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## Backgrounder on the International Efforts for the Conservation of Whales

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Commissioned by  
the Pew Charitable Trusts

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The Varda Group, for the Pew Charitable Trusts

## TABLE OF CONTENTS

1.	INTRODUCTION – The Paradoxes of the Anti-Whaling Campaign .....	4
	Paradox One.....	4
	Paradox Two.....	4
	Paradox Three .....	4
	Paradox Four .....	5
2.	Status and history of the international whaling issue .....	5
	Mature campaign .....	5
	Origins of the IWC .....	5
	60-year anniversary .....	5
	No changes in 50 years .....	6
	Schedule.....	6
	1972 Stockholm Conference.....	6
	The Crux of the Controversy.....	7
	New Management Procedure .....	7
	Pirate whaling destabilised the IWC .....	7
	Seychelles leadership.....	8
	NGO IWC project.....	8
	Major progress.....	8
	Changing positions .....	9
	Growing momentum .....	9
	Good science.....	9
	CITES listing .....	9
	Moratorium agreed .....	10
	1990 Review of the Moratorium.....	10
	Shrinking whalers club.....	11
	Further quota reduction .....	11
	Zero Catch NW Pacific sperm whale catch limit .....	12
	Increasing Uncontrolled Norwegian Whaling .....	12
	Scientific whaling loophole.....	13

## Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

Scientific whaling begins.....	13
Institute for Cetacean Research .....	14
Revised Management Procedure (RMP) .....	14
Divided opinion over the RMP .....	15
Southern Ocean Sanctuary .....	16
Blockage of the Revised Management Scheme .....	17
Ten year deadlock and the Irish Proposal .....	17
Japanese “vote buying” campaign .....	18
Japan’s immediate agenda.....	20
Environmentally workable RMS.....	20
Stalemate.....	21
The ‘ <i>whales eat fish</i> ’ controversy.....	22
Aboriginal subsistence whaling.....	23
“Small-type coastal whaling” .....	24
DNA sampling.....	25
“External” or “environmental” threats. ....	25
Whale watching .....	26
<b>3. Conclusions .....</b>	<b>26</b>

## Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

# 1. INTRODUCTION – The Paradoxes of the Anti-Whaling Campaign

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The history of the campaign for the protection of whales is one of paradoxes.

### Paradox One

*On the one hand* whales have been, and continue to be, one of the most powerful and visible icons of the environmental movement, with considerable resources dedicated to their protection by a multitude of governments, scientific institutions and non-governmental advocacy organisations.

*Nevertheless*, despite more than 30 years of public whale conservation campaigns, commercial whaling has never stopped, and it is now increasing without international control under the guise of “scientific whaling” allowed by the loophole provided by Article VIII of the 1946 International Convention on the Regulation of Whaling (ICRW), and under formal “objection” to the moratorium decision. In other words, we won but we haven’t won. While commercial whaling was brought under reasonable control in the 1980s, commercial / scientific whaling is increasing dangerously with no international control at all.

### Paradox Two

The public in the broadest sense largely believes that whaling is an outlawed activity of the past (no one under the age of 25 has ever experienced a time when commercial whaling was legal). In an age where pressing environmental issues such as climate change, deforestation, and the destruction of marine ecosystems take up the lion’s share of media coverage and public and governments concern, people would prefer to believe that the whaling problem has been solved. The public cares deeply about whales, but do not have the wherewithal to force a solution to the current impasse.

### Paradox Three

With the IWC’s adoption of landmark decisions such as the commercial whaling moratorium in 1982 and the creation of important whale sanctuaries, and with the subsequent reduction of recorded<sup>2</sup> catches of whales from 32,000 in 1975 to around 1,300 in 2005, the whale conservation movement was a success story. But Japanese and Norwegian officials are now arguing that as predators, cetaceans must be culled to conserve fisheries. While there is no scientific justification for such a position, many have chosen to scapegoat the whales in order to carry on with unsustainable fishing practices. If this view is accepted by the international community it is likely to be expanded to other marine predators such as seals and seabirds, with profound ecological consequences

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<sup>2</sup> Unreported and under-reported catches would make this figure higher.

# Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

for ocean ecosystems worldwide. So again, we won the battle but we could still lose the war.

## **Paradox Four**

The international community is concerned about a full array of environmental threats to cetaceans, such as climate change, the interaction with fisheries, underwater ocean noise (from seismic testing, shipping, the operation of sonar, and military operations), pollution (particularly from heavy metals and organochlorine compounds), ship strikes, and coastal habitat destruction. Yet because of the more acute threat to whales from hunting, vast resources are invested in trying to maintain the commercial whaling moratorium. The paradox is that although whales are increasingly endangered by non-hunting threats, the conservation community must continue to expend the bulk of its resources on an issue it theoretically won 25 years ago.

## **2. Status and history of the international whaling issue**

### **Mature campaign**

The international campaign against commercial whaling is a very mature campaign, and understanding what has happened in the past, and what has been tried before, is essential in understanding possible approaches for the future.

### **Origins of the IWC**

Whaling in the modern age is regulated by the 1946<sup>3</sup> International Convention for the Regulation of Whaling (ICRW). This treaty created the International Whaling Commission (IWC<sup>4</sup>), which was established in 1949 in accordance with Article III when the ICRW entered into force. The Commission, which now has 72 member states, meets annually in Plenary session, preceded by meetings of its Scientific Committee and a number of sub-committees and *ad hoc* working groups.

### **60-year anniversary**

The present *whaling regime* has thus reached 60 years of age. As a result, our collective interest in helping to resolve the issue of continued whaling is timely. 60 years represent nearly three generations of both human beings and great whales. These 60 years have been plagued with considerable controversies and failures by the members of the IWC in trying to “*establish a system of international regulation for the whale fisheries to ensure proper and effective conservation and development of whale stocks*”<sup>5</sup>

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<sup>3</sup> <http://www.iwcoffice.org/commission/convention.htm#convention>

<sup>4</sup> <http://www.iwcoffice.org/>

<sup>5</sup> Preambular paragraph 6 of the 1946 ICRW

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

#### No changes in 50 years

Ten years after the ICRW was signed, in November 1956 an additional Protocol was adopted, extending the application of the Convention to helicopters and other aircraft, and providing for methods of inspection in the Schedule of the Convention.<sup>6</sup> Since that time, in the remaining fifty years there has been only one serious attempt to negotiate a revision of the ICRW; this occurred in the late 1970s and arose from concurrent developments in the Law of the Sea and other international and national agreements. A plenipotentiary conference was proposed but never took place for fear it would be impossible to achieve the necessary consensus on a revised text. Subsequently there has been little serious discussion about amending the Convention for the same reason.

