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MAY 1999

NOTES & COMMENT

## Flouting the Convention



*The ongoing campaign to ban all commercial whaling is driven by politics rather than science, and is setting a terrible precedent*

by [William Aron](#), [William Burke](#), and [Milton Freeman](#)

*(The online version of this article appears in two parts. [Click here to go to part two.](#))*

THIS month the [International Whaling Commission](#) will hold its [fifty-first annual meeting](#), in Grenada. Once again pro- and anti-whaling forces will barrage the

commission and each other with press releases, angry denunciations, and publicity stunts. Once again politics will drown out science and will push the commission into a state of posturing irrelevancy. And once again the result will be a disservice to the people who whale, to the commission itself, and, most troubling, to international environmental law and sound resource management. Indeed, the continuing dysfunction of the IWC -- one of the most prominent conservation groups in the world -- should worry everybody who has concerns about preserving our natural heritage.

Discuss this article in **Post & Riposte**.

More on **politics & society** in *The Atlantic Monthly* and *Atlantic Unbound*.

**From the archives:**

**"To Whale or Not to Whale,"** by **Mark Derr (October, 1997)**

A controversy over subsistence and commercial hunting threatens to tear apart the International

In 1946 a fifteen-year effort by whaling nations to exert multilateral control over the whaling industry finally produced the International Convention for the Regulation of Whaling, the fundamental purpose of which was "to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry." The convention established the fourteen-nation IWC, which was empowered to regulate the industry but was granted no authority to amend the convention itself. In adopting, revising, or terminating regulations the IWC is required always to follow the convention's intent -- namely, as explicitly stated in Article V, "to provide for the conservation, development, and optimum utilization of the whale resources," taking into consideration "the interests of the consumers of whale products and the whaling industry." Simply put, no possible interpretation of the

Whaling Commission and worsen the problem of illegal whaling.

convention allows for putting an end to whaling when credible scientific opinion supports the sustainable use of abundant whale resources.

**"Empowering Species," by Charles C. Mann and Mark L. Plummer (February, 1995)**

The Endangered Species Act, in the view of its opponents, threatens to wreck our very economy. Proponents declare the law inadequately enforced and demand that its protections be extended. Is there a way to make the law more responsive to both sides?

The IWC started off badly. For nearly thirty years after its inception it tolerated whaling at unsustainable levels. Many of the largest species declined so precipitously that in 1972 the United States began calling for a ten-year moratorium on all commercial whaling. The proposal was intended to shock the IWC into getting its house in order -- that is, putting into effect a management system that would both maintain the whaling industry and allow whale populations to recover. When the moratorium was voted down in 1972 and 1973, activists threatened to boycott goods from whaling nations; targets included Russian vodka, Japanese cameras and TV sets, and Norwegian and Icelandic fish products. The whaling industry was forced to compromise.

**"The Butterfly Problem," by Charles C. Mann and Mark L. Plummer (January, 1992)**  
The Endangered Species Act

In 1974 the IWC endorsed the New Management Procedure -- an Australian plan, with strong backing from the United States, that essentially banned whaling of all overexploited stocks but permitted commercial catches of abundant stocks at levels that would not threaten their existence. The plan satisfied the IWC Scientific Committee, most of whose members had objected both to the excessive size of the earlier whale quotas and to the idea of a moratorium on commercial

insists that we attempt to save every threatened species. This inflexibility, the authors say, has now become economically untenable.

**"The Destruction of Dolphins," by Kenneth Brower (July, 1989)**

In spite of laws intended to protect them, federal indifference and cruel fishing methods once again endanger dolphins.

**See an index of Atlantic articles about the environment.**

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**International Convention for the Regulation of Whaling**

The full text of the 1946 convention. Posted by the

whaling, which they also viewed as excessive. The NMP took effect in the 1975-1976 whaling season. Since then not one whale population has been jeopardized by a commercial whaling operation.

