

The Pew Environment Group - Whale Conservation Project

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**A change in climate for whales**  
**Backgrounder on the International**  
**Efforts for the Conservation of**  
**Whales**

未来への共通の解決策はあるか？

Is there a common way forward?

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For the Tokyo Pew-sponsored Whale Symposium  
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<http://www.pewwhales.org/tokyosymposium>

***“Who should take the first big step to break the ice?”***

*Abstract from the Chair Summary of the Japanese Government-sponsored “IWC  
normalization meeting”, Tokyo, February, 2007*

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<sup>1</sup> <http://www.vardagroup.org>. With thanks to Leslie Busby for her review of our first draft in December 2006.

# Backgrounder on the International Efforts for the Conservation of Whales

The Varda Group, for the Pew Environment Group

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### **1. Prologue to this version**

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This is an updated and augmented version of the original Backgrounder prepared by the Varda Group on behalf of the Pew Environment Group prior to the first Pew-sponsored Whale Symposium held at United Nations Headquarters in New York in April, 2007.

It has been prepared for the participants in the second Pew-sponsored Whale Symposium at the United Nations University in Tokyo, 30-31 January, 2008.

Readers will find detailed information on the history of the efforts to conserve whales in the last 60 years, and updated data and analysis to put the Tokyo Symposium in context.

The Tokyo Symposium is called “A change in Climate for Whales” because stakeholders from the pro- and anti-whaling sides are unhappy about the way the International Whaling Commission (IWC) currently conducts its business. Whalers feel unprotected and unfairly treated, and conservationists feel that decisions are ignored and that whales are increasingly unprotected.

As observers at recent meetings of the IWC, we have noticed that few IWC members from different factions talk to each other in earnest, yet they all say that they regret this situation.

Against this background, the purpose of the Symposium is very ambitious: to seek to identify a common way forward to address issues and seek to resolve the divide between the proponents of a resumption of commercial whaling and the advocates of the continuation of the current moratorium on commercial whaling.

The broad context for the event, put simply, is the protracted stalemate within the IWC. There is enough power at each end of the pro/anti-whaling spectrum to block change. The meetings and debates are characterized by tunnel vision: each ‘side’ is so deeply entrenched in its own position that the perspectives of the ‘other side’ are largely ignored. There is an absence of any real dialogue, or of cooperative efforts to seek ways forward. As a result, more and more whales are taken each year in the absence of any international agreement, and concern is increasing.

The Pew Symposia are aimed at broadening perspectives. The first Symposium in NY brought together the conservation community, scientists, policy experts and others from both inside the ‘IWC world’ and outside.

Shortly after the Japanese Government organized an “IWC normalization meeting” (see page 23, below), the first Pew-sponsored Whale Symposium took place on 12-13 April 2007 at United Nations Headquarters, New York. Sixty-seven people from twenty-nine different nationalities took part in the Symposium, representing a mix of legal, policy and science academics, policy- and opinion-makers, national and international civil servants, NGO and Think-Tank

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representatives. The New York Symposium was chaired by Sir Geoffrey Palmer, former Prime Minister of New Zealand and IWC Commissioner for his country.<sup>2</sup>

In order to encourage open debate, all participants were asked to respect the Chatham House Rule, whereby no statement may be attributed to individual participants unless it is cleared in advance with them. For each of the four sessions, three panel presenters speaking respectively from a perspective from within the IWC, a perspective from outside the IWC, and an NGO perspective made presentations to kick off the discussions in which all participants were encouraged to take part.

A draft of the Chair's Summary of the Symposium was circulated to all participants, and once finalized it was posted on the Symposium website, sent by the IWC Secretariat to all IWC Commissioners and posted on the IWC website for consideration under Agenda Item 7 "The Future of the IWC" at the 59th Annual Meeting of the IWC in Anchorage, May 28-31.

Although representatives from whaling countries who had been invited had declined to attend, the meeting had representation from around the world and had about equal numbers of people with IWC experience, NGO experience, and environmental experience but not with whales. This mix allowed for new perspectives to be aired and came up with a menu of options that may offer a way forward.