#### Schedule

Discussion at the annual meetings of the IWC is limited to the *Schedule* to the Convention, with little if any discussion about the Convention itself. The *Schedule* is a set of rules for the conduct of whaling, setting out annual catch limits and other management measures such as the classification of stocks, supervision and control measures, information and reporting, and so forth.<sup>7</sup> The moratorium on commercial whaling (*Schedule Article 10(e)* adopted in 1982, effective as of 1986), as well as the *whale sanctuaries* established in 1979 (Indian Ocean - *Schedule Article 7(a)*) and 1994 (Southern Ocean - *Schedule Article 7(b)*) were adopted as amendments to the *Schedule*, with the requisite three quarters majority support in accordance with Article III (2).

#### 1972 Stockholm Conference

The profile of the whaling issue (and consequently of the IWC) increased rapidly in the 1970s pursuant to the Final Declaration of the 1972 UN Stockholm Conference on the Human Environment resolution calling for a 10-year worldwide moratorium on commercial whaling. A grassroots whale conservation movement arose thereafter, with origins on the West Coast of North America where the annual migration of Gray and the presence of other whale species visible from shore provided the public and media with a direct emotional connection to the issue. In 1972 and 1973, the IWC discussed the moratorium on commercial whaling, tabled by the US at the time as a proposed *Schedule* amendment, but was unable to come to agreement. Whaling countries in particular argued that it would represent a breach of Article V (2) of the ICRW:

*“These amendments of the Schedule (a) shall be such as are necessary to carry out the objectives and purposes of this Convention and to provide for the conservation, development, and optimum utilization of the whale resources; (b)*

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<sup>6</sup> <http://www.iwcoffice.org/commission/convention.htm#protocol>

<sup>7</sup> <http://www.iwcoffice.org/commission/schedule.htm>

## Background on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

*shall be based on scientific findings; (c) shall not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory or ship or land station or to any group of factory ships or land stations; and (d) shall take into consideration the interests of the consumers of whale products and the whaling industry.”* (Article V (2), ICRW, 1946)

#### The Crux of the Controversy

To this day, the commercial whaling controversy is centred on the compatibility of a moratorium and any significant restrictive measure beyond quota allocations (such as *sanctuaries*) with Article V (2). The *like-minded countries* maintain that a moratorium is based on scientific findings (including the uncertainties of science, as per the *precautionary approach*) and that it is a measure necessary to provide in the long run for the conservation, development, and optimum utilization of whale resources. Whaling countries led by Japan argue that the moratoria (and sanctuaries) are incompatible with Article V (2). Repeated threats by Japan over the years to walk out of the IWC were based on their interpretation of Article V (2) (although these threats never materialised.)<sup>8</sup>

#### New Management Procedure

In 1975 the IWC adopted a “New Management Procedure” that was meant to address the failures of previous management methods to protect whale stocks from over-hunting and depletion. But the NMP soon showed itself to be unreliable and difficult to implement and exploited whale stocks continued to decline. Members of the Scientific Committee began to call for a moratorium on further whaling to buy time to improve the scientific basis of management, and *like-minded* member countries became increasingly empowered by environmental organisations, setting the stage for the adoption of the moratorium. In 1979-1980 IWC geopolitics changed dramatically for three main reasons:

#### Pirate whaling destabilised the IWC

1. Environmental organisations had documented that Japanese corporations were behind high seas pirate whaling operations whose whale meat production was transferred on Japanese freighters at sea or in remote harbours quasi-clandestinely<sup>9</sup>. This was revealed publicly only days before the 1979 meeting of the IWC was due to begin in London,

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<sup>8</sup> Iceland did leave the IWC in 1992 in an attempt to form a regional whale management body, but re-joined in 2002 (See also Footnote 10).

<sup>9</sup> Two combined factory ships and catchers, the *Sierra* and the *Tonna*, flying flags of convenience were documented in the Atlantic, including footage taken on board the *Sierra* showing the catch of endangered humpback and other whale species, and the transfer of its whale meat cargo in the Spanish port of Las Palmas, Canary Islands. *The London Observer*, June 1979, and “*Outlaw Whalers*,” 1979 published by *Monitor International*.

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

where for the first time in several years a moratorium on commercial whaling was being proposed again as well as the creation of a sanctuary in the Indian Ocean. Destabilised, and in need of ways to plead that it was acting in good faith and that it would bring its private sector under control, Japan hastily responded by announcing an embargo on whale meat imports from non-member countries. As a result, no less hastily, several whaling countries that had never been members of the IWC joined in order to obtain a catch quota which would allow them to continue to sell their whale meat to Japan. Initially, this move brought additional pro-whaling votes into the IWC.

#### Seychelles leadership

2. Also from 1979 onward, the government of the Seychelles joined the IWC with an active (some would say almost militant) brief to promote the protection of whales. In the two preceding years, the government of Panama had also been a strong conservation voice in the IWC, but was concerned about Japan's capacity to damage its economy which was almost entirely dependent on shipping.<sup>10</sup> The Seychelles' entry into the IWC (as a result of the President's keen personal interest) caught Japan and its allies by surprise; within a short time, however, it was at the receiving end of considerable Japanese economic and diplomatic pressure to change position and delegation. The Seychelles refused and played a leading role on the whaling issue for several years, enhancing its public profile worldwide as a conservation-minded country.

#### NGO IWC project

3. A number of environmental and conservation organisations, including WWF-International and Greenpeace began working more closely together, in an effort to find a three-quarters majority in favour of the moratorium. They not only encouraged IWC member states to become more active but also encouraged others to join given that whales belong to the global commons. (As has been well documented, Japan later perverted this tactic for its own purposes, see Page 18 below). In 1980 after the moratorium was again blocked by the whalers' 1/4 blocking vote, the two organisations set up a joint *IWC project* as the political arm of the international whale campaign; IFAW also became involved. The IWC project, which ran until 1989, involved on the one hand supporting pro-conservation science to be heard at the IWC's Scientific Committee and on the other encouraging countries with no vested interest in whaling to join the IWC in order to break Japan's 1/4 blocking minority.

**Major** A number of *like-minded* countries and a number of NGOs that were increasingly becoming global in scope and reach began to work more closely

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<sup>10</sup> In 1980 Panama left the IWC.

## Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

**progress** together. Within a couple of years the Indian Ocean whale sanctuary had been declared, pelagic (high seas) whaling with the exception of minke whales was banned (in a surprise move that divided the “whaling camp” isolating Japan and the USSR), and a worldwide moratorium on sperm whaling was adopted. But a complete moratorium on all commercial whaling remained elusive.

**Changing positions** By the time of the 1981 meeting, there was a noticeable shift in the composition of the IWC and political momentum was clearly building in favour of the moratorium. The NGO IWC project also targeted countries with a traditionally pro-whaling position. Already in 1977, environmentalists had successfully shifted the position of Australia, until then a whaling country. In 1981, Canada – a founding member of the IWC and a whaling country until 1971 – chose to leave the Commission rather than face the consequences at home of the Canadian fisheries administration’s support for whaling. By 1982 Greenpeace had managed to shift Spain’s position, a whaling country in the midst of negotiating its entry into the European Community.

**Growing momentum** Between 1980 and 1982 a growing number of countries joined the IWC, prompted in part by the growing public support for the protection of whales. NGOs successfully kept the issue in the public spotlight through at-sea expeditions, reports such as the annual “*Outlaw Whalers*” containing the findings of investigators from around the world documenting the violation of IWC rules and other public communication tools.

**Good science** By 1982 there was a solid scientific case for ending commercial whaling on most of the whale populations that were being hunted at the time. This included in many cases compelling evidence of continued population declines or collapse and in others enough uncertainty to invoke the benefit of the doubt (the expression *precautionary approach* was not in use at that time, but the whaling issue by and large was a precursor test-case of the *Precautionary Principle*<sup>11</sup>). In the years preceding the 1982 decision, the IWC had been forced to classify one population after another as Protection Stocks and thus to adopt “zero quotas” in the light of emerging scientific evidence, giving a clear signal that the New Management Procedure it had adopted less than ten years before was not working, and that the IWC was failing in its mission to conserve and to secure the “*optimum utilization*” of the world’s whale populations.

**CITES listing** Many national whaling operations established in the 1960s and 1970s (e.g. those of Brazil, Chile, Peru, and Spain) were intended almost exclusively to

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<sup>11</sup> See Holt, S.J. 2005. The Notion of Sustainability. In D.M. Lavigne (ed.). *Gaining Ground: In Pursuit of Ecological Sustainability*. IFAW, Hyannis, MA and University of Limerick, Limerick, Ireland, 2006.

## Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

provide whale meat for the Japanese market. The gradual closure of the legal international trade in whale products through decisions of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) therefore made a significant contribution to the reduction and elimination of whaling operations around the world in keeping with the drive for a global moratorium. In 1981, the CITES Parties listed fin, sei and sperm whales on the Convention's Appendix 1, prohibiting international trade in products from these species despite Japanese objections. In 1983 CITES added Bryde's, bottlenose, beaked, pygmy right, and minke whales to Appendix 1, the latter effective as of 1986 when the moratorium would enter into force.

CITES Parties have also since passed resolutions, most recently in 2000, effectively affirming the IWC's primacy in the whaling issue and the necessity therefore for CITES actions regarding whale species to be in keeping with IWC decisions. There is controversy at every CITES Conference of Parties (which convenes every three years) regarding the listing of certain whale species on Appendix 1, but so far Japanese and Norwegian proposals to "down-list" minke and other species have failed as have the Japanese-led attempts to break the CITES-IWC relationship.<sup>12</sup>

### Moratorium agreed

It was in this context that the IWC voted in favour of an indefinite moratorium on commercial whaling at its annual meeting in July 1982. Despite the political momentum that had been created, and the scientific evidence supporting the moratorium call, the vote was narrow. Before the vote took place, in a last ditch effort to tip the balance by raising the spectre of an imminent IWC collapse (opening the way to uncontrolled whaling), Japan warned that it would leave the IWC if the vote passed. When the vote was called, the Japanese delegation even stood up and filed out of the room, leaving the Head of Delegation alone to cast his vote. But they remained members of the IWC.

### 1990 Review of the Moratorium

The moratorium established an indefinite pause in commercial whaling effective three years later (by the start of the 1985-86 pelagic season in Antarctica, and in 1986 for coastal whaling). In accordance with the terms of the moratorium decision, there was to be, by 1990 at the latest "*a comprehensive assessment of the effects of this decision on whale stocks and consider[ation of] modification of this provision and the establishment of other catch limits.*" There was no commitment for the moratorium to end in 1990, although the whaling countries repeatedly argue to the contrary. The moratorium was thus locked into place for several years, and some believed that the whaling industry would fade away, with investments diverted elsewhere. The Japanese

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<sup>12</sup> The 14<sup>th</sup> Conference of the Parties to CITES will take place in The Hague 3-15 June 2007, the week immediately after the 59<sup>th</sup> Annual Meeting of the IWC in Anchorage (28-31 May, 2007).

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

scientific whaling programme was thus an ingenious strategic move to keep the whaling industry alive until such time as the moratorium could be lifted.

**TABLE 1:** Recorded number of Whales killed from the beginning of the whaling campaign to the present day:

1975:	32,000
1980:	16,000
1985:	8,000
1990:	less than 1,000
1994:	731
2000:	1,015
2004:	1,324
2005:	1921

#### Shrinking whalers club

Most whaling countries did abandon whaling completely after the moratorium entered into effect: whereas there were nine whaling country members of the IWC in 1982 (Brazil, Chile, Iceland, Japan, Korea, Peru, Norway, Spain and the USSR), there are only three now: Japan, Norway and Iceland. (A suspiciously high number of whales are also caught as 'bycatch' in South Korea, but there has been no official Korean position taken to allow a resumption of whaling.) In 1982, Japan, Peru, Norway and the USSR lodged objections to the moratorium rendering it not binding on them; Iceland did not (pursuant to an Icelandic Parliament decision<sup>13</sup>).

#### Further quota reduction

Pursuant to the adoption of the moratorium and before its entry into force in 1986-87, joint efforts by NGOs and *like-minded* countries focused on further reducing quotas and encouraging the withdrawal of objections to the moratorium. Through diplomatic pressure, Peru withdrew its objection and today participates in the IWC as a *like-minded* (conservation) country.