Such success was not enough for the anti-whaling forces, however, who seized on the fact that the NMP called for scientific data, such as abundance estimates, growth rates, and identification of regional stocks, that were difficult to obtain with precision. Most of the Scientific Committee believed that the gaps in data were not important enough to stop controlled whaling. But the United States and other anti-whaling countries, urged on by the emerging animal-rights movement, tipped the scales in their own favor by recruiting additional nonwhaling nations to the commission -- increasing its membership from the original fourteen to forty. (Any nation can accept the 1946 convention and become an equal voting member of the IWC.) Citing the alleged data-collection problems, the newly inflated IWC passed a moratorium on all commercial whaling in 1982. The vote for this moratorium marked a significant change: instead of trying to force the IWC to comply with the convention and support only sustainable whaling, the anti-whaling majority was trying to force the commission to flout it.

In a small compromise that has turned out to be an empty gesture, anti-whaling nations asked the Scientific Committee to undertake

International Whaling Commission.

**World Council of Whalers**

News, essays, and general information geared toward those involved in the whaling industry.

**The High North Alliance**

"The High North Alliance's objective is to defend the right of coastal communities to utilize marine mammals sustainably." Features news, links, and a comprehensive collection of articles, including a section devoted specifically to articles discussing the International Whaling Convention.

**Some anti-whaling sites:**

a comprehensive assessment of whale stocks by 1990 -- at which time the IWC was to reconsider the fate of the moratorium. The committee was also asked to develop an up-to-date replacement for the NMP. The result was the Revised Management Procedure, completed in 1993, which permitted whaling only if impartial systematic surveys had determined that an individual stock was not in danger. When the commission resisted even this modest plan for sustainable whaling, the chairman of the Scientific Committee quit.

In 1994 the RMP -- a risk-averse successor to a management scheme that had already proved successful by terminating the harvest of all whales in jeopardy -- was accepted in principle by the commission. In practice, however, the IWC has yet to allow a return to commercial whaling; instead it has deliberately dragged out negotiations over monitoring and enforcing the RMP. By focusing on increasingly arcane questions of logistics, costs, and methodology, each needing lengthy debate, the anti-whaling majority has successfully pushed the target for the whaling nations ever further into the future -- a procedure that has been likened to moving the goal posts.

The cause of this charade is obvious: a majority of the IWC wants to halt all commercial whaling, no matter what the convention says. Indeed, Australia, Great Britain, New Zealand, and the United States -- and, more recently, Austria and Italy --

**Greenpeace****Sea Shepherd Society****Whales on the Net****West Coast Anti-whaling Society**

have explicitly stated that they will not approve commercial whaling under any conditions. In 1991 the Australian commissioner stated flatly that there was no longer any need to hunt "such large and beautiful animals" for food. Conceding that no scientific reason exists to ban all whaling, the U.S. commissioner announced in 1991 that he would defend the U.S. position on ethical grounds.

Such an approach, based on moral judgments rather than science, plainly violates both the convention and the international rule of law. And because anti-whaling activists will accept nothing less than a total ban, they leave no room for good-faith negotiation and compromise. The whaling industry will not cooperate in its own elimination, nor will the governments of whaling nations permit their citizens to be victimized. As a result, scientists, whalers, and activists are locked in a never-ending battle. The bitter standoff violates international law, fosters tensions between otherwise friendly nations, and undermines environmental legislation. Worst of all, the cynical actions of the IWC's anti-whaling majority constitute a clear warning to all nations engaged in negotiating multilateral environmental agreements: Beware, for the United States and its allies may suddenly adopt new interpretations of long-standing principles, and use them against you. Even if you accept treaties, these countries may (for purely domestic reasons) apply sanctions

against you for actions fully in compliance with those treaties.

**Continued...**

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Illustration by Philip Anderson

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Despite guidelines accompanying the International Convention for the Regulation of Whaling that refer to only twelve whale species (right, pigmy right, bowhead, humpback, blue, fin, Bryde's, minke, sei, sperm, and Arctic and Antarctic bottlenose), many IWC members act as if the convention covered all whales -- and even all cetaceans, the order of eighty-three species of aquatic mammals that also includes dolphins and porpoises. Few scientists deny that several species of whale -- including the blue, the right, the bowhead, and the humpback -- have been severely overhunted by commercial whalers and are now properly regarded as endangered. But almost all scientists admit that most other species are in no danger of extinction. Minke and pilot whales, for example, have populations of more than a million, and sperm whales have a population of about a million. Gray whales (probably more abundant now than ever) and some regional stocks of sei, Bryde's, and fin whales (less abundant than in earlier times, but not dramatically so) are in no sense endangered by controlled hunts.



