

## THE INTERNATIONAL WHALING COMMISSION: ALL BARK, NO BITE

### Introduction

On June 21, 2010, the International Whaling Commission (“IWC”), with its stated goal as “provid[ing] for the proper conservation of whale stocks and ... orderly development of the whaling industry[.]”<sup>1</sup> “Int’lcommenced its annual meeting in Agadir, Morocco.<sup>2</sup> Among the most noteworthy agenda items was a discussion about ending the Commission’s twenty-five year ban on commercial whaling and allowing nations to resume such operations under strict regulation.<sup>3</sup> Predictably, the IWC, which is comprised of representatives from each of its eighty-eight member countries,<sup>4</sup> found it impossible to reach an agreement. Those nations whose economies have historically thrived due to whaling profits argued for the reinstatement of commercial whaling, while the non-whaling countries cited urgent conservation concerns as the reason for leaving the ban intact.<sup>5</sup> Unable to resolve these differences, the IWC took no action and decided to revisit the issue during its 2011 meeting.<sup>6</sup>

So, for the time being, it would appear that the earth’s whales are protected from the over-exploitation that has run rampant within the whaling industry since its start.<sup>7</sup> Unfortunately, things are not always as they appear. The unsettling truth is that it makes little difference whether the ban is lifted or remains in effect. Nations belonging to the IWC and who have pledged adherence to its regulations are presently hunting whales, despite the ban’s existence, with no plans to stop.<sup>8</sup> The most startling fact, perhaps, is that they are doing so legally. The International Convention and accompanying Schedule that govern the whaling industry and that mandated the creation of the IWC<sup>9</sup> contain gaping loopholes that allow these countries to whale without any legal repercussions whatsoever.

### The Commercial Whaling Industry’s Bloody History

Commercial whaling can be traced back to the twelfth century.<sup>10</sup> From the time of its inception to just over sixty years ago, it progressed, virtually unregulated.<sup>11</sup> Each whaling nation set its own catch quotas, with little or no regard to the catches of other whaling nations. Consequently, all large whale species experienced a drastic decline in their populations, with four becoming “severely endangered” and two “commercially extinct.”<sup>12</sup> One expert has commented that “the history of man’s depletion of one species of great whale after another is perhaps the most infamous example of human mismanagement of the earth’s natural resources.”<sup>13</sup>

### The Advent of the International Convention for the Regulation of Whaling

After centuries of uncontrolled commercial whaling, the disappearance of whale stocks finally appeared to catch the attention

of fifteen whaling nations in 1946, when they met to formulate new, cooperative whaling approaches that they hoped would save the industry.<sup>14</sup> To that end, they developed the International Convention for the Regulation of Whaling (“ICRW”), prescribing the manner in which whaling operations would be conducted from that point forward and by which each nation agreed to abide.<sup>15</sup> The ICRW provided for the creation of the IWC, and charged the Commission with determining the current condition and likely future of whale populations, developing and recommending sustainable catch limits, and incorporating amendments in the ICRW as needed.<sup>16</sup> At the time, it looked as though the ICRW would change the destructive trend of the whaling industry and save the whales from extinction.

## **A Powerless Commission**

Regrettably, the events of the last sixty-four years since the ICRW and IWC came into existence show that the ICRW was seriously flawed from the outset. Certain provisions within the ICRW render the IWC virtually powerless, making it impossible for the Commission to make any meaningful changes within the commercial whaling industry.

First off, before the ban on commercial whaling took effect, the ICRW required the IWC to study whale stocks and decide upon catch quotas each stock could support.<sup>17</sup> While this was a crucial step in revitalizing whale populations damaged from years of over-fishing, the ICRW stated that these quotas were merely “recommendations[,]” rather than binding guidelines.<sup>18</sup> Alas, these “recommendations” largely fell upon deaf ears. Between 1946 and 1986 when the ban was imposed, whaling nations belonging to the IWC repeatedly ignored the Commission’s scientifically-derived quotas and set quotas far exceeding the advised numbers.<sup>19</sup>

After the IWC prohibited all commercial whaling, a number of whaling nations looked for other means to sidestep the Commission’s authority, and they didn’t have to look very far. The ICRW includes a section that allows any IWC country to object to an amendment that has been passed by the Commission and incorporated within the ICRW.<sup>20</sup> If it does so according to the specified parameters, the amendment simply does not apply to that country.<sup>21</sup> Currently, both Iceland and Norway commercially whale under objections to the ban.<sup>22</sup>

At the same time, the ICRW contains an exception to the whaling prohibition that permits countries “to kill, take and treat whales for purposes of scientific research[.]”<sup>23</sup> Furthermore, the ICRW relinquishes all control over research-oriented whaling by allowing the country wishing to conduct such whaling to determine whether its own research proposal is meritorious, set its own quotas, and sell the profitable whale “leftovers” at market.<sup>24</sup> In typical form, the IWC exerts paper-thin authority over nations whaling in the name of science by requiring them to submit their research objectives to the Commission and then offering “recommendations” regarding whether the research should proceed.<sup>25</sup> Japan has been whaling under a self-granted scientific permit since 1987, despite the IWC’s repeated pleas for it to stop.<sup>26</sup>

