

The Truth about the Commercial Whaling Moratorium

著者(英)	Joji Morishita
journal or publication title	Senri Ethnological Studies
volume	84
page range	337-353
year	2013-08-30
URL	http://doi.org/10.15021/00002452

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Joji Morishita

National Research Institute of Far Seas Fisheries, Japan

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Abstract

Widely accepted perceptions about the commercial whaling moratorium is that it prohibits all whaling permanently, denies whaling morally and ethically, was introduced because all whales are endangered, and that it prescribes whales as special and to be protected, even if they are abundant. Review of the negotiation history of the moratorium, its legal interpretation, and the science of whales demonstrates that these perceptions are groundless. In fact, the moratorium provision requires the consideration of catch limits based on comprehensive scientific assessment. In other words it is about the management of whales as a living marine resource.

1. The Commercial Whaling Moratorium Defines the Whaling Controversy

The commercial whaling moratorium adopted by the International Whaling Commission (IWC) in 1982 forms the basis for the anti-whaling movement, by defining the structure, shape, and appearance of the whaling controversy. For the anti-whaling movement, the commercial whaling moratorium is a sacred cause, symbol, stereotype, and fortress. It is neither an overstatement nor mischaracterization to say that the commercial whaling moratorium is the starting point and foundation for the discussions at the IWC meeting, the arguments of anti-whaling non-governmental organizations (NGOs), and the anti-

whaling media coverage.

The general and widely accepted perceptions about the commercial whaling moratorium is that it prohibits all whaling permanently, that it denies whaling morally and ethically, that it was introduced because all whales are endangered, and that it prescribes whales as special and even sacred, and to be protected, even if they are abundant. The arguments of anti-whaling NGOs and media assume that these perceptions have been firmly established, and are safeguarded by the commercial whaling moratorium (Morishita 2006). These perceptions are the cause of the strong conflicts at the IWC, and have been blocking various attempts to solve the whaling issues.

The most recent example of that is the “Future of the IWC” project. The IWC has been dysfunctional and facing collapse because of the strong conflicts between the group that supports sustainable use of whales, including Japan, and the anti-whaling group, lead by Australia, which accepts no whaling other than indigenous whaling. The “Future of the IWC” project was an attempt to solve the situation by requiring concessions from both sides. Three years of extensive discussions yielded a joint proposal that was submitted by the IWC Chair and Vice-Chair prior to the 2010 IWC annual meeting. The proposal was a package containing various items that included organizational and procedural modifications of the IWC, and cooperative and support programs for developing states. However, the core of the proposal was the establishment of a ten-year interim period during which whaling activities would be accepted and managed under the auspices of IWC in exchange for a substantial reduction of catches from existing whaling activities. These included the commercial whaling by Norway, based on its legal objection provided for by Paragraph 3 of Article V of the International Convention for the Regulation of Whaling (ICRW), and the scientific whaling of Japan, based on the special permits for the purpose of scientific research provided for by Article VIII of the ICRW. For the whaling countries, this proposal meant that the IWC would accept whaling, despite the existence of the moratorium, in exchange for their concession of reducing the current catch levels. For the anti-whaling countries, the proposal meant that they would achieve a substantial reduction of the catch of whales in exchange for their acceptance of whaling. In other words, the whaling countries would attain achievements in terms of the principle and philosophy related to whaling issues, while the anti-whaling countries would achieve the reduction of whale catches in substance.

Australia has held an extreme anti-whaling position, and the mass media in Australia reacted strongly against the proposal from the Chair and Vice-chair. This was demonstrated by a headline in the *Canberra Times* of June 23, 2010, which declared a crisis: “Whale moratorium may end after secret talks among nations.”

Anti-whaling NGOs also imposed strong pressures on anti-whaling governments to prevent agreement on the joint proposal. They argued that the acceptance of the compromise would lift the commercial whaling moratorium so that whales would again face the dangers of whaling. However, the truth was that a substantial reduction of catches would have been achieved. To be exact, the joint proposal would have established a ten-year interim period during which Schedule 10(e) of the ICRW, the commercial whaling moratorium clause, was to be maintained. Legally speaking, the moratorium

would not be “lifted”. However, the perception related to the commercial whaling moratorium made any agreement on the “Future of the IWC” proposal very difficult, if not impossible.

How was the commercial whaling moratorium, the foundation of the anti-whaling positions, conceived and adopted? And what are the specific requirements of Schedule 10(e) that established the moratorium?

The commercial whaling moratorium is regarded as a permanent prohibition of commercial whaling, not just by the general public and the media in anti-whaling countries, but also in Japan. This perception is widely accepted because many believe that whales are endangered, that commercial whaling is inherently evil, as the past history of over-harvesting shows, and that whales are regarded as special and different from other animals. However, these perceptions have been built on one-sided information and claims. They should be scrutinized at least from a neutral perspective, based on objective records and information.

This paper is an attempt to reveal the truth about the commercial whaling moratorium by reviewing its negotiation history, legal interpretation, and the science about whales and whaling, among other aspects.