Unsurprisingly, researchers continue to argue that endangered species should generally not be hunted. However, the IWC allows native peoples in Alaska and Siberia to hunt limited numbers of bowhead along with gray whales to meet their needs. Neither species has been adversely affected by such hunting. Estimates of the bowhead population in the late 1970s ranged from 500 to 2,000 animals; the current bowhead population is believed to exceed 8,000. The rise in the estimate is due in part to population growth but mostly to better survey techniques. It is estimated that the gray-whale population has increased from about 7,000 animals in the 1930s to more than 26,000 today, despite authorized subsistence catches of 140 or more a year. The difference is thought to reflect population growth.

Just because it is possible to harvest whales without placing their populations in jeopardy does not mean that the practice is acceptable. Whale protectionists often claim that whales are extremely intelligent -- as smart as, if not smarter than, humankind -- and that the killing of such highly sentient creatures is wrong. But whales have been studied intensively for decades, and there is still no strong evidence that they are uniquely intelligent. Many species throughout the animal kingdom demonstrate behaviors and abilities just as complex as those demonstrated by whales.

Another major objection to whaling is that it

is an inhumane practice carried out unnecessarily. Let us be clear: "humane killing" is an oxymoron. The best we can hope for in killing animals is that death be as quick and as nearly painless as possible. Experience has shown that in the whaling industry this is largely achieved -- just as it is in the food industries that kill millions of cattle, sheep, pigs, and chickens every day.

Some whaling-ban advocates feel that whaling has no place in the contemporary world. They point to the fact that many industrialized countries, despite having engaged in commercial whaling twenty or thirty years ago, are now fervent opponents of whaling. If this is the case, the advocates ask, why should Norway and Japan and a few other countries continue whaling? The trouble is that this argument assumes that there are no fundamental cultural differences between whaling and nonwhaling societies: the former are simply considered to be stuck at an earlier stage of development, in need of being goosed up the ladder of progress.

Anthropologists believe otherwise. The societies that have abandoned whaling hunted whales principally for oil. Until the late 1960s whale oil was used for many purposes -- in submarine guidance systems, for example, leading the Pentagon to object to listing sperm whales as an endangered species. Indeed, the IWC was established in part to ensure the profitability of the whale-oil business, which it did by setting quotas

measured in units of oil. When substitutes for whale oil became available in the 1970s, nations that whaled primarily for oil stopped hunting whales.

Things were different in other nations, especially Norway and Japan, where whaling is an ancient occupation worthy of the respect and support that Americans award to, say, the running of a farm. Norwegians view whaling as part of the hard, honorable life of a fisherman -- a reliable slow-season activity that helps fishing communities to make it through the year. The Japanese who come from a long line of whalers have deeply held moral beliefs about maintaining their family tradition. To be prevented from honoring their ancestors in this manner is a source of shame. After the 1982 moratorium some Norwegian fishers went bankrupt. The same thing happened in Iceland. Given the abundance of the whale stocks, these nations ask, why can't such people be free to practice their traditional livelihood? Anthropologists have long observed the primary role played by traditional foods in the social structure and moral norms of a community -- a role that is captured in the widely repeated aphorism "you are what you eat." Asking people to give up their customary diet is in many ways like asking them to give up part of their identity.