There was a view that the current arrangements, contentious as they are, may be the best available means of conserving whales. Indeed, no-one suggested at any time that the IWC should be dismantled, although there were many ideas on how to improve it. One of these was that changes should be made to the convention in order to remove or restrict the use of scientific whaling. Another was to have better enforcement of the convention with a dispute settlement provision, and elimination of provisions for making reservations to new rules or to opt out of them. There were suggestions (but no consensus) that some commercial whaling could resume on a limited basis, provided that scientific whaling was abandoned, that there was a ban on the international trade in whale meat, and that whaling in sanctuaries was eliminated.

It was widely agreed that a more diplomatic atmosphere in the IWC was needed.

In order to break through the stalemate, it was suggested that attempts be made to settle problems by a "higher" authority such as an independent world commission, a ministerial summit held on the 60th anniversary of the IWC in 2009, or a mutually agreed binding mediation or arbitration procedure. Others

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<sup>2</sup> The New York Symposium website can be accessed at:  
<http://www.pewwhales.org/whalesymposium/index.php>

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thought an international diplomatic conference under the auspices of the UN should be convened, or an independent group of eminent persons could be assembled to make recommendations. Another idea was that the whaling issue should be integrated into broader oceans, biodiversity and species protection programmes.

It was also suggested that research be conducted into the economics of whaling, including the question of government subsidies for whaling, and their implication for whale watching and other non-lethal uses of whales which are thought to be more profitable than whaling.

Two strong suggestions were that new approaches to conflict management within the IWC should be explored, and that it would be desirable to organize another symposium within Japan.<sup>3</sup>

It is in this context that the Pew Environment Group decided to organize in Tokyo, at the Headquarters of the United Nations University the second Pew Whale Symposium (30-31 January, 2008), a multi-stakeholder conference to take stock and help the different parties explore options prior to the intersessional meeting in Heathrow. By holding the Symposium in Tokyo, we are putting words into action: opening up the dialogue to all of those who are interested in effective and maybe even pragmatic solutions.

This report has been commissioned by the Pew Environment Group. However, any inaccuracy and value judgment therein remains the sole responsibility of its authors.

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<sup>3</sup> The full text of the New York Symposium Chair's Summary is available at: <http://www.pewwhales.org/documents/chairssummaryfinal.pdf>

## 2. 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 in many countries 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>4</sup> catches of whales from 32,000 in 1975 to 335 in 1990 and even as much as 1,827 in 2006, the whale conservation movement was and is a success story. But Japanese and Norwegian officials are now arguing that as predators, cetaceans must be culled to conserve fisheries. There is no scientific justification for such a position: the proponents of whale culling 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 for ocean ecosystems worldwide (including the continuation of destructive fishing practices). So

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<sup>4</sup> Unreported and under-reported catches would make this figure higher.

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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 26 years ago.

## 3. 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 International Convention for the Regulation of Whaling (ICRW<sup>5</sup>). This treaty created the International Whaling Commission (IWC<sup>6</sup>), which was established in 1949 in accordance with Article III when the ICRW entered into force. The Commission, which now has 78 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>7</sup>

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<sup>5</sup> <http://www.iwcoffice.org/commission/convention.htm#convention>

<sup>6</sup> <http://www.iwcoffice.org/>

<sup>7</sup> Preambular paragraph 6 of the 1946 ICRW

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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>8</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>9</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 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) 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*

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<sup>8</sup> <http://www.iwcoffice.org/commission/convention.htm#protocol>

<sup>9</sup> <http://www.iwcoffice.org/commission/schedule.htm>

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*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 catch limits and 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>10</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>11</sup>. This was revealed publicly only days before the 1979 meeting of the IWC was due to begin in London, 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

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<sup>10</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 13).

<sup>11</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*.

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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>12</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 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 21 below). In 1980 after the moratorium was again defeated 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; the International Fund for Animal Welfare (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 progress

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 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.

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<sup>12</sup> In 1980 Panama left the IWC. They joined again in 2001.

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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>13</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 catch limits” 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 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

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<sup>13</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.

