

## **BAN WHALING**

### **IWC/US CANNOT ENFORCE A BAN**

#### **US AND IWC HAVE NO POWER TO STOP WHALING-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

Whaling member nations such as Japan and Norway met this moratorium with understandable dismay. Today these member countries continue to hunt whales, Norway in open defiance of the continuing moratorium and Japan through an IWC loophole that allows whaling for scientific purposes. Norway and Japan claim that certain whale species can be hunted on a sustainable basis without endangering the existence of the great mammals. They also argue that whaling is integrally tied to their histories and cultures, and thus they should not be required to cease. Neither country seems to have any intention of ending its whaling practices, and the IWC and United States have proved powerless to stop their hunting.

#### **IWC HAS NO ENFORCEMENT MECHANISMS-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

Anti-whaling forces seem to prefer forcing Japan and Norway to cease their whaling practices and comply with the IWC's moratorium rather than compromising, but this option has proved to be impossible. The IWC and its main enforcer, the United States, have been unable to stop the two nations from continuing to hunt whales. The IWC has been powerless because it lacks the appropriate enforcement mechanisms, and the United States because it has determined that maintaining good relationships with whaling nations takes precedence over unlimited protection of whales.

The IWC is equipped with a few token enforcement mechanisms such as the ability to investigate member nations and prepare reports on their activities. The Commission, however, has no independent authority to sanction violators of the ICRW Schedule and must rely entirely on member nations to "take appropriate measures to ensure the application of the provisions of this Convention and the punishment of infractions against the said provisions in operations carried out . . . under its jurisdiction."

#### **IWC CANNOT ENFORCE REGULATIONS-Ackerman '02**

[Reuben; Senior Editor of BC Law Review; "Japanese Whaling in the Pacific Ocean: Defiance of International Whaling Norms in the Name of "Scientific Research," Culture, and Tradition"; Boston College International and Comparative Law Review; Spring 2002; Lexis]

Certainly, Japan's refusal to conform to any of the IWC's resolutions demonstrates the Whaling Commission's inability to effectively enforce its whaling regulations. n136 In the IWC's favor, fishing regulations are presumably difficult to enforce by any organization. It is inherently difficult to patrol all parts of the high seas, and scrutiny at fishing docks for illicit fishing practices may not always be wholly effective. Furthermore, as is demonstrated by tremendous restrictions on the ability to impose meaningful sanctions, illegal fishing practices may be difficult to deter, especially if such practices yield commercial success with little consequence.

### **IWC ENFORCEMENT HAS NO TEETH-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

To make matters worse, the ICRW contains a provision that allows member nations to object to any amendment adopted by the IWC. The effect of such an objection is that the amendment will not be enforceable against the objecting nation. Thus, even if the IWC did have the authority to sanction violators, it could impose no punishment on Norway for its continued commercial whaling because that country objected to the moratorium amendment when it was adopted. The scientific exception contained in Article Eight of the ICRW is another weakness. This provision, allowing the governments of member nations to grant their citizens permits to kill whales for scientific research purposes, arguably makes Japan's current whaling practices non-violative of the ICRW. As a result of the above mentioned provisions, the IWC's only course of action in response to Japan and Norway has been to symbolically "condemn" the countries for their behavior. At the 1998 annual meeting of the IWC in Oman, a majority of fifteen countries voted to condemn Norway for its continued commercial whaling in the face of the moratorium. At the same meeting, a majority of seventeen countries voted to condemn Japan for its whaling practices. These repeated condemnations, however, which occur every year at the IWC's annual meetings, have no real effect on Japan and Norway for the simple reason that the Commission has no means of enforcing resolutions of condemnation.

### **PELLY AMENDMENT ACTIONS ARE IDLE THREATS-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

Under the Pelly Amendment, the Secretary of Commerce is instructed to certify to the President any country which is "conducting fishing operations in a manner . . . which diminishes the effectiveness of an international fishery conservation program." n131 The President then has the option of directing the Secretary of the Treasury to "prohibit . . . the importation into the United States of any products from the offending country for any duration as the President determines appropriate." n132

Since its enactment, several countries have been certified under the Pelly [\*318] Amendment, n133 but the U.S. presidents have never found it appropriate to impose sanctions on the offending nations. n134 One could hardly help agreeing with the understated remark of one author that "twenty years of threats without the actual imposition of any sanctions may lead certified countries to doubt whether the United States actually will impose sanctions pursuant to the Pelly Amendment."