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<sup>13</sup> In 1992, Iceland withdrew from the IWC in Glasgow. Its Fisheries Minister, together with his colleagues in Norway, Greenland and the Faroe Islands, had formed in 1990 the North Atlantic Marine Mammal Commission (NAMMCO) as an attempt to establish an alternative, regional regime for the management of whales. NAMMCO still exists but once Norway (one of only two sovereign state members; the other members being Greenland and the Faroe Islands, with Russia and Japan attending as observers) decided to continue to work within the IWC rather than to withdraw from it, Iceland was left isolated and was never able to pursue this challenge to the IWC's authority. In 2002, at a special meeting of the IWC held in Cambridge it was agreed that Iceland could rejoin the IWC with a retroactive objection to the moratorium, notwithstanding the fact that in 1982, it had not filed any objection, thereby opening a dangerous precedent.

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

#### Zero Catch NW Pacific sperm whale catch limit

In 1984, one year before the moratorium was due to enter into force, the IWC set zero catch limits for North West Pacific sperm whales, hundreds of which were being taken by Japanese hunters. Japan objected to that decision, and despite hopes from US NGOs, the US Government did not apply fisheries sanctions on Japan when the first whale was killed in violation of the zero catch quota, thus reinforcing Japan's resolve to continue to defy the moratorium.<sup>14</sup> A dozen NGOs sued the US Government for not applying sanctions; the case lasted for two years but was finally lost in the Supreme Court. In the meantime, Japan withdrew its objection to the moratorium with effect from the 1987/1988 pelagic and 1988 coastal whaling seasons in exchange for a promise from the US Administration that economic sanctions would not be applied against Japanese fishing interests even if Japan were to continue sperm whaling for a certain number of years despite the IWC decision.

#### Increasing Uncontrolled Norwegian Whaling

The catch quota for the North East Atlantic minke whale population hunted by Norway was reduced considerably in 1983 and in 1985, based on a recommendation by the majority of the IWC Scientific Committee. That population was classified as a Protection Stock with a zero catch limit, but Norway objected and continued commercial whaling until 1987, when it launched a scientific whaling programme (1988-1992) under which a small number of minke whales were taken. In 1993 Norway resumed commercial minke whaling under its objection to the moratorium and has steadily increased its self-allocated catch quota, which for the first time in 2006 surpassed 1,000 (the quota was 1052 although actual catches did not surpass 546). Together with Japan, Norway remains the most forceful opponent of the moratorium; to Norwegian authorities, whaling (whale culling) is seen as a means to manage fisheries resources.

In May 2004 the Norwegian Parliament called for whale catches to be increased dramatically, even tripled, and for catches of other species under scientific permit to be considered. Norwegian whaling has been promoted aggressively in the Norwegian Parliament by a small fractional party called the "Kystpartiet" – the Coastal Party, self-defined as a '*value-conservative party where people matter*' and run by a populist leader, Steinar Bastesen. A whaler himself, Bastesen was strongly in favour of whaling, and was often seen sporting a vest made of either seal or whale skin while debating political issues in the halls of the Norwegian parliament, the Storting. In the Norwegian General Election in 2005, the Coastal Party did not get enough votes to win a single seat<sup>15</sup>. Nonetheless, in December 2005 the Government announced that it

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<sup>14</sup> Under US legislation, the US Administration is entitled to apply fisheries sanction on countries violating agreements adopted under the IWC.

<sup>15</sup> They are nevertheless still represented in a number of municipalities along the coast.

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

was raising the catch level to 1,052 whales, the highest in more than 20 years, including an expansion of the hunt into the international waters around Jan Mayen, also for the first time since the 1980s. The Fisheries Minister was quoted as saying, “The quota for 2006 is a step on the road towards an ecosystem-based regulation of the whale hunt” (Reuters, 22.12.2005). The quota for 2007 has been set again at 1052, with a redistribution to give 30% to the coastal areas in the hope that this time actual catches will be closer to this quota.

#### Scientific whaling loophole

Since the coming into force of the moratorium, and particularly since the controversy over Japanese sperm whaling and US sanctions, the whaling issue has been dominated by the scientific whaling controversy. In accordance with Article VIII (1) of the ICRW of 1946:

*Notwithstanding anything contained in this Convention any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit, and the killing, taking, and treating of whales in accordance with the provisions of this Article shall be exempt from the operation of this Convention. Each Contracting Government shall report at once to the Commission all such authorizations which it has granted. Each Contracting Government may at any time revoke any such special permit which it has granted. (ICRW, 1946, Article VIII (1))*

Traditionally this provision was used to catch single specimens for natural history museums. During the 1976-77 season, Japan began using the research provision to circumvent IWC catch restrictions by killing several hundred Brydes' whales in the Southern Indian ocean.

#### Scientific whaling begins

When the moratorium entered into force, Iceland and South Korea were the first to take advantage of this loophole to continue whaling, and the *like-minded* countries' response was slow, in part because the right to set unilateral “scientific” whaling operations is clearly recognized in Article VIII. With Japan's announcement of a long-term “research” programme in the Antarctic beginning in the 1987/88 pelagic whaling season, a major political campaign was launched to secure as much IWC opposition as possible.

The 1987 Annual Meeting agreed an “enabling” resolution, so called because it laid out the terms under which the IWC was then enabled to adopt specific resolutions against the lethal components of the individual scientific whaling programmes (the Japanese programme in particular also involved non-lethal research and this aspect was encouraged). Such resolutions were adopted annually thereafter. In 1994, the IWC adopted another major resolution calling, *inter alia*, for a trade ban on scientific whaling products and for there to be no

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

scientific whaling in IWC-established sanctuaries (this being the same year that the IWC created the Southern Ocean Sanctuary). The multitude of IWC resolutions calling on Iceland, South Korea and Japan to refrain from issuing scientific permits passed virtually every year by simple majority, and had little direct effect on the countries concerned, being merely non-binding recommendations. But their existence legitimised other, more effective actions (bilateral diplomatic pressure, mostly from the EU and US towards Iceland and Korea). Both Iceland and Korea ceased their scientific whaling after a few years.

#### Institute for Cetacean Research

The Japanese government created its Institute for Cetacean Research (ICR) to conduct “scientific” whaling on a long-term basis. The primary goal of the “scientific” whaling programme is widely thought to be *market distortion through subsidies*: the maintenance of employment and *know-how*, whaling equipment including fleets, and an otherwise shrinking domestic market (demand) for whale meat. The other goal is for Japan to make its own case against the moratorium and for a resumption of commercial whaling at profitable levels, particularly in Antarctica. The ICR has more recently been the source of the “whales-eat-fish” argument currently being used by Japan to justify its whaling programme (see page 22, below).