2. Schedule 10(e) of the ICRW

The commercial whaling moratorium was established by adopting Paragraph 10(e) of the Schedule of the ICRW. The Schedule “forms an integral part of” the ICRW (Article I, Paragraph 1) and stipulates “regulations with respect to the conservation and utilization of whale resources” (Article V, Paragraph 1).

Schedule Paragraph 10(e) reads as follows:

10(e) Notwithstanding the other provisions of paragraph 10, catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. This provision will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits.

When this provision is read without prejudice, some important differences and inconsistencies with the general perceptions about the moratorium are noteworthy. First, there is no language in this provision that prohibits commercial whaling permanently. The provision suspends commercial whaling temporarily with a deadline for review. Further, it prescribes a comprehensive scientific assessment of whale stocks, and provides for the possible modification of the moratorium provision and the establishment of catch limits. In 1982, when the provision was adopted by the Commission, as well as at present, anti-whaling countries and anti-whaling NGOs argued for the permanent prohibition of commercial whaling, and they even claim that the permanent prohibition

had already been established when the moratorium was adopted. However, again, Schedule 10(e) does not prohibit commercial whaling permanently. The latter half of Paragraph 10(e) sets a clear deadline, “*by 1990 at the latest*”, instructs the IWC to “*undertake a comprehensive assessment of the effects of this decision on whale stocks*” and to “*consider modification of this provision and the establishment of other catch limits.*” If read without preconceptions, the provision requires a temporary suspension of commercial whaling, the conduct of scientific stock assessments during the period of the suspension, review of the Schedule paragraph 10(e) based on the best scientific advice, and the establishment of catch limits other than zero.

Clearly, therefore, in its original sense the moratorium was a temporary measure. This is a standard resource management approach that does not separate whaling from other forms of resources use based on special emotions or a particular sense of ethics about whales. It is quite common in other resource management contexts to suspend temporarily a resource use activity when there is insufficient scientific information on the resource, and to initiate research and scientific analysis in order to re-establish conservation and management scheme(s) for the resource. Schedule paragraph 10(e) is neutral on whaling in terms of notions of right or wrong.

In the IWC discussions any commercial aspect of whaling is denied vehemently, because of the adoption of the commercial whaling moratorium. Whenever a proposal includes some commercial aspect, rejection is the first reaction. Since the adoption of the moratorium, Japan has been proposing an allocation of a small number of minke whales for the traditional coastal whaling communities (Abashiri, Ayukawa, Wada, and Taiji) that suffered extreme social and economic difficulties because of the moratorium. In order to be exempted from the provisions of the moratorium, various measures were incorporated into the proposal to eliminate commercial aspects. However, the proposal has been rejected year after year. The reason given by the opposing IWC member countries was the existence of some commercial aspects in the traditional coastal whaling.

Although there seems to be a strong aversion to any type of commercial aspect in whaling in the IWC, such a position is illogical and even discriminatory. Some commercial aspects are unavoidable, even for the indigenous (aboriginal) subsistence whaling that is allowed by IWC as an exception to the moratorium. For example, fuel and hunting equipment necessary for the indigenous whaling are purchased through normal commercial transactions. And, although not unavoidable, handmade crafts using the baleen of bowhead whales are sold at high price to tourists in shops in Anchorage, Alaska. The term “commercial whaling” is convenient jargon to differentiate some whaling activities from indigenous whaling. In reality, it is not possible to separate clearly commercial whaling from indigenous whaling based on either the presence or absence of commercial activities. It is absolute sophistry to claim that the Japanese traditional coastal whaling is prohibited because its sale of whale meat is commercial, while the sale of indigenous whaling crafts at a luxury hotel in Alaska is not regarded as commercial, and has been allowed in the IWC so long as the whale is harvested for subsistence use by indigenous people.

It should be noted that there are no words in the provision of the moratorium,

Schedule paragraph 10(e), to deny the commerce *per se*. The word “commercial whaling” is used as a category only to differentiate the indigenous from non-indigenous whaling.

Fundamentally, it is wrong to deny commercial whaling simply because it has commercial elements. It is even bizarre to regard commercial aspects as something to be ashamed of. Many human activities, including the anti-whaling media, are commercial. There is no logical reason why commercial activities in whaling should be denied, while allowing them in other arenas. The issue should not be whether or not whaling is commercial, but rather whether or not it is sustainable.

3. The Negotiation History of the Commercial Whaling Moratorium

The negotiation history leading to the adoption of the moratorium also shows that the moratorium proposal was discussed as a normal resource conservation and management measure (at least on the surface), and not as a permanent prohibition of whaling and/or denial of whaling based on ethical reasons.

A commercial whaling moratorium proposal was first discussed in Stockholm in 1972, at the United Nations Conference on the Human Environment.¹⁾ Eventually, the IWC commercial whaling moratorium was adopted in 1982, after 10 years of discussions. The records of the discussions demonstrate that the moratorium was presented as a routine resource conservation and management measure.