### **US IS MERELY A BYSTANDER IN WHALING, NOT POLICE-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

In essence, the political shackles that have been placed on the United States's main statutory attempts to force compliance with the IWC have reduced the United States from "policeman" n151 of the IWC to merely a concerned bystander. And, "without the United States as its champion, the IWC is powerless to prevent a resurgence of commercial whaling." n152 The IWC and the United States have failed in their efforts to pressure and even force Japan and Norway into compliance with the moratorium through the use of condemnations and sanction threats respectively. Compromise is the only remaining solution to the problem of depleted whale stocks and the international conflict over whaling.

### **A BAN CANNOT SOLVE; OBJECTOR STATES WOULD IGNORE-Schiffman '96**

[Howard; "The Protection Of Whales In International Law: A Perspective For The Next Century"; Brooklyn Journal of International Law; 1996; Lexis]

Even if the large number of anti-whaling states were seen as sufficient to create the right of whales to live in peace under customary international law, another rule of law exists that renders the question practically moot: the problem of persistent objectors. n151 Even if commercial whaling was adjudicated to be illegal under international custom, it is well settled that persistent objectors to that custom are not bound by it. n152 [\*332] Specifically, Japan, Norway, and Iceland would be deemed persistent objectors, not obligated to obey the customary protection of whales. The likely scenario for the assertion of a violation of customary international law in this case would be that an anti-whaling state, at the behest of environmental groups, would seek adjudication and enforcement against Japan or Norway. These respondent states need only raise their well-documented status as persistent objectors to rebut the presumption of acceptance of the purported custom.

### **THE DEBATE ALONE COULD STOP A BAN FROM TAKING EFFECT-Schiffman '96**

[Howard; "The Protection Of Whales In International Law: A Perspective For The Next Century"; Brooklyn Journal of International Law; 1996; Lexis]

The strongest reason to conclude that whale preservation is not yet customary international law is perhaps the most obvious. Although small in number, there are strong dissenters to such a claim. There is no requirement in international law that every state must show the general practice or evidence the opinio juris. Certainly, however, a large majority of states should do so. n149 Most states do in fact oppose whaling, have made public pronouncements to that effect, and act in accordance with that belief. However, the small minority of states that do not are not quiet about it. Japan, Norway, and Iceland have been most vocal and visible on the IWC and in the world arena in attempting to preserve, not the rights of whales, but the rights of whalers. n150 Moreover, these states are important in the debate as their positions go a long way to defeat the claim of custom at the threshold. Thus, the arduous dissent of these few states, by itself, could arguably prevent the formation of customary law in the first instance.

## **BAN WOULD COLLAPSE IWC**

### **NOT ACKNOWLEDGING CONCERNS OF WHALING NATIONS WILL BREAK APART THE IWC-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

If no concessions are made for these countries, it is likely that both Japan and Norway will withdraw from the IWC altogether. Such a result could prove to be disastrous for the continuing vitality of the Commission and the whales. The World Wildlife Fund's Vice President of International Policy, Richard Mott, believes that current deadlock within the IWC "could lead to the body's breakup in a 'handful of years.'

### **PUSHING FOR BAN ON WHALING WILL COLLAPSE THE IWC AND REVERSE ALL OF THE SUCCESSES OF THE MORATORIUM IN THE PAST FEW DECADES-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

If the International Whaling Commission continues along its current path toward absolute preservation in the face of its own scientific data revealing the rebounding numbers of certain whale stocks, n247 it will likely lose the membership of Japan and Norway. Such a loss could be potentially devastating for the Commission. It would leave the IWC with no means to regulate the whaling policies and procedures of Japan and Norway, thus leaving the world's whale stocks at the mercy of these pro-whaling nations. The potential ramifications of Iceland's decision to resume commercial whaling and trade in whale products, unregulated by any international body, should serve as a wake-up call for the IWC and the world. If other pro-whaling nations decide to follow suit in a similarly unregulated manner, all that was gained by the moratorium in terms of increasing whale stocks could be lost.