**Related link:**

**[The Japan Whaling](#)**

The Japanese are particularly angered by the IWC's ongoing failure to fulfill its legal obligations to whaling-treaty members. They point to the extensive research --

**Association**

"A non-governmental organization [founded] to collect, study and propagate information about whaling and to contribute to the resumption and sound development of ecologically sustainable whaling based on scientific findings."

much of it done by non-Japanese scientists and endorsed by the IWC Scientific Committee and the international scientific community -- suggesting that an interim reinstatement of coastal minke whaling (until the implementation of the RMP) would not be harmful. When such research is ignored or trivialized by the IWC itself, it is easy for the Japanese to conclude that the United States and its anti-whaling allies are irrational, dishonorable, and racially prejudiced. To Japan and other countries, a Western antagonism to whaling and to the use of whale products smacks of cultural imperialism.

To counter the pleas of countries like Norway and Japan, the anti-whaling members of the IWC assert that worldwide public opinion now opposes commercial whaling. But the convention's acceptance of whaling is not an isolated anachronism. In recent years United Nations conferences have twice had an opportunity to oppose whaling, and have twice declined to take it. In 1982, soon after the IWC adopted the whaling moratorium, 119 states signed the UN Convention on the Law of the Sea, an agreement that permits whaling on the high seas. Individual nations may forbid their nationals to take whales, and coastal states may prohibit all takes within their national waters, but unless states jointly agree otherwise, whaling can go on. In 1992 the UN Conference on Environment and Development reaffirmed the provisions of the Convention on the Law of the Sea,

explicitly rejecting efforts by anti-whaling forces to exclude whales from the list of resources open to sustainable use and development. Both actions show that there is no international consensus against whaling.

Despite this lack of a consensus, in 1994 the New Zealand commissioner stated that his country would "work to maintain the moratorium on commercial whaling because it reflects the current reality of world opinion" -- an assertion subsequently repeated by the British and U.S. commissioners. The evidence does not support this claim. Public-opinion polls have for years indicated that people in putatively anti-whaling countries do not know that many whale species are not near extinction -- and that when they learn this fact, they are willing to support whaling. In April of last year, to cite a recent example, Responsive Management, an American polling firm specializing in environmental issues, released a survey of attitudes toward whaling in Australia, France, the United Kingdom, and the United States. At the outset of the survey 92 percent of those polled admitted that they knew little or nothing about minke whales, the species now of most interest to whaling countries. When informed that the minke is not endangered, that its harvest is traditional in some places, and that an IWC-managed hunt would ensure that there would be no adverse effect on whale numbers, 71 percent of U.S. respondents said they would

endorse regulated whaling for minke. A majority of respondents from each of the other three nations also favored minke whaling under these conditions, though the majority was not as large.

These results are not surprising. Most people in the West know that they personally benefit from the slaughter of large numbers of food animals every year, and that in general it is perfectly lawful to take non-endangered animals in regulated hunts. Responsive Management found that only six percent of the Australian and U.S. respondents opposed whaling on the grounds of animal rights.

Perhaps sensing that informed public support for a total whaling ban would be weak, whaling-ban advocates frequently resort to campaigns that can most kindly be referred to as "artful." Despite a decades-old scientific consensus that most whale species do not face extinction, Greenpeace and other anti-whaling groups continue to decry a supposed illicit trade in whale products, implying that a large global market for such products exists. This has not been the case for decades, and is not likely to be so again. Nor are there large numbers of potential whaling interests anywhere in the world waiting to resume uncontrolled whaling once the moratorium is lifted, as whaling-ban advocates also claim. What is at work here is politics -- and the opportunity for anti-whaling organizations to raise substantial revenues through emotionally

powerful but deceptive campaigns.

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The whaling industry has done much to deserve activists' ire, and public-awareness campaigns about its behavior are laudable. But they are also simplistic and misleading - often deliberately so, to attract funding and support. The slogan "Save the whale," for example, was far more effective in awakening public concern than the scientifically correct "Save the particular whale stocks threatened by overhunting" would have been. Unfortunately, the slogan was hijacked by a small group of animal-protection activists, who mustered public support for a whaling ban by creating the false impression that all whale stocks were in danger. Politicians found it easy to follow this lead.

With the arrival of cheaper substitute oils in the early 1970s, the whaling industry in most countries approached collapse. As the small, unprofitable whaling industries in Australia, Brazil, France, Germany, Great Britain, the Netherlands, Peru, Spain, and the United States closed down, no significant constituencies in those countries remained to counter the claims of activist groups, and a whaling ban became a political freebie. By militating against whaling, these countries could project an environment-friendly image abroad without antagonizing business or labor interests at home.