For instance, the IWC Commissioner for the USA stated at the IWC annual meeting in 1974 that “we are seeking a ten year moratorium based on the continuing decrease in catch per unit effort of fin whales and FAO’s recognition of the gross uncertainties in the data and questionable assumptions on which present management schemes are based”.²⁾ The USA did not ask for a permanent prohibition of commercial whaling, as far as this statement is concerned. Further, this statement was treating whaling as a resource management issue, nothing different from routine fisheries management. The statement did not include denial of whaling as a legitimate activity, and did not present an ethical perspective on whaling.

At the 1979 IWC annual meeting, the UK delegation stated that “there should be a moratorium on commercial whaling in order to allow a thorough assessment of whale numbers and of their biology” and that “resumption of whaling should only be considered if evidence of recovery of stocks and improvement in methods of killing justify it.”³⁾ The UK position was clearly against whaling, but it did not deny resumption of whaling and did not demand a permanent prohibition of it. At the same meeting, Sweden stated that “we strongly favor a moratorium because there are too many gaps in the science but we are prepared to discuss opening of whaling after the moratorium based on scientific results.”⁴⁾

At the 1981 IWC annual meeting, one year before the adoption of the moratorium, the UK stated that “we recognize that other countries have a legitimate commercial interest in whaling and if in the future, it could be shown beyond a reasonable doubt that some exploitation of stocks might be safely resumed and that satisfactory methods of killing were available, the lifting of the ban might be considered.” And that “what we

had in mind is a moratorium and not a permanent ban.”⁵⁾

Finally, at the 1982 IWC annual meeting, when the commercial whaling moratorium was adopted, some delegations that supported the moratorium made the following statements. Seychelles; “I would repeat and remind you that this is a catch limit proposal not a ban or a moratorium.”⁶⁾ Spain; “First of all let me advance that I don’t consider this as a total ban ... but just a temporary interruption of the activity.”⁷⁾ St. Lucia; “It is with deep regret that I note that there has been a misunderstanding on the proposal of the distinguished delegate from the Seychelles. It is not a proposal for a total ban for commercial whaling, but rather a proposal on catch limits.”⁸⁾ Those statements clearly indicate that the moratorium proposal was not presented as a permanent prohibition of whaling, and was not a value judgment denying whaling *per se* as something evil. This is also consistent with the literal reading of Schedule paragraph 10(e).

4. The Southern Ocean Sanctuary and the Commercial Whaling Moratorium

In 1994, twelve years after the adoption of the moratorium, the Southern Ocean Sanctuary (SOS), which prohibits commercial whaling in the Antarctic Ocean, was established. When Schedule paragraph 7(b), which established the SOS, is compared with Schedule 10(e), the moratorium, it clearly shows that the SOS was established without any scientific justification. This is unlike the moratorium, which was intended as a scientifically based measure to consider whale catch limits based on normal resource management procedures.

Schedule 7(b) of the ICRW reads as follows:

- (b)In accordance with Article V(1)(c) of the Convention, commercial whaling, whether by pelagic operations or from land stations, is prohibited in a region designated as the Southern Ocean Sanctuary.... This prohibition applies irrespective of the conservation status of baleen and toothed whale stocks in this Sanctuary, as may from time to time be determined by the Commission.

It should be noted that the SOS prohibits commercial whaling “*irrespective of the conservation status of baleen and toothed whale stocks in this Sanctuary.*” This means that commercial whaling is prohibited even when whale resources are abundant. This prohibition is based on concepts and a philosophy totally different from and contrary to the provisions of the ICRW, which call for science-based conservation and management of whale resources (Burke 1998). Schedule paragraph 7(b) clearly states prohibition in contrast to the moratorium provision, and Schedule paragraph 10(e) sets forth the logical steps of temporary suspension of whaling activities, accumulation and analysis of scientific data, and consideration of catch quota. That the Commission had adopted the SOS provision in addition to the moratorium implies the moratorium was a resource management measure and not a total prohibition, made in order to respond the scientific uncertainty in the knowledge of whale resources, rather than a permanent prohibition.

The 2004 review of the SOS conducted by the IWC Scientific Committee included the commissioning of a study by external experts who concluded that the SOS cannot be justified as a science based resource management measure.

Quoted below is the abstract of the review report of the external experts.⁹⁾

This external scientific review of the Southern Ocean Sanctuary (SOS) was commissioned by the IWC Scientific Committee and presented to the IWC Steering Committee on June 27–28, 2004. This review addresses a number of questions related to the effectiveness of the SOS and provides recommendations on how to incorporate MPA concepts into the SOS and other IWC Sanctuaries. Overall, the SOS — and IWC Sanctuaries in general — are not ecologically justified. The SOS is based on vague goals and objectives that are difficult to measure, lacks a rigorous approach to its design and operation, and does not have an effective monitoring framework to determine whether its objectives are being met. The SOS represents a ‘shotgun’ approach to conservation, whereby a large area is protected with little apparent rationale for boundary selection and management prescriptions within the sanctuary. While a vast array of ecosystem-level and precautionary conservation benefits have been invoked for the establishment of the SOS, in reality this large-scale sanctuary does little more than provide a false sense of security by assuming that protections for whale populations are in place. In fact, the SOS does not protect or mitigate other threats to Southern Ocean whale stocks and the marine ecosystems upon which these populations depend, including: pollution, habitat degradation and loss, introduced species, and global climate change. We thus contend that sanctuary establishment and evaluation should be guided by a series of measurable and tangible goals, aimed at quantifying the status of both the ‘protected’ species under consideration and the broader marine ecosystem. The SOS could be significantly improved to become an important part of the IWC management approach, and the larger conservation of Southern Ocean marine ecosystems, if the following steps are implemented: (a) development of formally stated goals (e.g. biodiversity protection, fisheries enhancement), (b) establishment of measurable