### **NORWAY WILL LEAVE THE IWC IF ACCOMMODATIONS ARE NOT MADE-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

The reactions of Japan and Norway to the IWC's continuing moratorium are an obvious expression of these nations' unhappiness with the current state of affairs. The possibility that this unhappiness could lead to a withdrawal from the IWC is very real as both Japan and Norway recently threatened to leave the Commission. n98 In addition, Norway has gone so far as to form a "rival whaling organization," the North Atlantic Marine Mammal Committee (NAMMCO), n99 [\*315] the purpose of which is to allocate whaling quotas based on science and sustainable development. n100 After the IWC's most recent annual meeting in Grenada failed to resolve the deadlock between pro-whaling and pro-conservation members, n101 a Norwegian representative stated "if there is not a compromise in the next few years, we may have to turn to other organizations" such as NAMMCO.

**COLLAPSE OF THE IWC WOULD MEAN AN END TO REGULATIONS ON WHALING NATIONS-Suhre '99**  
[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

The ramifications for the IWC of losing these pro-whaling members would be enormous. As one author stated, "fears for the organization's future effectiveness are justified," because the Commission is on the verge of losing Japan and Norway, and if it does, it will have "no legal or moral control over [these countries'] activities." Without the ability to regulate the whaling nations, the IWC "will serve neither the whaling interests, nor the states that seek to control whaling." Thus, whether or not one agrees with the current whaling practices of Japan and Norway, one must recognize that compromise with these nations is mandatory if the IWC is to remain effective.

**COLLAPSE OF THE IWC WILL DEVASTATE WHALE STOCKS-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

A taste of what could happen if Norway and Japan withdraw from the IWC is about to be delivered by Iceland, a country which withdrew from the Commission in 1992 after becoming frustrated with the IWC's lack of progress toward a solution acceptable to the pro-whaling contingent. Iceland's parliament recently voted to end the country's ten-year ban on whaling, and the country is preparing to resume whaling as early as next year. Iceland's small population will be unable to provide a large domestic market for whale meat, and thus the country plans to export much of what it catches. Iceland feels no obligation to refrain from trading in whale products because it is no longer a member of the IWC and is not a signatory of CITES. Because certain countries such as Japan have virtually bottomless markets for whale meat and blubber, the number of whales that Icelandic hunters would be willing to kill in a year and the amount of profit to be gained from such whaling will likely be very high. With no international regulation and very attractive motives for hunting, the resumption of Icelandic whaling could be potentially devastating for targeted whale stocks.

**THE ONLY WAY TO ENSURE THAT NORWAY AND JAPAN STAY IN THE IWC IS THROUGH COMPROMISE-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

What is to stop Norway and Japan from [\*316] following the example of Iceland, throwing off the shackles of the IWC's whale preservation politics and resuming full-fledged commercial whaling and trade in whale products? Iceland's potentially reckless plans make clear the necessity for pro-whaling nations to remain part of the IWC. Regulation, control, and compromise, all of which can be achieved through an international organization that combines the interests of both whalers and conservationists, are needed to protect the world's whale stocks from the over-harvesting which occurred in the past. The only way to insure that whaling countries stay with or rejoin such an organization is to compromise.

## **BANS ARE CULTURALLY BIASED**

**BANS ON WHALING ARE NOTHING MORE THAN CULTURAL IMPERIALISM-Frøvik and Ward '01**  
[Rune and Simon; "The Whalers' Tale"; Spiked; 03 Jul 2001; <http://www.spiked-online.com/articles/0000002D164.htm>; retrieved 04 Aug 2003]

Since time immemorial man has caught fish and whales, but in the past three decades a rum situation has emerged. While fishing continues to enjoy almost universal acceptance as a means of food production, Western urban society has decided unilaterally to shut down whaling with complete disregard for any culture which still practises it.

Each culture has its own culinary idiosyncrasies. For many Asians dog meat is a delicacy, the French like their frogs, snails and horsemeat, and Australians are fast developing a taste for kangaroos. And there are just as many taboos. Indians forego the joy of beefsteak, Jews and Muslims won't touch pork, and those pickiest of people, the northern Norwegians, would not dream of eating eider duck.

