	Côte d'Ivoire	Czech Republic
Denmark	Dominica	Finland
France	Gabon	The Gambia
Germany	Grenada	Guatemala
Republic of Guinea	Hungary	Iceland
India	Ireland	Israel
Italy	Japan	Kenya
Kiribati	Luxembourg	Republic of Korea
Mali	Republic of the Marshall Islands	Mauritania
Mexico	Monaco	Mongolia
Morocco	Nauru	Netherlands
New Zealand	Nicaragua	Norway
Oman	Republic of Palau	Panama
Peru	Portugal	Russian Federation
San Marino	St Kitts and Nevis	St Lucia
St Vincent & The Grenadines	Senegal	Slovak Republic
Solomon Islands	South Africa	Spain
Suriname	Sweden	Switzerland
Togo	Tuvalu	UK
USA		

The Amendments adopted in St Kitts and Nevis will enter into force on 4 October 2006 for the Parties that have not lodged an objection. As of 19 September 2006 Australia is not aware of any objections having been lodged with the IWC secretariat.