## **A World Without Whales**

Large whales are apex predators,<sup>27</sup> which means they reside at the top of their food chain and are not, themselves, preyed upon. Their special location in the chain causes changes in their composition and size to ripple through the remainder of the chain, altering the population characteristics and interactions of the other animals in the ecosystem.<sup>28</sup> For instance, when an apex predator’s numbers decrease, naturally, its prey numbers increase. This can lead to an overabundance of what was once prey and substantially overburden the ecosystem, sometimes to the point of total collapse.<sup>29</sup> Although scientists are not yet aware of the full ecological effects of commercial whaling, they have observed marked changes in the oceanic ecosystem linked to the decline of whales<sup>30</sup> and warn of their danger.

## **Where Do We Go from Here?**

The ICRW and IWC were founded on two guiding principles: cooperation and sacrifice. It is clear, however, that greed and self-interest permeate the difficult issues surrounding commercial whaling and drive its continued existence. A number of nations find the economic prospects of whaling impossible to resist, despite knowing that if they continue to whale in the manner they are now, the extinction of whales and whaling is not far on the horizon. If these nations insist upon whaling, a whaling regime accommodating both economic and conservation interests must be developed, and fast. A simple change in mindset and attitude couldn’t hurt either. Absent prompt changes, these majestic creatures of the deep and the many benefits

they impart upon the environment and humans may soon be no more.

#### Footnotes

<sup>1</sup> Int'l Whaling Comm'n, *IWC Information*, INTERNATIONAL WHALING COMMISSION, <http://iwcoffice.org/commission/iwcmain.htm> (last updated Aug. 4, 2010).

<sup>2</sup> Arthur Max, *International Whaling Commission Puts Decision on Whaling Moratorium on Hold Another Year; Native Greenlanders Get Extended Whaling Rights*, L.A. TIMES BLOG, L.A. UNLEASHED (Jun. 25, 2010, 7:32 PM), <http://latimesblogs.latimes.com/unleashed/2010/06/international-whaling-commission-puts-decision-on-whaling-moratorium-on-hold-an-other-year-native-gre.html>.

<sup>3</sup> *Id.*

<sup>4</sup> International Whaling Commission, *supra* note 1.

<sup>5</sup> Max, *supra* note 2.

<sup>6</sup> *Id.*

<sup>7</sup> William C. Burns, *The International Whaling Commission and the Future of Cetaceans: Problems and Prospects*, 8 COLO. J. INT'L ENVTL. L. & POL'Y 31, 31-33 (1997).

<sup>8</sup> Int'l Whaling Comm'n, *Catch Limits & Catches Taken*, INTERNATIONAL WHALING COMMISSION, <http://www.iwcoffice.org/conservation/catches.htm> (last updated Jan. 9, 2009).

<sup>9</sup> International Convention for the Regulation of Whaling, Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72 [hereinafter ICRW].

<sup>10</sup> Burns, *supra* note 7, at 32.

<sup>11</sup> *Id.* at 31-33.

<sup>12</sup> *Id.* at 32-33.

<sup>13</sup> *Id.* at 31 (quoting SIMON LYSTER, INTERNATIONAL WILDLIFE LAW 17 (1985)).

<sup>14</sup> *Id.* at 33.

<sup>15</sup> ICRW, *supra* note 9.

<sup>16</sup> *Id.* at arts. 3-6.

<sup>17</sup> *Id.* at art. 4.

18 *Id.* at arts. 4, 6.

19 Burns, *supra* note 7, at 35-44.

20 ICRW, *supra* note 9, at art. 5, § 3.

21 *Id.*

22 Int'l Whaling Comm'n, *Catches Taken: Under Objection*, INTERNATIONAL WHALING COMMISSION,  
[http://www.iwcoffice.org/conservation/table\\_objection.htm](http://www.iwcoffice.org/conservation/table_objection.htm) (last updated Jan. 26, 2010).

23 ICRW, *supra* note 9, at art. 8, § 1.

24 *Id.* at art. 8.

25 Int'l Whaling Comm'n, *Scientific Permit Whaling*, INTERNATIONAL WHALING COMMISSION,  
<http://www.iwcoffice.org/conservation/permits.htm> (last updated Jun. 22, 2010).

26 *Id.*

27 Donald A. Croll et al., *Ecosystem Impact of the Decline of Large Whales in the North Pacific*, in WHALES, WHALING, AND  
OCEAN ECOSYSTEMS 200, 200 (James A. Estes et al. eds., 2006).

28 See *id.* at 200-10.

29 *Id.* at 200.

30 See *id.* at 200-10.

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