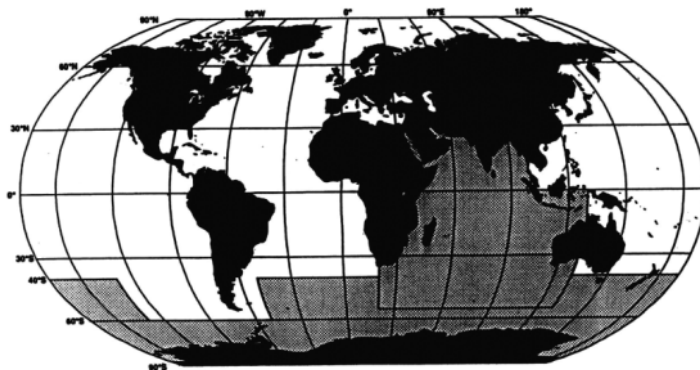


Figure 1 Boundaries of the Southern Ocean and Indian Ocean sanctuaries (From the IWC web site)

objectives with which to assess progress towards attaining these goals, (c) creation of a formal management plan, including the establishment of a monitoring framework, and (d) development of more appropriate review criteria, reflecting the ecological objectives in the management plan.

5. Whales Are Not Endangered

It is a misperception that whales are endangered, and another misconception that the moratorium was adopted because whales are endangered. It is also clear that the anti-whaling NGOs and media use the existence of the moratorium to reinforce the misperception that whales are endangered.

What is the view of the IWC on the stock status of whales? The IWC Scientific Committee has been engaged in stock assessments of various species, and, when the views of the scientists converge, the results are placed on the IWC's web site.¹⁰ It is reasonable to assume that the views of the Scientific Committee reflect the most reliable information available regarding the science of whales, because the Scientific Committee meets every year with the participation of 150–200 internationally renowned scientists. For instance, the IWC's web site lists the following views regarding the stock status of whales: "In fact only two species of large whales can be considered in danger of extinction, the North Pacific right whale and the North Atlantic right whale ..."; "...in most areas for which there are good data, humpback whales have shown evidence of strong recovery towards their unexploited size with annual increase rates of about 10% being recorded in a number of areas ..."; "[fin whales] in the central North Atlantic and off West Greenland have shown populations there to be in a healthy state."; and "There are several hundred thousand Antarctic minke whales and thus they are clearly not endangered."

Some species, such as blue whales in the Antarctic Ocean, remain at a low stock level and have not recovered from the past over-harvesting. However, it is totally wrong to claim the moratorium was adopted because all the whales are either endangered or threatened with extinction. As described above, the moratorium was intended as a temporary management measure to conduct comprehensive analysis of the status of whale stocks during the suspension of whaling activities in response to the uncertainties in the scientific data necessary for the management of whale resources.

The listing of all whale species in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington Convention, CITES) also reinforces the misperception that all whales are endangered. However, the history of the listings and discussions at the CITES meetings indicate that the perception is wrong.

When many species of whales were listed in the CITES Appendices, the listings were conducted in accordance with the criteria adopted in 1976 at the 1st Conference of the Parties (COP1) of CITES (Resolution Conf.1.1, the Bern Criteria). However, even in those days, the Bern Criteria were regarded as qualitative rather than quantitative and ambiguous, and thus subject to political pressures. The Bern Criteria was reviewed at COP8, and Resolution Conf.8.20 was adopted. Conf.8.20 specifically noted that the

listings in the CITES Appendices were not always appropriate, and one reason was “a lack of appropriate criteria to define the term “threatened with extinction” in Article II.” COP9 adopted Resolution Conf.9.24, which set forth new criteria for listing, including quantitative guidelines.

Based on this new criteria for listing species, at COP10 (1997) and COP11 (2000) Japan proposed relocating the Antarctic minke whales from Appendix I (endangered) to Appendix II (threatened with extinction). For the COP10 downlisting proposal, the CITES Secretariat expressed a clear opinion that the Antarctic minke whales do not meet the criteria for an Appendix I listing. Further, for the COP11 downlisting proposal, the CITES Secretariat again provided its interim assessment that “adequate information has been presented to indicate that the stocks of minke whale referred to in the proposal does not meet the biological criteria for Appendix I” (Doc.11.59.3). However, the CITES Secretariat eventually recommended that the downlisting proposal be rejected because IWC was maintaining the commercial whaling moratorium. Because the moratorium did not designate whale species, including the Antarctic minke whale, as either endangered or threatened with extinction, the CITES Secretariat recommendation was based solely on politics.