#### Revised Management Procedure (RMP)

After the moratorium came into force (1985/86) the IWC’s Scientific Committee embarked on a major review of the status of whale stocks worldwide, called the Comprehensive Assessment of Whale Stocks. As part of that effort, it was agreed that the scientists should look into improving the basis for the management of any future whaling, given that one of the main justifications for the moratorium decision had been, for most of the governments that supported it, the failure of the NMP and previous management measures to protect whale stocks from over-exploitation. A competitive process was launched at this time within the Scientific Committee, with five scientists/ groups of scientists developing different management procedures that had to take into account the three management objectives that had been identified by the Commission. These were: (a) stability of catches over time, (b) minimizing the risk of depletion, (c) providing the highest long term yield.

Inevitably there was a difference of opinion among Commission members as to where the balance should lie among these three, somewhat contradictory, objectives, but the majority (conservation-minded) was able to direct the scientists to give greatest weight to objective (b) – minimizing the risk of depletion. In 1991 a majority in the Scientific Committee proposed to the Commission as the “best” of the five the procedure developed by one of the conservation-minded scientists, Justin Cooke, who has been representing the IUCN at the IWC and its Scientific Committee for a considerable number of

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

years. From that point on it became the “core” procedure upon which all further RMP/RMS work has been based. In a key 1994 resolution, the IWC “accepted” that the precise specification of the RMP given in an Annex of that year’s Scientific Committee report “completes the main scientific component in the development of a Revised Management Scheme for commercial baleen whaling;” the resolution also noted that “the specification should not be modified, reconfigured or adjusted unless expressly instructed by the Commission.”<sup>16</sup>

The RMP is made up of a set of rules for calculating catch limits for baleen whales, with a “tuning level” which determines the size of the whale population as a fraction of its natural size after 100 years of operation of the RMP (assuming it works as intended). A tuning level of .72 (as chosen by the Commission, the most conservative of the three options proposed to it by the Scientific Committee) corresponds to a population of 72% the natural size. The lower the tuning level the higher the catch may be. The 1994 resolution reaffirmed that the RMP should not be implemented until “*all aspects of the Revised Management Scheme (RMS) are incorporated into the Schedule*”. The RMS, of which the RMP forms an integral part, is being developed as a set of rules for operating commercial whaling including measures for compliance to ensure that the rules and RMP-generated catch limits are actually implemented. While such rules were being sought, the moratorium was to stay in place. An IWC RMS Working Group was created, and since that time, the development of the RMS has been at the centre of all IWC proceedings. Quite differing views regarding what sort of control and oversight would be required under the RMS, and who would bear the costs, have prevented agreement so far.

#### Divided opinion over the RMP

There were also differences of opinion amongst the conservation community. Some viewed the RMP as an updated version of the New Management Procedure (1975) with the same 54% Protection Stock level that would undercut the moratorium. Others thought the RMP was the best that could be achieved in the IWC. New Zealand, for example, abstained when the RMP came to a vote in 1991, stating their opposition to commercial whaling which could be resumed for Southern Hemisphere minke whales under the RMP.

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<sup>16</sup> One of the dangers of Japan and allies gaining control of a simple majority of votes in the IWC now is that the entire precautionary basis that lay behind development of the RMP would be overturned. Japan and Norway have openly stated their intention to seek a revision of the RMP to make it less conservative. Because the RMP was never formally adopted by the IWC, only “accepted” in a non-binding resolution, it can just as easily be rejected or changed in another non-binding resolution proposed by the whaling countries if they continue to control a simple majority of IWC members.

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

Nearly a decade and a half later, these differences have not been resolved. Meanwhile, Japan has reinforced its “scientific” whaling programme and it is currently increasing the number and species of whales killed, while Norway is whaling pursuant to its objection to the moratorium. Iceland has just completed two years of a small scientific whaling programme and has resumed commercial whaling in late 2006 under its controversial objection to the moratorium. The movement to end commercial whaling is thus at a critical point: there has been a moratorium on paper for more than twenty years, but ironically commercial whaling is increasing, and increasingly out of international control.

#### Southern Ocean Sanctuary

Anticipating in some ways this scenario, in the early 1990s the large NGOs with a historic stake at the IWC and vested interests in maintaining the moratorium, undertook in partnership with *like-minded* countries a successful campaign for the establishment of a whale sanctuary covering all waters South of 40 degrees South. The idea was to keep the Southern seas, the greatest reservoir of whales, off limits regardless of what the RMP calculation models might say about the sustainability of limited commercial whaling for minke whales in this area. The rationale for the sanctuary was that – regardless of population estimates - it made sense to protect the largest reservoir of baleen whales at an optimum level, as the management of whaling had failed so badly in the past and there was no guarantee that it will not do so again in future. The initiative also recognised the special status granted to Antarctica by the international community, coinciding with the successful effort that culminated in agreement of the Environmental Protection Protocol to the Antarctic Treaty.

The proposal was tabled by France at the 1992 IWC annual meeting, but as it was argued that there had not been enough time for the Scientific Committee to consider it, it was deferred until the next year. There was little enthusiasm for the proposal amongst the majority of conservation countries at first, and Japan attacked it very strongly at the 1993 annual meeting in Kyoto, arguing that since there was no consensus within the Scientific Committee, endorsement of this proposal would be against the rules of the Commission. The meeting passed a non-binding (simple majority) resolution endorsing the establishment of a sanctuary in principle, and an intersessional meeting was called to examine the proposal in detail. At that point, support from the *like-minded* group increased, and the intersessional meeting held in Australia agreed “*there were no objections in principle to the establishment of a sanctuary*”. *Like-minded* support for the proposal was also boosted by the revelation in November 1993 of massive under-reporting and mis-reporting of catches by four Soviet Antarctic whaling expeditions during the 1960s and 1970s, some with devastating effect on already seriously depleted populations. Subsequently, the 1994 annual meeting of the IWC held in Mexico adopted the Southern Ocean Sanctuary, now hailed as a milestone by environmentalists.

## Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

Japan flags the Southern Ocean Sanctuary to support its allegation that the IWC is not acting in accordance with its mandate; not only does Japan continue to oppose the sanctuary each year at the IWC, including through draft resolutions to revoke it, but Japanese “scientific” whaling continues to take place within its boundaries.