Beset with environmental challenges and yet respectful of such cultural differences, the world community has embraced the principle of sustainable use as embodied in Agenda 21. We have agreed that the use of renewable natural resources is acceptable, provided rates of usage are within the resources' capacity for renewal.

Yet the West's cultural imperialists would have whales exempted from the sustainable use principle - an exemption that would, quite simply, place them above and apart from the animal kingdom to which they obviously belong.

**HARVESTING WHALES IS CRITICAL TO MANY CULTURES-Frøvik and Ward '01**  
[Rune and Simon; "The Whalers' Tale"; Spiked; 03 Jul 2001; <http://www.spiked-online.com/articles/0000002D164.htm>; retrieved 04 Aug 2003]

For communities which live close to nature, particularly in regions where ecosystems contain limited numbers of species, those species that do exist often play vital roles, both nutritional and cultural, in people's lives. Inhabitants of the High North in Norway, for example, will continue to harvest what nature provides, be it seals, fish, birds...or whales. And in the interest of self-preservation, they will strive to do so sustainably. But the idea of placing a major species off-limits for human consumption is incomprehensible.

Harvesting and trading in marine resources are the lifeblood of communities in the High North. Life continues by taking life. For a Norwegian combined fishing and whaling vessel, typically 65 feet in length, this means passing the seasons catching saithe, herring, cod and minke whales.

**WHALING BAN IS CULTURALLY IMPERIALIST AND RACIST-Browne '01**  
[Anthony; Staff Writer; "You eat cows and pigs, so why can't we eat whales?"; The Guardian; 24 Jun 2001; <http://observer.guardian.co.uk/focus/story/0,6903,511787,00.html>; retrieved 04 Aug 2003]

As part of the campaign, Tokyo invited The Observer on an all-expenses-paid trip to Japan to hear its side of the story. Japan's argument is simple: it has no desire to hunt anything other than types of whale, such as the blue, that can be harvested without a threat to their future. Tokyo accuses the West - still insisting on the ban on hunting all main species - of ignoring science, breaking treaties, cultural imperialism, double standards and outright racism. Commercial whaling, say the Japanese, is of no economic significance. It is, though, part of their heritage, and a matter of principle.

## **A/T: UNIQUENESS OF WHALES**

### **RIGHT TO LIFE ARGUMENTS ARE CULTURALLY BIASED-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

Finally, there are some individuals who believe that whales have an absolute right to life which should not be violated by commercial hunting activities. n166 In 1979, Australia's Prime Minister went so far as to say that there are many who view whaling as "inconsistent with the ideals of mankind." n167 However, members of societies that do not eat whale meat do not sacrifice much to make this argument. As one author stated, "nations without an interest in whaling have an easy time pontificating about whales while their citizens consume hamburgers."

### **WHALES SUFFER NO MORE THAN OTHER ANIMALS KILLED FOR FOOD-Browne '01**

[Anthony; Staff Writer; "You eat cows and pigs, so why can't we eat whales?"; The Guardian; 24 Jun 2001; <http://observer.guardian.co.uk/focus/story/0,6903,511787,00.html>; retrieved 04 Aug 2003]

Morishita rejects the animal welfare arguments. He claims harpoon technology has advanced dramatically since the days when whales flailed in agony for hours as they bled to death. Norway and Japan now only use grenade harpoons that explode in the base of the neck, killing by a shock to the brain. The Japanese say 40 per cent are killed instantly, and the average time to death is 2 minutes 30 seconds. 'The West is suffering from double standards. Wildlife is for them to see and admire, and you should only eat animals such as cows and pigs that are reared. But Australia kills three to four million kangaroos a year, and in the US they catch 5.6 million wild deer,' said Morishita.

He asks how Britons would react if Hindus tried to ban the eating of the cows they consider holy. 'The West are trying to force their values on us. It is cultural imperialism.'