At both COP10 and COP11, downlisting proposals by Japan and Norway collected near-majority support, but were short of the two-thirds majority required for adoption.¹¹⁾ These cases demonstrate that listing and delisting of the CITES Appendices do not always follow the CITES’s own criteria. In the case of whales, the political considerations of the CITES Contracting Parties reflecting the existence of the IWC moratorium overrode the existence of CITES’ own science-based listing criteria, and that the Antarctic minke whale did not meet these criteria.

6. The Moratorium and the Revised Management Procedure (RMP)

The perceptions that the moratorium prohibits commercial whaling permanently, and that the IWC objective is total protection of whales, irrespective of their stock status, are inconsistent with the facts that in 1994, the IWC adopted by consensus a catch quota calculation method and that in reality the IWC Scientific Committee has been engaged in the catch quota calculation process for several species of whales. Obviously, if commercial whaling is prohibited permanently by IWC, it would not be necessary for the Scientific Committee to conduct these calculations.

The Revised Management Procedure (RMP) is a catch quota calculation method completed by the IWC Scientific Committee in 1992, after long and difficult discussions conducted over about 8 years. The RMP is designed to provide long-term catch quotas while avoiding the risks of whale stock reductions, by taking account of uncertainties in the scientific information. RMP also considers the possibility of a drastic and substantial reduction of whales that might be caused by extreme environmental disasters, as well as the possibility of large errors in reporting past catches used in calculating safe catch quotas. RMP is a very conservative management system that satisfies the precautionary approach required for resource management and environmental protection.

Professor Butterworth of the University of Cape Town, a prominent member of the IWC Scientific Committee and a leading expert on fisheries management, stated that almost all fisheries would need to be prohibited if RMP was applied worldwide (Butterworth 1992). However, when this very conservative RMP is applied to abundant whale species, such as minke, some catch quotas would be allowable. Some whale stocks are abundant enough to pass the test of the RMP.

Because the RMP is a safe whale management system that allows the continuation of whaling, anti-whaling countries opposed its adoption. Even if the RMP is a safe scientific system that brings about progress in the conservation and management of whale stocks, because the adoption of the RMP meant the continuation of whaling, it was extremely difficult for anti-whaling countries to accept it. Simply put, implementation of the RMP is inconsistent with a permanent prohibition of whaling.

Facing the opposition to the adoption of the RMP, Dr. Hammond, a scientist from the UK and the Chair of the Scientific Committee when RMP was completed, resigned the Chair. His letter of resignation, dated May 26, 1993, was full of anger toward the IWC that ignored the efforts of scientists who diligently developed a scientific system for the consideration of whale catch limits as requested by and in accordance with Schedule paragraph 10(e).

Hammond's resignation letter, May 26, 1993, circulated as an IWC Circular RG/VJH/19814 dated June 1, 1993:

Dear Ray,

As you know I have been an active member of the SC since 1981, chairing various WGs and sub-committees and being elected vice chair in 1988. When I was elected Chairman in 1991, the highest priority for the Committee was to complete the RMP. By that time it had long been recognized that the NMP was unworkable so that, although there was a management procedure defined in the Schedule, the Commission effectively had no mechanism in place for the management of commercial whaling; an unacceptable situation for an international organization with such a mandate. It was my job to guide the SC to finalize the RMP as soon as possible.

In 1992, the SC unanimously recommended the adoption of the draft specification for the RMP, whilst recognizing that work remained to be done on documentation of the computer programs, on specifying minimum standards for data required for the RMP, and on outlining guidelines for conducting surveys and analyzing data from them. In a resolution, the Commission accepted the draft specification, thus recognizing that the RMP should replace the NMP, and highlighted these other aspects which needed agreement before the umbrella RMS could be completed.

This year, the SC completed its part of that work and unanimously recommended it to the Commission for adoption and endorsement. Although a minority view had been expressed stating that the RMS required further monitoring that that implicit in the RMP itself, the SC even agreed unanimously on other data which should be required under the RMS. The question of whether or not monitoring of the RMP's performance should be a

minimum requirement of the RMS was, therefore, elevated to a policy decision of the Commission to make; the practical scientific implications had already been dealt with.

Thus, one of the most interesting and potentially far-reaching chapters in the science of natural resource management came to a conclusion. The Commission could now put in place a mechanism for the safe management of commercial whaling, regardless of whether or not the “moratorium” was lifted.

The reality was somewhat different. At the Commission meeting, the work of the SC was praised and acknowledged by several delegations to be complete, but it remained unadopted. The future of this unique piece of work, for which the Commission had been waiting for many years, was left in the air. This has left the Commission in the incongruous position of having accepted the draft specification of the RMP but having never accepted nor adopted the final version.

Of course, the reasons for this were nothing to do with science. Although despite the unanimity of the SC’s recommendation, some Commissioners used selective quotations out of context from the Committee’s report to justify not adopting the RMP on “scientific” grounds.

But the matter of substance is, what is the point of having a SC if the unanimous recommendations on a matter of primary importance are treated with such contempt? And in what position does this leave the Chairman?