### Blockage of the Revised Management Scheme

No agreement has ever been reached on the RMS, hence the RMP has not been implemented. Japan and Norway continue to pursue vigorously their pro-whaling agenda and at the 2006 IWC annual meeting in St. Kitts they finally obtained a simple majority that can allow them to take control of the IWC (although the full three-quarters majority is likely to continue to elude them).

### Ten year deadlock and the Irish Proposal

Neither side appears able to muster enough votes to impose its will on the other. The deadlock is now more than a decade old. In 1997, Ireland tried to break it, because it saw *“a risk of the break-up of the IWC with whaling taking place outside its control except for aboriginal subsistence whaling”*.

The Irish proposal consisted in adopting some catch limits for existing coastal whaling operations if allowed in accordance with RMP calculations, and to declare a global sanctuary for all other waters. In other words, resilient commercial whaling would have been restricted to areas where it was already taking place in coastal waters at the time, e.g. minke whaling along the coasts of Japan and Norway, and it could not have expanded. The proposal also contained provisions to restrict consumption of whale products to local use, with no international trade; “scientific” whaling would in return be phased out, and whale watching regulated.

To varying degrees Denmark, Mexico, Sweden, South Africa, the Netherlands, Switzerland, Oman, Germany, Norway, and St. Lucia all gave support to the proposal and said that they were prepared to consider these ideas in more detail. Brazil, Spain, Chile, Argentina, USA, UK, France, Australia and Monaco expressed reservations mainly over the question of allowing any commercial whaling at all, and issues arising from the Law of the Sea and coastal states' rights and responsibilities. Japan never formally commented on the proposal or indicated clearly whether it would have accepted such a compromise; many were sceptical that it would. In the end, the proposal never gained sufficient momentum and was abandoned.

## Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

**Table 2:** 16 New Countries in the IWC

Year	Net pro-whaling gain	New Member(s)
2000	1	Guinea.
2001	2	Morocco, Panama <sup>17</sup> .
2002	4	Benin, Gabon, Palau, Mongolia, Portugal, San Marino.
2003	3	Belize <sup>18</sup> , Iceland, Nicaragua
2004	4	Cote d'Ivoire, Mauritania, Suriname, Tuvalu, Belgium, Hungary.
2005	6	Mali, Kiribati, Czech Republic, Slovak Republic, Luxembourg, Gambia, Nauru, Cameroon, Togo.
2006	3	Guatemala <sup>19</sup> , Cambodia, Slovenia, Marshall Islands, Senegal, Israel
2007		Croatia

### Japanese "vote buying" campaign

In the meantime, in an effort to gain votes at the IWC Japan has undertaken an active campaign to recruit new allies, including a well-documented 'vote-buying' scheme,<sup>20</sup> the results of which are shown in Table 2.

In the last days of the St. Kitts meeting, these efforts finally paid off: the pro-whaling camp managed to gather a simple majority to approve by non-binding resolution the so-called "St/ Kitts Declaration." This happened after Japan had lost four other critical votes<sup>21</sup> due to the late arrival of Senegal and to a decision by the delegation from Denmark to vote in favour. The St. Kitts

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<sup>17</sup> When Panama joined in 2001 it did so to support Japan. After a massive public campaign Panama changed its position and supported the conservation side at the 2005 Annual Meeting. The continuation of its IWC membership is uncertain.

<sup>18</sup> Belize's recent tradition was to vote with Japan, but at the 58<sup>th</sup> annual IWC meeting, that country dramatically reversed its position and voted pro-conservation on most votes.

<sup>19</sup> Thought to have joined to support Japan, Guatemala did not attend the 58<sup>th</sup> annual meeting in St. Kitts.

<sup>20</sup> See Leslie Busby, Third Millennium Foundation report on Vote Buying. Contact: [thirdmf@libero.it](mailto:thirdmf@libero.it)

<sup>21</sup> Votes failed on measures to 1) exclude consideration of scientific recommendations regarding small cetaceans; 2) institute secret ballots; 3) grant Japan a 150 North Pacific minke whales catch limit; and 4) eliminate the Southern Ocean Sanctuary.

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

#### Declaration:

- [...] express[es] [...] concern that the IWC has failed to meet its obligations under the terms of the ICRW and,

- Declare[s] [our] commitment to normalizing the functions of the IWC based on the terms of the ICRW and other relevant international law, respect for cultural diversity and traditions of coastal peoples and the fundamental principles of sustainable use of resources, and the need for science-based policy and rulemaking that are accepted as the world standard for the management of marine resources.

**Table 3:** List of IWC Member Nations (Currently 72)

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

Like-minded: L (35) -- Pro-whaling: W (34) – Undetermined: ? (3)

## Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

### Japan's immediate agenda

If Japan retains its majority, it is expected that it will continue to seek, *inter alia*:

- a resolution to establish IWC secret ballot procedures (voting is now by roll call and therefore a matter of public record);
- a resolution to abolish the Southern Ocean Sanctuary;
- to dismantle the IWC Conservation Committee (see below);
- a resolution in support of its two “scientific” whaling programmes; and
- to promote far less conservative version of the RMP and agreement of an overall Revised Management Scheme that will mean in effect the end of the moratorium on commercial whaling.

With this in mind, the Japanese Government hosted a meeting seeking the “normalization” of the IWC in Tokyo on 13-15 February 2007. Although formally invited to participate, the “other half” of the IWC (the countries opposed to the resumption of commercial whaling and even those who lean towards a more neutral stance) declined the invitation considering that the meeting to be one-sided exercise with a pre-cooked outcome. At the time of writing, the outcome is not yet known, but it is unlikely that any new workable formula will have been found.

### Environmentally workable RMS

In the event that a pro-Japan majority ultimately prevails, it will be essential to ensure that any management scheme is the most conservationist and effective possible. Several NGOs have produced policy briefings that describe what in their view would be the essential elements of an environmentally workable RMS. The Environmental Investigation Agency (EIA) for example lists the three following criteria on which any future RMS should be based:

- Current best international practice of other relevant international regimes;
- Up-to-date technology, and
- Lessons from the “disastrous history of commercial whaling”<sup>22</sup>

EIA’s list of the following Key Elements for an Effective RMS includes:

- Prevent over-exploitation of whales and ensure compliance with catch

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<sup>22</sup> “A Precautionary Approach: Negotiating the Revised Management Scheme”, EIA Briefing, Updated for the 57th IWC Meeting, 2005.