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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, 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>14</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 scientific whaling programme was thus an ingenious strategic move to keep the whaling industry alive until such time as the moratorium could be lifted.

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<sup>14</sup> The 14<sup>th</sup> Conference of the Parties to CITES took 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). There again, despite repeated attempts by Japan and other countries, it was decided to maintain the status-quo whereby the international trade of whale products is prohibited. The 15<sup>th</sup> Conference of the Parties to CITES will take place in Doha, Qatar, in 2010.

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**TABLE 1:** Recorded number of whales killed from the beginning of the international anti-whaling campaign to the present day<sup>15</sup>:

1975:	32,000
1980:	16,000
1985:	8,000
1990:	335
1994:	631
2000:	1014
2004:	1298
2005:	1455
2006:	1827

### 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>16</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 catch limits 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* (pro-conservation) country.

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<sup>15</sup> Source: IFAW briefing for the 59<sup>th</sup> Annual Meeting of the IWC, Anchorage, May 2007.

<sup>16</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.

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### 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>17</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 limit 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>18</sup>. Nonetheless, in December 2005 the Government announced that it was raising the catch level to 1,052 whales, the highest in more than 20

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<sup>17</sup> Under US legislation, the US Administration is entitled to apply fisheries sanction on countries violating agreements adopted under the IWC.

<sup>18</sup> They are nevertheless still represented in a number of municipalities along the coast.

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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 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

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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 28, 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 World Conservation Union (IUCN) at the IWC and its Scientific Committee for a considerable number of 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

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specification should not be modified, reconfigured or adjusted unless expressly instructed by the Commission.”<sup>19</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**

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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.

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 completed two years of a small scientific whaling programme and resumed commercial whaling in late 2006 under its controversial objection to the moratorium, although in August, 2007 the hunt was suspended due to the lack of a domestic or international market for whale meat. The movement to end

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<sup>19</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 precautionary. 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.

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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 1991 with the adoption 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. 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.

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### 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 obtained a simple majority as a result of a “vote consolidation operation” (see page 21, below) .

### Ten year deadlock and the Irish Proposal

A year later at the IWC annual meeting held in Anchorage, Alaska, the pro-conservation group regained the simple majority. But 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.

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

Year	Net pro-whaling gain	New Member(s)
2000	1	Guinea.
2001	2-1	Morocco, Panama <sup>20</sup> .
2002	4	Benin, Gabon, Palau, Mongolia, Portugal, San Marino.
2003	3-2	Belize <sup>21</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, Cambodia, Slovenia, Marshall Islands, Senegal, Israel
2007	2	Costa Rica, Croatia, Cyprus, Ecuador, Greece, Guinea Bissau, Laos, Uruguay

### Japanese "vote consolidation" 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-consolidation' scheme,<sup>22</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." Despite Japan's efforts, this happened after Japan had lost four other critical votes<sup>23</sup> due to the late arrival of Senegal and to a decision by the delegation from Denmark to vote in favour. The St. Kitts Declaration:

<sup>20</sup> When Panama joined in 2001 it did so to support Japan. Panama changed its position and supported the conservation side at the 2005 Annual Meeting.

<sup>21</sup> Belize's recent tradition was to vote with Japan, but at the 58<sup>th</sup> and 59<sup>th</sup> annual IWC meetings, that country dramatically reversed its position and voted pro-conservation on most votes.

<sup>22</sup> See Third Millennium Foundation report "Japan's 'Vote Consolidation' Operation in the IWC", at [http://www.ifaw.org/ifaw/dimages/custom/2\\_Publications/Whales/IWC/VB%20REPORT%202007b%20REVISED%20VERSION%20FINAL.pdf](http://www.ifaw.org/ifaw/dimages/custom/2_Publications/Whales/IWC/VB%20REPORT%202007b%20REVISED%20VERSION%20FINAL.pdf)

<sup>23</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.

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

- Declare[d] [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 78)

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

Pro-conservation<sup>24</sup>: C (41) -- Pro-whaling: W (35) – Status undetermined: ? (2)

<sup>24</sup> This Pro-Conservation/Pro-Whaling categorization is useful to reflect attitudes toward the continuation of the moratorium. At the same time of course, pro-whaling countries also argue that it is in their interest to conserve whales as a resource.