In the United States senators and representatives from both parties have eagerly advertised their anti-whaling credentials. In June of 1996 the House Resources Committee, not otherwise known for its commitment to environmental activism, unanimously resolved to ask the IWC to block whaling by the Makah Indian tribe of Washington state. The chief proponent of the resolution was Jack Metcalf, a Washington Republican who, *The Seattle Times* tartly noted, was regarded as having "one of the least-green voting records in Congress." And last May the Senate, fresh from its refusal even to consider a treaty on global warming, unanimously resolved to "remain firmly opposed to commercial whaling."

In the ongoing campaign to ban whale hunting altogether, the ends do not justify the means. By spurning all attempts at compromise, today's anti-whaling crusaders have the potential to disrupt the large-scale environmental legislation of tomorrow.

To address such issues as global warming, the overuse of freshwater supplies, acid rain, overfishing in the oceans, the introduction of species to new environments, and other international environmental problems, the nations of the world will have to negotiate with one another -- and for negotiations to be successful, *all* sides will have to compromise. Necessarily, the sacrifices will



be harder for poor countries than for rich ones -- note the reluctance of Third World nations to sign a greenhouse-gas agreement. But the sacrifices must be agreed upon and implemented in good faith. For Western nations to provide clear evidence in a highly visible forum that they are willing to flout past agreements, as they have with whaling, dims the prospect for reaching new ones in the future.

Because of the intransigence of anti-whaling nations, the IWC is rapidly becoming irrelevant. Some nations that want to whale but view the commission as a science-free forum for eco-posturing -- Japan and Norway in particular -- have taken advantage of the convention's provisions for opting out of IWC decisions. Other whaling nations, such as Canada and Iceland, have simply exited the IWC. Today almost all whaling is conducted by nonmembers in accordance with general international law or by IWC members ignoring the commission's (nonbinding) decisions. Fortunately, the latter nations, mainly Norway and Japan, have chosen to limit their catches to sustainable levels. But the example of an international environmental agency politicizing itself into irrelevance is alarming.

The means for protecting whale populations, allowing a resumption of controlled whaling, and rescuing the IWC from itself already exist: a plan known as the Revised Management Scheme. First

proposed in 1992 by Australia, and supported by five other nations, including the United States, the Revised Management Scheme incorporates the Revised Management Procedure and adds an observer program and other safeguards to ensure that whaling operations do not endanger whale populations.

Under such a plan a return to large-scale commercial whaling is highly unlikely. The reasons are economic, biological, and social: Inexpensive substitutes have eliminated the market for whale oil, and the market for whale meat is very limited. The slow growth of whale populations means that large-scale whaling is unlikely even to be possible for the foreseeable future. And whales today are protected by the most important safeguard of all: an ecological awareness, which is now firmly implanted in the minds of the public and politicians alike, that nowhere existed during the ruinous heyday of industrial whaling.

Pointing to the recently revealed cheating of the Soviet Antarctic whaling fleet, whaling-ban advocates claim that the ban can't be lifted because whaling nations can't be trusted. But the cheating took place before any observer program existed. Together with other enforcement methods, observer programs have proved effective in regulating the take of dolphins in the eastern tropical Pacific Ocean and of fish in the United States' exclusive economic zone of the North Pacific. An international observer

program independent of the IWC was implemented last year by four North Atlantic whaling nations. But attempts to put together an observer program within the IWC are moving extremely slowly, because anti-whaling nations see that putting it in place will remove a barrier to whaling.

As a first step toward rescuing the International Whaling Commission, the Revised Management Scheme should be completed and fully implemented without further delay. Ending the charade at the IWC would induce more whaling countries to follow its dictates -- and would for the first time bring most or all of the whaling industry under a science-based scheme of international regulation. It would also suggest that nations in diverse economic and cultural circumstances can cooperate and compromise for the mutual environmental good -- something that will be in ever greater demand.

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