### **INTELLIGENCE OF THE WHALES ARGUMENT IS FLAWED-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

In the face of this scientific evidence that minke whales have reached the point where they can again be hunted, anti-whaling countries and organizations have turned to morality arguments which emphasize, among other things, the "intelligence and majesty" of the whale species. n157 The extent of whales' intelligence is a subject of much scientific debate, n158 but their "complex social hierarchies," communicative abilities, and the large size of their brains have led many to speculate that these creatures are, in fact, "highly intellectual." n159 This intellect or intelligence has been heralded as a reason not to kill whales. n160

The logical inverse of this justification seems to be that, if whales were not intelligent, it would be acceptable to kill them. Surely, valuing a creature's life on the basis of its intelligence does not represent high morality. As a Buddhist Reverend replied in response to an American's query about whether the high intelligence of whales meant anything to Buddhists, "intelligence has little to do with the basic dignity of a living form . . . I know some people are less intelligent than others, but all are equal in their basic dignity." n161 It seems a higher immorality to protect whales from death on the basis of their intelligence while condoning, at the same time, the often painful slaughter of cattle, pigs, chickens, and other less intelligent animals that citizens of anti-whaling nations such as the United States are fond of eating.

## **IDENTIFYING ONE SPECIES AS SPECIAL FAILS TO SOLVE**

### **FOCUS ON ONE SPECIAL SPECIES IS INADEQUATE TO SOLVE-Doremus '02**

[Holly; Professor of Law, UC-Davis; "Biodiversity and the Challenge of Saving the Ordinary"; Idaho Law Review; 2002; Lexis]

The biodiversity problem vividly illustrates the shortcomings of the focus on the special. Although saving the special will always be an important component of nature protection, that strategy alone cannot solve the current biodiversity problem. Saving biodiversity is by definition a general goal, not readily amenable to any special focus. Carlos Davidson's description of nature as a tapestry, out of which human activity is pulling thread after thread, helps demonstrate the distinction. A focus on the special implies that identifying and protecting a small number of key threads will achieve our goals. But the goal of biodiversity protection is nothing less than preservation of the entire tapestry in a form that allows its designs to be viewed and enjoyed. The loss of every thread diminishes the picture, but no thread is so special that its removal will cause the entire picture to disappear. Protecting the tapestry is a very different task than protecting the best, the most striking, or the most important individual threads or parts of the overall picture. We simply cannot save the whole by identifying and saving the most special parts. We must either find a way to see the entire tapestry as special or we must seek a different strategy for protecting it.

### **FOCUS ON "SPECIAL SPECIES" RUNS COUNTER TO US ENVIRONMENTAL POLICIES-Doremus '02**

[Holly; Professor of Law, UC-Davis; "Biodiversity and the Challenge of Saving the Ordinary"; Idaho Law Review; 2002; Lexis]

But the limitations of that strategy are increasingly apparent. To put it bluntly, the strategy of the special is not likely to prove effective at meeting what we describe as our current goals. The protection of our biotic resources provides a striking example of this disjunction. Both scientists and policymakers today tout the goal of protecting biodiversity, understood to encompass the range of biotic resources. Ecologists and conservation biologists wholeheartedly endorse biodiversity protection. n2 It is enshrined as a goal for the Forest Service, through the National Forest Management Act and that Act's implementing regulations. n3 Other federal agencies, although lacking statutory mandates to conserve biodiversity, have nevertheless enthusiastically adopted that goal. The Fish and Wildlife Service, for example, has instituted an "ecosystem approach" to maximize biodiversity conservation under the ESA, n4 and the Council on Environmental Quality has issued guidelines for using the National Environmental Policy Act to conserve biodiversity. n5 The protection of biodiversity has even been enshrined as a goal of international law, through the adoption of the Convention on Biological Diversity. n6 Of course, as a society we are still arguing vociferously about how much biodiversity to protect, what costs we are willing to bear in the name of biodiversity, and how to divide those costs. My point is only that we seem, at least on the surface, [\*327] to have a strong consensus at the policymaking level that biodiversity protection is an important goal.