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### Japan's immediate agenda

If Japan had retained its majority in 2007, it was expected that it would 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 a 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.

### Normalisation Meeting

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 the meeting to be a one-sided exercise with a pre-cooked outcome. 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;
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.

### Varda Review

While few would dispute the assertion that the IWC is dysfunctional, the reasons as described by the JFA above are widely seen as one-sided and oversimplified. In advance of the New York Pew-sponsored Whale Symposium, the Varda Group undertook a review of the Normalization meeting outcome, where

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we sought to identify possible areas of agreement and areas of disagreement between the “two sides” of the IWC.<sup>25</sup> We agreed that the climate of “mutual distrust” was one source of disfunctionality, and that in order to find a solution to the current impasse in the IWC; all stakeholders ought to seek areas of commonality and compromise, and to communicate views on how to begin the process of trust building. This is precisely what Pew is attempting to do through its symposia, although it is uncertain whether a common definition of what would constitute “improvement” can be found. Finally, the Normalization meeting also noted the need to “consider looking at Governments rather than Commissioners to resolve the situation”, a proposal that was echoed in a variety of ways at the Pew-sponsored New York Symposium (see pages 4-6, above). Whether the areas of disagreement can be resolved – at least partially – will depend on the willingness of key protagonists to move away from the current status-quo.

### Normalisation VS. Modernisation

While the Japanese Government continues to talk of “normalization”, others are seeking the “modernization” of the IWC sixty years after it was created. Modernizing the IWC requires the incorporation of contemporary principles that can be borrowed from other conventions and multilateral agreements whose aims are to ensure the conservation of marine biodiversity and to promote healthy ecosystems. Such principles include:

1. Application of the precautionary approach;
2. 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);
3. Establishment of a body to review compliance with new powers of enforcement, including a dispute settlement mechanism;
4. Avoidance of reservations to new rules and provisions and elimination of the privilege to “opt out” of any such rules and provisions when adhering to the regime;
5. Recognition and regulation of non-lethal use of cetaceans as a legitimate and optimum use of the whale resources;
6. 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.

Principles 1 to 4 above have already been endorsed by the Governments of Japan, Norway and Iceland in the context of numerous modern multilateral

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<sup>25</sup> “Turning the Page: Bringing Whale Conservation into the 21<sup>st</sup> Century”, by Rémi Parmentier and Kelly Rigg, April 2007 available at <http://www.pewwhales.org/documents/backgrounder2normalization.pdf>. With the Normalization meeting’s Chair Summary annexed.

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agreements covering environmental and even fisheries issues other than whales and whaling.<sup>26</sup> It can thus be said that refusing them in the context of whales and whaling would therefore be inconsistent.

**59<sup>th</sup> IWC  
Annual  
Meeting in  
Anchorage**

Little more than three months after the Normalization meeting, and five weeks after the Pew Whale Symposium held in New York on 12-13 April 2008, the 59<sup>th</sup> IWC Annual Meeting took place in Anchorage, Alaska, 28-31 May, 2007.

As several new like-minded (pro-conservation) countries had become IWC members since the previous meeting held in St. Kitts (see Table 3, above), the Japanese Government no longer enjoyed a simple majority, and this meeting was largely perceived as a demonstration of strength of the pro-conservation group. This was certainly the perception of the Japanese and other pro-whaling Governments which decided half-way through the meeting not to participate in key votes in which their views were certain not to prevail.