I have come to the conclusion that I can no longer justify to myself being the organizer of and spokesman for a Committee whose work is held in such disregard by the body to which it is responsible. Nor can I justify asking other members of the Committee to spend their valuable time working hard during the year and even harder at annual meetings knowing how the results of this work may be treated. And I cannot justify to my employer spending a significant amount of my own time to such an unproductive end.

The morale of the SC is lower than at any other time in my experience and I think many members will understand my position. I hope that some Commissioners will too.

I am, of course, prepared to continue as Chairman for a short time until the new Chairman is able to take over and to help, if needed, in the development of the work plan for the coming year.

I plan to maintain my scientific participation in the work of the Committee and I am willing to continue as Convenor of the Steering Group on management procedures if the new Chairman so desires.

Yours sincerely,

Philip Hammond

Dr. Hammond’s resignation was followed by adoption of the RMP by the IWC, in 1994. However, in adopting the RMP, the IWC set up a new hurdle, the Revised Management Scheme (RMS), to stall the implementation of the RMP. The RMS is a comprehensive system composed of the RMP together with monitoring and enforcement measures. The requirement for the completion of an RMS is logical because even if an

RMP can provide sustainable catch limits, the limits might be exceeded without compliance and enforcement. However, the RMS discussions were used to prevent the RMP implementation.

The IWC had spent more than 10 years and met more than 40 times to discuss the components of an RMS. Although a huge amount of time, energy, and financial resources had been consumed, the 57th IWC annual meeting, held in Ulsan, Republic of Korea, in 2005 practically declared a breakdown of the RMS negotiations. Anti-whaling countries blamed pro-sustainable use countries for the breakdown, claiming that pro-sustainable use countries had opposed placement of international observers aboard whaling vessels, and refused the financial burdens of enforcement. In reality, whenever pro-sustainable use countries accepted a condition, anti-whaling countries proposed another new condition. This can be interpreted as the anti-whaling countries having no intention of accepting whaling. Rather that they had been negotiating in order not to complete an RMS.

Even now the IWC Scientific Committee is conducting scientific discussions concerning the RMP calculations for several species of whales. However, since catch limits are specified in the Schedule, implementation of the catch limits calculated by the Scientific Committee requires an amendment of the current zero catch limits set by paragraph 10 (e). This requires three-quarters of the votes at the IWC Commission meeting. However, at the IWC meetings neither pro-sustainable use countries nor anti-whaling countries have enough votes to achieve the three-quarter majority. Therefore, the Scientific Committee has been conducting the comprehensive assessments of whale stocks and the RMP implementation for calculating catch limits in accordance with Schedule paragraph 10(e) which had established “the moratorium”, while fully recognizing that IWC would not accept the results of their efforts. Such a situation demonstrates the inherent contradictions of the IWC (Morishita and Goodman 2005).

7. The St. Kitts and Nevis Declaration

One reason for the misperception that the commercial whaling moratorium characterizes whaling as ethically evil and permanently prohibits whaling is the adoption of a series of IWC resolutions that criticize whaling activities. However, the meaning and significance of the IWC resolutions need to be scrutinized before accepting them at face value.

Under IWC rules, amendments to the Schedule provisions are legally binding (e.g. the adoption of the commercial whaling moratorium) and require the three-quarter majority vote for adoption. On the other hand, IWC resolutions can be adopted by a simple majority, but they are not legally binding. An IWC resolution is merely an expression of the views of a simple majority of members at a particular time. Further, in past IWC meetings, efforts had almost never been exerted to seek agreement over the contents of resolutions. Anti-whaling countries had often proposed resolutions that could hardly be acceptable for pro-sustainable use countries, and without adequate discussion had forced their adoption by vote. It is therefore quite inappropriate to regard such IWC resolutions as IWC’s formal positions. In reality, anti-whaling countries and NGOs have been taking advantage of these resolutions to build misperceptions about the commercial

whaling moratorium.

In 2006, however, this IWC routine collapsed. At the 58th annual meeting of IWC (St. Kitts and Nevis), where the numbers of pro-sustainable use countries and anti-whaling countries were so close that either side could win a simple majority, a resolution critical of the moratorium was adopted with only a one vote majority as the “St Kitts and Nevis Declaration”.

The St. Kitts and Nevis Declaration states that¹²⁾ “the moratorium which was clearly intended as a temporary measure is no longer necessary” and that “...the position of some members that are opposed to the resumption of commercial whaling on a sustainable basis irrespective of the status of whale stocks is contrary to the object and purpose of the International Convention for the Regulation of Whaling.”

Anti-whaling countries had strongly resisted the Declaration, and some have been taking a position that the declaration is invalid as they don't recognize Iceland, which voted for it, as an IWC member. Iceland had rejoined the IWC in 2002 with a reservation to the commercial whaling moratorium. Legally speaking, anti-whaling countries cannot deny Iceland rejoining the IWC because Article X.2 of the ICRW stipulates that “*Any Government which has not signed this Convention may adhere thereto after it enters into force by a notification in writing to the Government of the United States of America*”. The ICRW requires only a notification to the US Government, the depository of the convention, for any country which wishes to become an IWC member. No approval by the existing members is required.