**FOCUS ON SPECIAL SPECIES, EVEN KEYSTONE SPECIES, DOES NOT OFFER SOLVENCY-Doremus '02**  
[Holly; Professor of Law, UC-Davis; "Biodiversity and the Challenge of Saving the Ordinary"; Idaho Law Review; 2002; Lexis]

By interpreting specialness differently, perhaps we could use individual species more effectively as surrogates for biodiversity. It has been suggested that by setting our species protection priorities carefully, concentrating on indicator, keystone, and umbrella species, we [\*331] might wind up protecting far more than the relatively small number of species that become listed. n23 Indicator species are supposed to reflect the health of the larger ecosystem, so that by ensuring their health we ensure that of the ecosystem. Keystone species are thought to be especially important contributors to community structure, so saving them should keep the community intact. Umbrella species are those that require extremely large ranges; their protection, it is hoped, will guarantee that of many smaller-range species. Alternatively, critics suggest that we should shift our focus to protecting key ecosystems, or "hotspots"--locations that harbor unusually high levels of biodiversity.

**FOCUS ON THE SPECIAL DIMINISHES ACCURATE VIEW OF DANGERS TO OTHER SPECIES-Doremus '02**  
[Holly; Professor of Law, UC-Davis; "Biodiversity and the Challenge of Saving the Ordinary"; Idaho Law Review; 2002; Lexis]

So long as we remain focused on the special, we are also unlikely to intervene to protect nature or its components before they become rare. Another filter we typically rely on is ordinariness in the sense of being common or abundant. "Special" equates strongly with limited or rare. It will always be an uphill battle to convince the public that species or ecosystems are special before they become severely reduced. [\*335] We tend both to discount the value of abundant resources and to assume they will always be there. As Joni Mitchell sings, "we don't know what we've got 'til it's gone." n39 Americans did not consider bison special or worthy of concern when vast herds of them covered the plains. No one (other than hunters) gave the passenger pigeon a second thought when it was the most abundant bird on the continent. Both became special only when they went, seemingly overnight, from common to nearly unknown. The same could be said of wetlands. We did not begin to protect them until most of the wetland acreage in the continental United States had been drained, filled, or otherwise converted. Although our understanding of what is special does change, it often does so only in response to the disappearance of resources. Our inability to see resources as special while they are still abundant means that the strategy of the special will almost inevitably leave protection so late that it will be at best costly and at worst impossible.

## **WHALING CAN BE DONE WITHOUT THREATENING WHALE POPULATIONS**

### **WHALING CAN BE DONE SUSTAIN ABLY -Frøvik and Ward '01**

[Rune and Simon; "The Whalers' Tale"; Spiked; 03 Jul 2001; <http://www.spiked-online.com/articles/0000002D164.htm>; retrieved 04 Aug 2003]

After a five-year pause Norway resumed whaling in 1993, and this year has set a quota of 753 minke whales to be caught from two north Atlantic stocks estimated to total 184,000. The minke whale is the main species targeted by today's whalers, and numbers more than one million worldwide. The present catch of about 1300 a year constitutes less than 0.15 percent of that population and is sustainable by any standards.

And this is not just the view of the whaling nations. At the 1997 meeting of the Convention on International Trade in Endangered Species (CITES), a majority of members voted in favour of the resumption of international trade in north Atlantic minke whale products. In so doing they adjudged this harvest to be sound from an environmental standpoint. However, the two-thirds majority needed to effect change was not achieved.

### **MISTAKES OF OVER WHALING IN THE PAST WILL NOT BE REPEATED-Frøvik and Ward '01**

[Rune and Simon; "The Whalers' Tale"; Spiked; 03 Jul 2001; <http://www.spiked-online.com/articles/0000002D164.htm>; retrieved 04 Aug 2003]

The decimation of several great whale stocks by pelagic factory ships was a sharp lesson in the dangers of capitalism run amok. But coastal whaling as practised by local communities, even when it involves cash and (heaven forbid!) profit, is a very different beast that in the long term has shown itself to be sustainable and environmentally sound. The fact that whaling is now the most closely scrutinised marine fishery in the world is a further guarantee to sceptics that the mistakes of industrial whaling will never be repeated.

### **WHALE POPULATIONS ARE DRAMATICALLY HIGHER THAN BEFORE-Browne '01**

[Anthony; Staff Writer; "You eat cows and pigs, so why can't we eat whales?"; The Guardian; 24 Jun 2001; <http://observer.guardian.co.uk/focus/story/0,6903,511787,00.html>; retrieved 04 Aug 2003]

Estimating whale numbers is notoriously difficult. It is impossible to tell, from a few sightings or catches, how many lie beneath the ocean. The IWC's scientific committee reckons there are between 510,000 and 1.1 million minke in the southern hemisphere, with a best guess of 760,000. It guesses there are another 150,000 in the North Atlantic, and 25,000 in the North Pacific. The most populous great whale is the sperm, which numbers two million. As a result of the moratorium, many whale populations are growing strongly. US scientists believe the number of humpback whales in the North Atlantic has doubled since the 1980s to 10,000, with the population growing at 7 per cent a year.