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

quotas;

- Stop the abuses of “scientific” whaling;
- Prevent misreporting and illegal whaling;
- Ensure that rules are adequately enforced and seen to be enforced; and
- Significantly reduce the cruelty of whale hunting methods.

To achieve this, EIA argues that the RMS must include:

- No automatic link to the amendment of Paragraph 10(e) of the *Schedule* (the moratorium on commercial whaling) and the resumption of commercial whaling if the RMS is adopted into the schedule;
- A watertight observation and inspection scheme that is effective from survey to retail;
- A fully diagnostic international DNA database that is centrally maintained;
- Effective enforcement and compliance measures;
- Measures that fully address “scientific” whaling;
- Effective welfare measures that will minimise the suffering inflicted on hunted whales and their associated populations; and
- No agreement on completion and adoption of the RMS package unless measures to address “scientific” whaling and prevent objections to any part of the RMS are agreed and in place.<sup>23</sup>

#### Stalemate

However, whether such a platform today has any chance of success is a truly open question. In 2004, Japan presented its own RMS proposal, which would have mandated a weakening of the RMP, eliminated the ban on factory ship whaling, eliminated all sanctuaries and ended the moratorium. Of course the proposal failed because, for the reasons stated above; the *like-minded* group still held on to a very slim majority. But the proposal is indicative of Japan’s mindset and confidence in its present strategy.

During the debate over this proposal, Japan blamed anti-whaling countries for the lack of progress towards the adoption of an RMS. Brazil, New Zealand and others responded that the lack of progress was due to the whalers being unwilling to accept safeguards which are now standard procedure in other organisations and Japan’s provocative behaviour in taking so many whales

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<sup>23</sup> EIA, *ibid.*

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

under scientific permits. Korea, along with African and Caribbean states called for “science”<sup>24</sup> to be respected and Japan’s text to be adopted. In total, 23 governments spoke.

The vote needed a  $\frac{3}{4}$  majority to be adopted and failed with 23 Yes, 29 No and 5 abstaining.<sup>25</sup> After a long and hectic debate, including an attempt by the Nordic countries and emerging *middle* or *open-minded* countries (Sweden and the Netherlands) to adopt a resolution that would advance the RMS and address “scientific” whaling at the same time, a resolution was presented by Germany, Ireland and South Africa, and adopted. It simply agreed to hold an intersessional meeting<sup>26</sup> to advance the RMS from the point it reached at the start of the 2005 annual meeting, and a working group just before the next meeting to discuss any remaining issues. It also agreed to consider ministerial, diplomatic or other high-level possibilities to resolve issues among contracting governments.<sup>27</sup> The intersessional meeting took place at the end of February, 2006 in Cambridge but it was unable to bridge the gap between pro-whaling and pro-conservation countries. It was on this occasion that Japan together with several other countries raised for the first time the alleged need to “normalize” the IWC.

#### The ‘whales eat fish’ controversy

Another aspect of the whaling controversy which has gathered strength in recent years is the notion that as predators, cetaceans must be *culled* in order to safeguard valuable living marine resources for human consumption. This argument is used with different degrees of depth by the Japanese and Norwegian administrations, and at the IWC, representatives from countries that have joined recently with a pro-whaling stance are claiming that it is the fear of seeing their fish wiped out by whales that has prompted them to join the IWC.<sup>28</sup>

Japan’s JARPA II multi-year “scientific programme” which is underway in Antarctica, involving the killing of up to 935 minke, 50 humpback and 50 fin whales per year for an indefinite period, is primarily intended to feed the argument that whales and other predators need to be culled. The 2005 IWC

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<sup>24</sup> Coming from Japan and its allies, this usually means “Japanese science”. The IWC Scientific Committee, consisting of scientists appointed by member States as well as a handful of invited “independent” experts, rarely provides unanimous advice to the IWC as it, too, is split between scientists supporting whaling and scientists of a more conservation-oriented approach.

<sup>25</sup> Those abstaining were: China, Denmark, Kiribati, Korea and Morocco.

<sup>26</sup> Cambridge, UK, 28 February to 3 March 2006.

<sup>27</sup> The resolution passed with 25 votes in favour, 3 against and 28 abstentions.

<sup>28</sup> Statements to this effect from South Pacific, Caribbean and West African representatives have been reported.

## Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

annual meeting in Ulsan, South Korea adopted a resolution urging the Government of Japan to withdraw the proposal or to revise it so that the research would not include lethal research methods. The stated objectives of JARPA II include, quite openly, “the monitoring of the Antarctic ecosystem, the monitoring of krill abundance, the feeding ecology” of whales as well as crab-eater seals and other predator species such as penguins and other seabirds. Summed up another way, the Fisheries Agency described the purpose of JARPA II prior to its launch as “to study the Antarctic ecosystem with a central focus on whales, and **to develop more appropriate whale management schemes,**” echoing Norway’s statements about “ecosystem-based regulation of the whaling industry.”

Japan’s and Norway’s<sup>29</sup> “*whales eat fish*” policy can best be described as a gross perversion of the *ecosystem approach* to biodiversity conservation endorsed in 2002 at the Conference of the Parties to the Convention on Biological Diversity (CBD) and subsequently in the Johannesburg Plan of Implementation at the World Summit on Sustainable Development (WSSD).

### Aboriginal subsistence whaling

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Since its founding, the IWC has recognized a special category called aboriginal subsistence whaling, distinct from commercial whaling. As whaling under this category is deemed to be for the immediate nutritional and subsistence needs of indigenous peoples it has followed different criteria than those for commercial whaling, most importantly that whaling is allowed on stocks that otherwise would be protected from commercial whaling because of their depleted state. It is not affected by the 1982 moratorium, which applies to commercial whaling only.

Under current IWC regulations, aboriginal subsistence whaling is permitted for Denmark (Greenland, fin and minke whales), the Russian Federation (Siberia, gray and bowhead whales), St Vincent and The Grenadines (Bequia, humpback whales) and the USA (Alaska, bowhead and gray whales). It is the responsibility of national governments to provide the Commission with evidence of the cultural and subsistence needs of their people. The Scientific Committee provides scientific advice on safe catch limits for such stocks. (There is considerable concern about the sustainability of the Greenland hunt although catch limits are still allowed.)

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<sup>29</sup> It has been suggested that Norway’s approach to marine predators is very much akin to its approach to land predators, especially the culling of migratory wolves on Norwegian soil, which is the subject of serious frictions with their Swedish neighbour who share the same wolves population. Comparisons have also been made with the culling of deer in Norway, a practice that meets general acceptance at the national level.