The adoption of the St. Kitts and Nevis Declaration highlighted the meaning and nature of an IWC resolution. Anti-whaling countries did not accept the legitimately adopted St. Kitts and Nevis Declaration whereas they treat past anti-whaling resolutions as if they were formal IWC policy. Unless they are adopted by consensus, all IWC resolutions are merely an expression of the views of a simple majority of members at a particular time. A change in the voting balance between the pro- and anti-whaling countries, that could and did happen by a shift in positions of a few countries, can alter messages from the IWC totally in the form of a resolution.

8. Future of the IWC Project

The adoption of the “St. Kitts and Nevis Declaration” brought about renewed aggression from some anti-whaling countries. On the other hand, an atmosphere of dialog reflecting the balance of voting power at IWC also emerged at the IWC. Many IWC participants shared the recognition that the *status quo* or continuation of the conflicts would threaten the *raison d'être* of the IWC as an effective international organization. This recognition had led to the birth of the “Future of the IWC Process” (Goodman 2011).

The objective of the “Future of the IWC Process” was firstly to establish rules for dialog and then seek an agreement on a package acceptable for both pro-sustainable use countries and anti-whaling countries, through concessions from both sides. In short, the objective was a truce. After more than two years of intensive negotiations, which could have been broken off any time, a draft package agreement was submitted jointly by the

Chair and the Vice-Chair to the 62nd annual meeting of IWC, in 2010.¹³⁾ Although the proposal contained various provisions, the basic idea was that, in exchange for a substantial reduction of the number of whales to be caught by the existing whaling activities, the IWC would accept whaling while keeping the language of the commercial whaling moratorium in Schedule paragraph 10(e). From the perspective of pro-sustainable use countries, this proposal meant the symbolic achievement of IWC's formal and agreed acceptance of whaling activities in exchange for the concession of reducing the number of whales to be caught by commercial whaling (Norway¹⁴⁾ and Iceland¹⁵⁾ and scientific whaling (Japan, based on Article VIII of ICRW). From the perspective of anti-whaling countries, this proposal meant the substantive merit of reducing the number of whales to be killed by whaling activities conducted legally, even under the moratorium, in exchange for the loss of the appearance that IWC prohibits whaling. It should be noted again that the clause of the moratorium would have remained in the ICRW Schedule under this proposal. In order to alleviate the pain of the concessions for both sides, the proposal was presented as an interim agreement for 10 years.

This draft package agreement under the "Future of the IWC Process" submitted jointly by the Chair and the Vice-Chair had presented the following alternatives to anti-whaling countries:

- (a) To keep *status quo*. No agreement. The moratorium remains, but no control over the existing whaling and even possibilities of future expanded whaling, or
- (b) To accept the Chair and Vice-chair's proposed compromise. Contrary to the characterization of the proposal by anti-whaling NGOs, portrayal by the press and the public perception, the moratorium remains. All whaling would be under the IWC control and the number of whales to be caught will be substantially reduced. Strong criticism from the public and the press expected.

If the interest of anti-whaling countries is protection of whales from whaling, they should naturally choose alternative (b), above. However, many of them selected the alternative (a). Why?

First, the anti-whaling NGOs and media strongly resisted the Chair and Vice-Chair's proposal, and actively promoted the perception that an agreement on the proposal would mean the collapse of the commercial whaling moratorium, resumption of extensive whaling, and return of the past over-harvesting. This perception totally ignores the true contents of the proposal and distorts the facts.

Second, many of the anti-whaling NGOs want the current IWC conflicts to continue. Maintenance and expansion of the whaling conflicts is essential for them to continue and to strengthen their campaigns. The more the conflicts become aggravated, the more financial contributions and media exposure they receive by strengthening various anti-whaling campaigns. They have strong incentives to continue the whaling conflicts even by misrepresenting the Chair and Vice-Chair's proposal.

Third, anti-whaling governments have no incentives to try to reach agreement at the IWC because seeking agreement would be against the interests of anti-whaling NGOs,

the media, and politicians who are sensitive to populist views, and for whom anti-whaling is a no-cost position. Unless the whaling issues become so intense that bilateral diplomatic relations with Japan, Norway, or Iceland are threatened, anti-whaling governments do not see the need to persuade those who are opposed to whaling. Supporting the Chair and vice-Chair's proposal was politically too risky in their domestic environment. In reality, for many countries the priority of the whaling issue is low compared to other international issues. Therefore, the *status quo* is desirable as long as countries can prevent the whaling issue from becoming a serious bilateral diplomatic problem. "Agree to disagree" is the best policy to accommodate domestic political interests without harming diplomatic relations.

While anti-whaling countries have domestic situations that prevented the acceptance of the "Future of the IWC" compromise, the result of the IWC negotiations could have been different if the true nature and objective of the commercial whaling moratorium had been correctly understood by the general public.

9. Summary: Contradictions in the Commercial Whaling Moratorium

There are conflicting views in the world on whales and whaling. One is that whales are renewable living marine resources, no different from other fishery resources. The other is that whaling should not be allowed, even for an abundant species. This is a simplistic depiction, since the reality is much more complex and variable. However, the whaling controversy is described too often as a dichotomy. It can be suggested also that inclination toward dichotomy had created the gap between the real meaning of the moratorium provision and its perception as promoted by anti-whaling interests.