Virtually all IWC members began the meeting with a willingness to build a conciliatory environment, especially when catch limits for aboriginal subsistence whaling were adopted on the second day (with the meeting taking place in Alaska, the US was particularly anxious to get a five-year block quota for bowhead whales caught by Alaskan Eskimos; the Commission allocated them 280 bowheads for the period 2008-2012). Discussion became heated in the second half of the meeting, however, when other issues were discussed, Contentious issues included: the South Atlantic Sanctuary proposed by the Latin American countries led by Brazil and Argentina (the proposal received simple majority support, but not the three-quarters majority required for the sanctuary to be established in the schedule); Japan's scientific whaling programme in Antarctica (a resolution calling on Japan to refrain from carrying out this programme was adopted with 40 votes in favour, 2 against and 1 abstention—27 countries did not take part in the vote); a request for catch limits of several species to be allocated to Greenland Inuits; a Japanese proposal to allow small type whaling along its coasts (the proposal was abandoned because it was clear that it would fail); and whale-watching and the non-lethal use of whales (a resolution was adopted with a very large majority but the commission failed to reach consensus on this issue and 20 countries did not take part in the vote).<sup>27</sup>

Several theories circulated about why a meeting that started so constructively ended so rancorously, but no single explanation prevailed.

One interesting development in Anchorage was the first ever Agenda item on

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<sup>26</sup> The UN Agreement on Straddling Fish Stocks of 1995, the Basel Convention on the Transboundary Movements of Hazardous Wastes, the Framework Convention on Biological Diversity, the Kyoto Protocol on Climate Change, the Stockholm Convention on Persistent Organic Pollutants, to only name a few.

<sup>27</sup> See <http://www.iwcoffice.org/meetings/meeting2007.htm#summary>

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### Intersessional Meeting on the Future of the IWC

The Future of the IWC “given *inter alia* the impasse reached on the RMS and the number of issues for which polarisation rather than consensus appears to be the norm.” The three documents tabled for discussion on this agenda item were. the Chair’s Summaries of both the normalization conference held in Tokyo and the Pew symposium held in New York as well as the Buenos Aires Declaration adopted by Latin American countries at a conference hosted by the Government of Argentina in December 2006.<sup>28</sup> As shown in section 21 of the IWC Chair’s Summary Report.<sup>29</sup> “many countries noted the positive overlap in some of the suggestions made at the three meetings and it was agreed that there was merit in pursuing discussions further through an intersessional meeting under the auspices of IWC.” At the end of 2007, the IWC announced that this intersessional meeting would take place at Heathrow airport in the UK on 6-8 March, 2008.

### Environmentally workable RMS

As explained earlier in this document (see page 17-18, above) considerable resources have been devoted to the development of the Revised Management Procedure, but the IWC has failed to adopt a Revised Management Scheme to operationalize it, Opinions are divided as to whether the RMP/RMS approach is still part of the solution. However if it is, it would 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>30</sup>

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

- Prevent over-exploitation of whales and ensure compliance with catch quotas;
- Stop the abuses of “scientific” whaling;
- Prevent misreporting and illegal whaling;
- Ensure that rules are adequately enforced and seen to be enforced; and

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<sup>28</sup> See [http://www.pewwhales.org/documents/buenos\\_aires\\_declaration2006.pdf](http://www.pewwhales.org/documents/buenos_aires_declaration2006.pdf)

<sup>29</sup> <http://www.iwcoffice.org/meetings/meeting2007.htm#summary>

<sup>30</sup> “A Precautionary Approach: Negotiating the Revised Management Scheme”, EIA Briefing, Updated for the 57th IWC Meeting, 2005.

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- 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>31</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 slim majority. But the proposal was 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 under scientific permits. Korea, along with African and Caribbean states called for “science”<sup>32</sup> to be respected and Japan’s text to be adopted. In total, 23 governments spoke.

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<sup>31</sup> EIA, *ibid.*

<sup>32</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.

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

### The Varda Group, for the Pew Environment Group

The vote needed a ¾ majority to be adopted and failed with 23 Yes, 29 No and 5 abstaining.<sup>33</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>34</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>35</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>36</sup>

Japan’s JARPA II multi-year “scientific programme” which is underway in Antarctica, involving the killing of up to 935 minke, 50 humpback<sup>37</sup> 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 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**”

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<sup>33</sup> Those abstaining were: China, Denmark, Kiribati, Korea and Morocco.

<sup>34</sup> Cambridge, UK, 28 February to 3 March 2006.

<sup>35</sup> The resolution passed with 25 votes in favour, 3 against and 28 abstentions.

