

## THE PEW WHALES COMMISSION IN CONTEXT

### TURNING THE PAGE: BRINGING WHALE CONSERVATION INTO THE 21<sup>ST</sup> CENTURY

Prepared by the Secretariat of the Pew Whales Commission, January, 2009

#### 1. Introduction

Created in 1949 pursuant to the entry into force of the 1946 International Convention for the Regulation of Whaling (ICRW)<sup>1</sup>, the International Whaling Commission (IWC)<sup>2</sup> will turn 60 in 2009. The moratorium on commercial whaling was adopted by the IWC 27 years ago, in 1982, and it has been in force since 1986 – nearly a quarter of a century. The controversy over commercial whaling stems back even further, to the Stockholm Environment Conference of 1972 where a call for a moratorium on commercial whaling was first aired.

It is thus a daunting challenge for anyone not familiar with the details and intricacies of whaling politics to fully understand why such a protracted battle has been fought over this single issue given the scale of other threats to the natural environment. Likewise, it is very difficult for anyone caught up in the minute details and fierce emotions of the whaling controversy to find the distance necessary to consider practical ways out of the current policy impasse whereby a moratorium exists in name only, with several countries continuing to hunt whales and sell them in the marketplace, including limited international trade. There are no international controls on the catch limits they assign themselves.

For these reasons the Pew Environment Group has assembled an international group of eminent persons - all committed to conservation but not directly involved (at least currently) in the politics of the IWC – to take a fresh look at the issue. They will come together in Lisbon, Portugal in February 2009, informed and assisted by the presence of several whaling debate insiders (both pro- and anti- whaling). The work of the Pew Commission will contribute to the IWC's ongoing discussions on the Future of the IWC.

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<sup>1</sup> <http://www.iwcoffice.org/commission/convention.htm>

<sup>2</sup> <http://www.iwcoffice.org>

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## 2. Japan's Attempt to 'Normalize' the IWC

In February 2007, the Government of Japan hosted a Conference on Normalization of the International Whaling Commission (IWC) in Tokyo.<sup>3</sup> The Conference was not an official meeting of the IWC, nor sanctioned by it. It was attended by representatives from 36 Governments and 20 observer organizations. With only a few exceptions the group of so-called like-minded countries - which favours the continuation of the current moratorium on commercial whaling and seeks to close the loophole which allows commercial whaling to continue under the guise of scientific research - did not attend.

The term 'normalization' was used for the first time by the delegation from Japan in March 2006 at a technical meeting of the IWC on the Revised Management Scheme.<sup>4</sup> It was meant to convey a return to the spirit of the 1946 International Convention for the Regulation of Whaling (ICRW). It was later the theme of a paper presented by Japan to the IWC's 58<sup>th</sup> Annual Meeting in St Kitts and Nevis in June 2006 and of a meeting hosted by Japan on the sidelines of the main IWC conference. The term also appeared in the 'St. Kitts and Nevis Declaration' - a document endorsed by a simple majority of the IWC member states present at the St. Kitts and Nevis meeting.

According to the Chair's Summary of the Normalization conference, the Japanese Fisheries Agency (JFA) declared the IWC to be dysfunctional for eight reasons:

1. Its alleged disregard for international law (ICRW and treaty interpretation);
2. Its alleged disregard for the principle of science-based policy and rule-making;
3. Its alleged exclusion of whales from the principle of sustainable use of resources;
4. Its alleged disrespect of cultural diversity related to food and ethics;
5. Its alleged increasing emotionalism concerning whales;
6. Its alleged institutionalized combative/confrontational discourse that discourages co-operation;

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<sup>3</sup> <http://www.iwcoffice.org/documents/commission/IWC59docs/59-7.pdf>

<sup>4</sup> See Document IWC/58/RMS  
<http://www.iwcoffice.org/documents/commission/future/SWGfuture/58-RMS-3.pdf>

7. Its alleged lack of good faith negotiations; and
8. Its alleged pressure on scientists which results in a lack of consensus scientific advice from the Scientific Committee.

Few would dispute that the IWC is passing through a difficult period in its history. However the reasons as described by the JFA above were clearly one-sided and over-simplified.