## Backgrounder on the International Efforts for the Conservation of Whales

### The Varda Group, for the Pew Charitable Trust

With the completion of the RMP for commercial whaling, the Commission asked the Scientific Committee to begin the process of developing a new procedure for the management of aboriginal subsistence whaling (the AWMP). This work is still ongoing.

In the late 1970s/early 1980s the catching of bowhead whales by the indigenous people of Alaska was the most contentious agenda item after the moratorium itself. The US Government, pushing hard for adoption of the moratorium, was put on the defensive by the whaling countries when it sought a quota from a species considered to be highly endangered. Some of the pressure was taken off this issue subsequently when new survey techniques found that the bowhead population was actually much higher than previously thought and the quota requests from the US no longer appeared to put the bowheads at risk.

But the bowhead issue returned to the forefront at the 2002 IWC Annual Meeting in Shimonoseki, Japan, where the US and Russian Federation's joint 5-year block quota request, fully backed by the Scientific Committee, nevertheless failed to be adopted by one vote due to Japan's ability to organize an effective  $\frac{1}{4}$  minority blocking vote including its newest recruits to the IWC. It was the first time in the IWC's history that the US went away without an agreed quota.

Obviously this situation put Japan and its new voting bloc into a position of strength, and led to the calling of a Special Meeting of the Commission 5 months later in Cambridge to resolve the crisis. In the end a 5-year block quota was agreed in Cambridge, with a provision for annual review after the 2004 meeting (added at the request of Japan and its allies). All other aboriginal subsistence operations received five-year block quotas at the Shimonoseki meeting, which means that all of them will be on the table again at the IWC's 2007 Annual Meeting, to be held in Anchorage, Alaska.

#### **“Small-type coastal whaling”**

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It should also be mentioned that Japan has sought for 20 years to have the IWC recognize a special category of coastal Japanese whaling, lying somewhere between aboriginal subsistence and commercial. Japan has year after year requested that special quota allocations be made to four coastal whaling communities as an exception to the moratorium, but because there are commercial elements in these whaling operations, and there is aversion to allowing exceptions to the moratorium, the conservation-minded majority of the Commission has consistently rejected these requests. The 2002 Shimonoseki crisis occurred ostensibly because of this question, with Japan and its allies justifying their opposition to the bowhead quota on the grounds that Japan's coastal communities (catching whales from stocks not classified as endangered, as the bowheads are) should be given special treatment as well. This is one of the key issues for Japan and has probably the highest

## Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

significance in Japan in terms of domestic support for the whaling issue (it is portrayed as unfair treatment of Japanese interests by foreigners, and a double-standard).

### DNA sampling

One of the perhaps most encouraging developments in the last 15 years has been advances permitting the origin of whale products to be traced through DNA sampling techniques pioneered by Dr. Scott Baker and his team at the University of Auckland with funding from NGOs. These DNA analyses have revealed the sale of a number of protected species of whale in South Korea and Japan. It was unclear whether the sources of the whale meat were legal (by-catch, strandings or meat from stockpiles) or illegal, thus highlighting the lack of regulation of Japan's marketplace. Most recently the work has been used to calculate the high level of "by-catch" in South Korea and Japan by identifying individual whales from their DNA. This has exposed a new and unregulated form of whaling informally known as "net whaling", which is threatening the survival of the extremely endangered "J-stock" minke whales that live between Korea and Japan. It has also been linked with work on pollutant burdens in whale meat, demonstrating high levels of pollutants particularly in North Pacific toothed whale meat.

Currently in the context of the RMS discussions, there is a sharp difference of opinion between Japan and Norway on the one hand, which propose that monitoring via DNA sampling be the responsibility of the whaling nation, and the *like-minded* countries on the other which propose that it be internationally controlled.

### "External" or "environmental" threats.

Ever since the moratorium on commercial whaling was adopted in 1982, there has been discussion regarding whether to address "external" or "environmental" threats, which may affect cetaceans at least as much as directed kills. In 1995 for example, Greenpeace published a report called "*Whales in a Changing Ocean*" advocating the cessation of whaling on the basis of the precautionary principle, given the vast uncertainties surrounding the future of whales in relation to issues such as the impact of climate change, ozone depletion, hazardous substances concentrations, overfishing, and underwater ocean noise caused by shipping, sonar and military operations.

In 2003 the IWC agreed to create a *Conservation Committee* that would address such external threats, but so far its agenda has been restricted to agreement to look into the issue of "*stinking Gray whales*" (gray whale meat caught by Russian Inuits in the Bering Sea appears to be affected by oil pollution), collisions from shipping and by-catch from fishing operations. A proposal to include ocean noise on the agenda of the Conservation Committee was rejected at the 2005 IWC meeting due to US opposition.

## Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Charitable Trust

### Whale watching

The regulation and promotion of the non-lethal exploitation of whales for recreational and academic purposes has also long been presented by environmentalists as a sustainable alternative for the IWC beyond (and instead of) setting catch quotas. Interestingly, whale watching has become a lucrative and popular activity even in countries with string rooted whaling traditions such as Japan and Iceland. In accordance to Article V(a) of the ICRW, 1946 *“amendments of the Schedule shall be such as are necessary [...] to provide for the conservation, development and **optimum utilization** of the whale resources [...]”* (emphasis added). Of course when the negotiators of the ICRW drafted the Convention in 1946, they had not envisaged the development of whale watching and other so-called benign uses of whales. But a strong case can be made that – in today’s world – whale watching and other benign uses of whales represent the “optimum utilization of the whale resources” which the members of the IWC thus have a duty to protect.

### 3. Conclusions

The question remains – how can we break the deadlock at the IWC in a way that ensures the long term conservation of whales?

The Symposium on the State of Whale Conservation in the 21<sup>st</sup> Century, sponsored by the Pew Charitable Trusts (New York, 12-13 April, 2007) will attempt to answer this question. The Symposium will take place little more than a month before the 59<sup>th</sup> Annual Meeting of the IWC in Anchorage, Alaska.

Experts on various aspects of international environmental policy and committed to conservation will meet for two days in New York with scientists and whale policy experts to discuss ways to ensure the long term conservation of whales and to explore policies for breaking the impasse. It is our fervent hope that by bringing some ‘fresh air’ to the debate, and holding it at the United Nations which is charged with looking after our global oceans commons, new ideas will emerge which ensure the conservation of whales into the 22<sup>nd</sup> century and beyond.