<sup>36</sup> Statements to this effect from South Pacific, Caribbean and West African representatives have been reported.

<sup>37</sup> In December, 2007, the Japanese Government announced a suspension “for a year or two” of the taking of humpback whales.

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**schemes,”** echoing Norway’s statements about “ecosystem-based regulation of the whaling industry.”

Japan’s and Norway’s<sup>38</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

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.)

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

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<sup>38</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.

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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 ¼ 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 is why all of them were on the table again at the IWC's 2007 Annual Meeting held in Anchorage, Alaska (see page 25 and 26 above).

### “Small-type coastal whaling”

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. One explanation of the anger expressed by a number of Japanese officials during and after the 59<sup>th</sup> IWC annual meeting in Anchorage is that with a conciliatory approach (Japan was actively supportive of a five year bowhead whale block quota for the 2008-2012 period), the Japanese Government had expected to get political dividends in return, This is one of the key issues for Japan and has probably the highest 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

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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.

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<sup>39</sup>. 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

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<sup>39</sup> 100,000 tourists in Iceland take part in whale watching tours each year.

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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.

During the last annual IWC meeting in Anchorage, representatives from pro-whaling governments argued that there was no conflict between whaling and the non-consumptive use of whales, including whale watching). Against this view, the Australian Environment Minister argued that whale watching operators from his country could suffer economic loss from Japan’s plan to harpoon fifty humpback whales in the Antarctic as part of their scientific whaling programme. These whales, Australia argues, are tourist attractions when they migrate close to their shore.

In August 2007, the Japanese Mainichi Shimbun newspaper reported how the conflict between whaling and whale watching can be very crude: a different kind of conflict between whaling and whale watching, which happened last on Friday 24 August, 2007. A Baird's beaked whale was harpooned off Hokkaido by a whaling boat in the presence of a nearby group of tourists on a whale watching tour who had paid to see living whales, not dead whales.

A year ago, a similar incident between a whale watching operator and a whaling boat was also reported in Norway.

The conflict between lethal and non-consumptive uses of the whale resources is the main driver of the strong political resolution of the Latin American countries who advocate a whaling free South Hemisphere, including a sanctuary in the South Atlantic, and claim that their national interests are under threat by the continuation of whaling in the Southern Seas. In the last three years in December these countries have held a regional conference in Buenos Aires to identify, define and coordinate their approach. This Latin American initiative is considered as one of the most significant recent developments in the geopolitics of whaling.<sup>40</sup>

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<sup>40</sup> See <http://www.ballenafranca.org/leer.php/143> ,  
[http://www.pewwhales.org/documents/declaracion\\_buenos\\_aires2006.pdf](http://www.pewwhales.org/documents/declaracion_buenos_aires2006.pdf)  
[http://www.pewwhales.org/documents/buenos\\_aires\\_declaration2006.pdf](http://www.pewwhales.org/documents/buenos_aires_declaration2006.pdf)  
[http://mardecetaceos.net/media\\_files/download/2007-declaracionfinal.pdf](http://mardecetaceos.net/media_files/download/2007-declaracionfinal.pdf) and  
[http://www.pewwhales.org/documents/Declaracion\\_dic2007\\_ingles.pdf](http://www.pewwhales.org/documents/Declaracion_dic2007_ingles.pdf)

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### **4. Conclusions**

The IWC has come to realise that the key question remains – how can we break the deadlock at the IWC in a way that ensures the long term conservation of whales? And whether the status quo can survive much longer is an acute question.

The second Pew-sponsored Whale Symposium in Tokyo (30-31 January, 2008) at the Headquarters of the United Nations University is therefore timely. Held five weeks before the intersessional meeting on the future of the IWC at Heathrow, and one year before the IWC marks its 60<sup>th</sup> anniversary in 2009, it will attempt to create a different environment for people who usually hold opposite views 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 in a building that belongs to the United Nations -- an institution charged with looking after our global oceans commons and to resolve conflicts, new ideas will emerge which ensure the conservation of whales into the 22<sup>nd</sup> century and beyond.