The moratorium provision stipulates that all commercial whaling is suspended temporarily because of uncertainties in the scientific information required for the management of whales, that a comprehensive stock assessment is conducted during the suspension, and that "by 1990 at the latest" the establishment of sustainable catch limits based on scientific evidence is considered. This provision is about the management of whales as a living marine resource. Together with the RMP, a catch limit calculation method developed by the IWC Scientific Committee based on the requirement of the moratorium provision, it is even possible to argue that the moratorium provision is a prescription for the resumption of whaling.

On the other hand, from the anti-whaling perspective, the objective is to achieve a permanent prohibition of whaling through the establishment of the commercial whaling moratorium. For this purpose, they have created the perceptions that commercial whaling is morally wrong or evil, that all whales are threatened with extinction, and the moratorium had prohibited commercial whaling permanently because of these reasons. However, a review of the negotiation history of the adoption of the moratorium in 1982 and literal reading of the provision of Schedule paragraph 10(e) of ICRW demonstrate that these perceptions are groundless, and were created by the biased campaigns of anti-whaling interests.

There are serious contradictions between the true meaning of the commercial

whaling moratorium and the widespread perception regarding it. In a sense, the conflicts over the whaling issues stem from these contradictions. Whereas the moratorium provision requires the consideration of catch limits based on the comprehensive scientific stock assessments, anti-whaling interests regard the moratorium as a permanent prohibition of whaling and as the symbol of their movement (Bailey 2008). As a result, the conflicts at the IWC have jeopardized the existence of the IWC as a functional international organization. Notwithstanding this, the “Future of the IWC Project” failed to achieve agreements, and no breakthrough is in sight to resolve the situation.

It is necessary to implement Schedule paragraph 10(e), the moratorium provision, in accordance with its literal meaning and original intention in order to save IWC as a functional organization. However, this is a very difficult if not impossible challenge, because of the steadfast misperception about the moratorium.

The Future of the IWC Process was not the first attempt to produce a truce. Since the “Irish Proposal”, in 1997, some serious attempts had been made to seek compromises between pro-sustainable use countries and anti-whaling countries. Interestingly, all adopted similar approaches of accepting some whaling as a part of a package agreement, and all failed (Iloff 2010). Only history will tell whether similar efforts for a truce continue, or whether the IWC will eventually collapse, as is feared by many.

One thing is certain; that the long history of conflicts has made the IWC dysfunctional. As a result what has been sacrificed is the conservation and management of whale stocks, the inherent purpose of the IWC.

Notes

- 1) United Nations Environment Program (UNEP). 1972. United Nations Conference on the Human Environment. <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1506&l=en>, last accessed 28 December 2010.
- 2) Verbatim record of the 1974 Annual Meeting available from the IWC Secretariat, Cambridge, UK.
- 3) Verbatim record of the 1979 Annual Meeting.
- 4) *id.*
- 5) Verbatim record of the 1981 Annual Meeting.
- 6) Verbatim record of the 1982 Annual Meeting.
- 7) *id.*
- 8) *id.*
- 9) Mark A. Zacharias, Leah R. Gerber, and K. David Hyrenbach, Incorporating the science of marine reserves into IWC Sanctuaries: The Southern Ocean Sanctuary, *IWC/SC/56/SOS5*.
- 10) <http://www.iwcoffice.org/conservation/estimate.htm>, last accessed 18 Nov 2010.
- 11) COP10 Downlisting of the Eastern Pacific stocks of Gray whale: Yes 47 No 61.
Downlisting of the Okhotsk Sea West Pacific stock of minke whales: Yes 45 No 65.
Downlisting of the Southern Hemisphere stocks of minke whales: Yes 53 No 59.
Downlisting of the North-east Atlantic and North Atlantic central stocks of minke whale: Yes 57 No 51.

- COP11 Downlisting of the Eastern Pacific stocks of Gray whale: Yes 40 No 63.
 Downlisting of the Okhotsk Sea West Pacific stock of minke whales: Yes 49 No 67.
 Downlisting of the Southern Hemisphere stocks of minke whales: Yes 46 No 69 Abstention 4.
 Downlisting of the North-east Atlantic and North Atlantic central stocks of minke whale: Yes 52 No 57.
- 12) The St. Kitts and Nevis Declaration; <http://www.iwcoffice.org/meetings/resolutions/resolution2006.htm#1>, last accessed 17 Nov 2010.
- 13) IWC, 2010, IWC/62/7Rev Proposed Consensus Decision to Improve the Conservation of Whales from the Chair and Vice Chair of the Commission. http://www.iwcoffice.org/_documents/commission/IWC62docs/62-7rev.pdf, last accessed 18 Nov 2010.
- 14) Based on its objection to the moratorium clause in accordance with Article V.3 of ICRW.
- 15) Based on its reservation to the moratorium clause submitted when Iceland rejoined IWC in 2002.

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