### 3. The Pew Whale Symposia

Despite the inevitably one-sided nature of the Tokyo Normalization Conference, that meeting nonetheless arrived at a few general conclusions no doubt shared by most IWC members. These were also reflected in the reports of the Pew Symposia held in New York in April 2007<sup>5</sup> and in Tokyo in January 2008<sup>6</sup>. Starting with the climate of “mutual distrust” which the Tokyo Normalization Conference rightly suggested was one source of the IWC’s difficulties, the Pew Symposia helped build the necessary bridges to ensure that the international whaling regime meets the goal of the conservation of whale populations in the 21<sup>st</sup> Century.

In trying to find a solution to the current impasse in the IWC, presumably all stakeholders would agree to seek “areas of commonality, compromise and letting others know what you want to begin the process of trust building”, as the Chair’s Summary of the Tokyo Normalization Conference put it. From its inception that has been one of the objectives of the Pew Whale Conservation Project. The broad and diverse participation in the Pew Symposia held in New York and Tokyo was intended to help facilitate this process, and these combined efforts have contributed to the process known as “the Future of the IWC”.<sup>7</sup>

Referring to “small signs that things are improving,” the Tokyo Normalization Conference Summary asked “but who should take the first big step to break the ice?” Though what constitutes ‘improvement’ would be open to interpretation, the New York and Tokyo Pew Symposia have, we hope, contributed to moving things forward. Some IWC Commissioners have described the Tokyo Pew Symposium as “the ice-

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<sup>5</sup> <http://www.pewwhales.org/whalesymposium/index.php>

<sup>6</sup> <http://www.pewwhales.org/tokyosymposium/index.html>

<sup>7</sup> See <http://www.iwcoffice.org/documents/commission/future/future.htm>

breaker” that allowed the “Future of the IWC” process to take off a month and a half later at an intersessional meeting of the IWC held in Heathrow, UK.<sup>8</sup>

The Chair’s Summary of the Tokyo Normalization Conference also noted the need to “consider looking at Governments rather than Commissioners to resolve the situation”. Despite their good work and unfailing commitment, it had been thought for some time that IWC Commissioners may have exhausted the limits of their negotiating possibilities. Taking precisely this concern into account, the New York and Tokyo Pew Symposia sought the input of a larger constituency.<sup>9</sup>

It is also with this concern in mind that the Pew Environment Group is organizing the meeting of the Pew Whales Commission made up of a dozen eminent persons from the six continents including several former Foreign Affairs and Environment Ministers.

#### **4. The Gordian knot**

The current state of the controversy on whale conservation, at its most simple, can be summarized as follows:

There is a significant group of countries, currently holding a majority of the votes at the IWC, who supports the continuation of the moratorium on commercial whaling as a necessary and legitimate decision under international law, entirely compatible with the principle of science-based policy and rule making. This group of countries believes that conservation and management of whales must take account of all uses, including non-lethal uses (such as whale watching) which may be fundamentally compromised by lethal ones. It must also take account of all potential impacts on whale populations, not just directed kills. According to this school of thought, the potential impacts of climate change, changes in marine ecosystems due to overfishing, noise pollution and ship strikes due to the increase of commercial, military and recreational maritime activities, fishing gear entanglement, the concentration of persistent organic pollutants

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<sup>8</sup> <http://www.iwcoffice.org/meetings/intersession.htm>

<sup>9</sup> Lists of participants to the Pew New York and Tokyo Symposia are available respectively at <http://www.pewwhales.org/whalesymposium/agenda.php> and <http://www.pewwhales.org/tokyosymposium/twsparticipantlist.pdf>. 67 people of 29 different nationalities participated in New York. 100 people of 28 different nationalities participated in Tokyo.

and heavy metals in the food chain, and other such threats compound the impacts from hunting.

Opposed to this view, the group of countries opposing the continuation of the moratorium on commercial whaling (currently in the minority within the IWC) argues that the moratorium by definition was meant to be a temporary measure and that whaling should be allowed to resume because certain whale populations are showing signs of recovery, and others according to them are not endangered. They also say that commercial whaling and whale watching are not mutually exclusive.

As noted previously, certain countries have circumvented the moratorium for many years in various ways, including reservations to the moratorium (ICRW Art. V) and the development of lethal whale research programs (ICRW Art. VIII). The situation whereby the catch of whales is taking place with no international control undermines the authority of the IWC, and it is likely to continue unless something is done about it.

