

**AMENDMENTS, DONE AT SHIMONOSEKI, JAPAN ON 24 MAY 2002,
TO THE SCHEDULE TO THE INTERNATIONAL CONVENTION FOR
THE REGULATION OF WHALING, DONE AT WASHINGTON ON
2 DECEMBER 1946**

Documents tabled on 27 August 2002:

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

Amendments, done at Shimonoseki, Japan on 24 May 2002, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946

NATIONAL INTEREST ANALYSIS

Proposed binding 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 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.
2. Should any Contracting Government lodge an objection, the amendment 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.
3. Australia does not propose to lodge an objection to these amendments, therefore no binding treaty action is required.

Date of proposed binding treaty action

4. The Commission notified Contracting Governments on 12 June 2002 of the amendments made at the 54th annual meeting held in Shimonoseki. If no objections are lodged, the amendments will come into force generally on 10 September 2002. If objections are lodged before 10 September 2002 the amendments will come into force for those countries that have not lodged an objection on 9 December 2002. The amendments will come into force for Australia, therefore, on 10 September 2002 in the former case or 9 December 2002 in the latter case.

Date of tabling of the proposed treaty action

5. 27 August 2002.

Summary of the purpose of the proposed treaty action and why it is in the national interest

6. The amendments to the Schedule to the Convention maintain the moratorium on commercial whaling, and renew quotas for aboriginal subsistence whaling in certain parts of the Northern Hemisphere. This is in the national interest because Australia is a strong opponent of commercial whaling, and has consistently recognised the needs of some subsistence cultures for continued access to whaling and whale products to meet demonstrated traditional, cultural and dietary needs.

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, and renew quotas for aboriginal subsistence whaling in certain parts of the Northern Hemisphere. They also insert an editorial footnote regarding the Indian Ocean Sanctuary.

8. The first set of 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 '2002/2003' for '2001/2002', and '2003' for '2002' in paragraphs 11 and 12 and Tables 1, 2 and 3 of the Schedule.

9. The second set of amendments arise from the need to review aboriginal subsistence whaling catch limits of baleen whales, which are set by paragraph 13. These limits apply to whale populations that do not occur in Australian waters. In two cases (North Pacific grey whales; Greenland minke whales), the Commission agreed by consensus to renew the existing quotas for a further five years, by substituting the dates '2003, 2004, 2005, 2006 and 2007' for '1998, 1999, 2000, 2001 and 2002'. The Commission increased one other aboriginal quota (St Vincent and the Grenadines humpback whales) by consensus – from two whales per year to twenty over the next five years (an average of four per year) – on the new condition that the hunt is conducted under appropriate legislation, and on the advice of the Scientific Committee. One sub-paragraph setting a catch limit (United States-Russian bowhead whales) was deleted, as the Commission did not agree to set a catch limit. Negotiations among IWC member States are continuing, with a view to establishing a new bowhead whale catch limit. This would be the subject of a separate schedule amendment.

10. 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.

11. 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 ban commercial whaling, but to permit limited hunting of whales by aboriginal subsistence cultures to meet demonstrated traditional, cultural and dietary needs.

Obligations

12. 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

13. The amendments to maintain zero catch limits for commercial whaling and to renew aboriginal subsistence whaling catch limits 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

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 and permit aboriginal whalers in some parts of the Northern Hemisphere to continue their hunts.

Consultation

15. 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. The views expressed at the meetings are taken into account in developing Australia's position on the proposals to be considered by the Commission. Following each annual meeting of the Commission, a report from the delegation is made available to non-government organisations, government departments, scientists and institutions. Representatives of two non-government organisations (Project Jonah and Humane Society International) participated as members of the Australian delegation at the 2002 annual meeting.

16. The amendments resulting from the 2002 annual Commission meeting, to maintain the moratorium on commercial whaling and renew aboriginal subsistence whaling catch limits, do not affect the States and Territories.

Regulatory Impact Statement

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

Future treaty action: amendments, protocols, annexes or other legally binding instruments

18. 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)).

19. 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.

20. 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

21. 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.

22. 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

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