The question of whale conservation raises many ethical issues, including whether whales should be primarily considered as food, or whether they have special qualities (including intelligence, social behaviour, etc.) that give them an intrinsic value to be cherished and preserved, above any economic considerations. Does any group of countries have a right to impose its values on others, especially with regard to culinary habits? Who, if anyone, has a right to ownership of whales, the majority of which live in international or transboundary waters, and to kill those whales, removing them from use by others such as through whale-watching? What level of resilience should the IWC strive for? Can we at any given point consider that a species or population has sufficiently recovered from past overexploitation, bearing in mind that it is (at least in most cases) impossible to determine if and when whale populations have recovered to their original, pre-exploitation levels? What about fairness and double-standards which some believe are being applied? For example, some consider that differentiating aboriginal subsistence whaling from commercial whaling reflects a patronizing or even a racist attitude while others say that, on the contrary, this is motivated by a desire to avoid discrimination and to respect indigenous peoples. And what about animal welfare considerations? And inter-generational rights and obligations, including the price that future generations will pay for mismanagement by past and present generations? These are all valid questions which can find quite opposite answers, depending on which side of the fence you stand, hence the question: can and should the fence be eliminated?

At the cross-road of ethics and fisheries management also lies the question of whether it would be acceptable to cull whales in order to attempt to increase fisheries yields. For example, in a memorandum informally distributed in the margins of the 60<sup>th</sup> Annual Meeting of the IWC in Santiago, Chile, the Japanese delegation argued for “the possible reduction of cetacean populations as part of ecosystem management aimed at increasing yields from other fisheries”.<sup>10</sup> However, more recently, the 4<sup>th</sup> World Conservation Congress of the International Union for the Conservation of Nature (IUCN) held in Barcelona in October 2008 “acknowledged that the great whales play no significant role in the current crisis affecting global fisheries.”<sup>11</sup>

Whether the right to hunt whales or the obligation to protect them will prevail in the end, and how the balance will be drawn, are still open questions. What is clear though is that a solution will not be achieved by imposition but only by persuasion.

## 5. Normalizing vs. Modernizing

60 years since the IWC was set up, and knowing what we currently know about the threats to the global environment (and marine ecosystems in particular), we should seek consensus on the fact that there is serious risk in unfettered adherence to an agreement adopted in 1946 before these threats had developed or had been identified. The conservation of whales is in everyone’s best interests, and the international community must look forward to the 21<sup>st</sup> century, not backwards to the 20<sup>th</sup>. It is time to turn the page and focus on modern whale conservation.

Turning the page and modernizing the IWC means that contemporary principles can be borrowed from other conventions whose aims are to ensure the conservation of marine biodiversity and promote healthy ecosystems, such as:

- Application of the precautionary approach;
- Application of an integrated, ecosystem-based approach to biodiversity conservation (as opposed to a narrower ecosystem-based management to fisheries or an even narrower species-based approach);

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<sup>10</sup> Working group Memorandum – “Preparing a safety net”.

<sup>11</sup> [http://intranet.iucn.org/webfiles/doc/IUCNPolicy/Resolutions/2008\\_WCC\\_4/DRAFT\\_UNEDITED/037\\_r ev1\\_draft\\_relationship\\_between\\_fisheries\\_and\\_great\\_whales.pdf](http://intranet.iucn.org/webfiles/doc/IUCNPolicy/Resolutions/2008_WCC_4/DRAFT_UNEDITED/037_r ev1_draft_relationship_between_fisheries_and_great_whales.pdf)

- Establishment of a body to review compliance with new powers of enforcement, including a dispute settlement mechanism in line with modern international environmental law;
- Avoidance of reservations to new rules and provisions and elimination of the privilege to 'opt out' from any such rules and provisions when adhering to the regime (in line with UNCLOS and the majority of modern MEAs);
- Recognition and regulation of non-lethal use of cetaceans as a legitimate and optimum use of the whale resources;
- Good faith negotiation on the future of the provision in ICRW Article VIII whereby restrictions to whaling may currently be undermined by the unilateral issuance of special permits.

## 6. Conclusion

IWC member States should be congratulated for speaking to each other in the last 20 months, as opposed to speaking at each other as they have done in the last 20 years.

There is however still enough power at each end of the pro/anti-whaling spectrum to block change. Unless each "side" makes an effort to show respect for the position of the other, more and more whales are likely to be taken each year in the absence of any international agreement, and concern will continue to increase.