### **ABUNDANCE OF WHALES WOULD JUSTIFY RESUMPTION OF SOME WHALING-Browne '01**

[Anthony; Staff Writer; "You eat cows and pigs, so why can't we eat whales?"; The Guardian; 24 Jun 2001; <http://observer.guardian.co.uk/focus/story/0,6903,511787,00.html>; retrieved 04 Aug 2003]

Japan insists some whales are so abundant it can take a limited number each year. Joji Morishita, deputy director of the far-seas fisheries at the Japanese Fisheries Agency, said: 'We are not talking about taking any whales that are close to extinction, but minke whales. There are more minkes than ever, and they say we cannot take one.' For the past 10 years, the IWC's scientific committee has honed a complex quota system to work out the number of whales that can safely be hunted. Using conservative estimates, it reckons that Japan could take up to 2,000 minke a year.

### **BANNING WHALING VIOLATES IWC GOALS AND IS UNSCIENTIFIC-Detsky '02**

[Mark; "Developments in Conservation and Living Resources: The Murky Sea over the Magnificent Whale"; Colorado Journal of International Law and Policy; 2002; Lexis]

The arguments of the pro-whaling nations to resume the take are threefold. First, the IWC was set up to insure a sustainable take, and maintaining the ban deprives their traditional economies and goes against the mission of the IWC. n28 Second, since the 1985 ban on commercial whaling, whale stocks have increased to the point where a sustainable take is not only allowable, but also necessary because increased whale populations are a threat to human needed fish stocks. n29 Third, whale species must be treated separately and managed to allow take when a species is deemed to have large enough numbers. n30 Some species, like the Minke, have proven large numbers, which prompts the accusation that the IWC is ignoring relevant data. n31 In 1991, an IWC scientific committee reported that 2,000 Minke whales could be taken without harm to the population, but the IWC rejected that recommendation. n32 One Japanese official stated that "for the IWC not to recognise whaling now is unscientific and a violation of its convention, and I believe there is a need to correct this speedily."

### **NORWAY PROTECTS THE INTERESTS OF WHALES CURRENTLY-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

Despite its rejection of the IWC's moratorium, Norway's whaling practices are far from unregulated. Norwegian whalers are closely monitored and must observe strict quotas set by the government. n92 A whaling inspector is stationed on each whaling vessel when whaling is occurring. n93 Further, Norway requires the use of exploding harpoons in order to spare the hunted whales as much pain as possible, and whalers are trained in marksmanship. n94 The fisheries ministry of Norway has even gone so far as to suggest that it might start electronic surveillance of whale boats, in an effort to "reassure the international community[. . .]that its whale hunt is carried out according to strict regulations." n95 Such surveillance would be accomplished by installing black boxes on whaling vessels to record information on the speed and position of the boats as well as the date and time that each harpoon was fired. n96 The information gathered by the boxes would be used to ensure that regulations are being followed.

### **WHALING CAN BE DONE ON A SUSTAINABLE BASIS-Ackerman '02**

[Reuben; Senior Editor of BC Law Review; "Japanese Whaling in the Pacific Ocean: Defiance of International Whaling Norms in the Name of "Scientific Research," Culture, and Tradition"; Boston College International and Comparative Law Review; Spring 2002; Lexis]

Additionally, these critics of the IWC contend that the IWC's regulations imposed upon whaling cultures are not based upon a need to protect whales from extinction. n129 Instead, they argue that the restrictions are the result of a convenient political determination by the non-whaling states that lead the IWC, who fear no political retribution (and expect only political gain) by the states' citizens since whaling is not a part of their culture. n130 Anti-whaling nations, in other words, have found a politically favorable topic and can push for conservation measures without the cost falling back on the electorate. These critics further maintain that commercial whaling can be maintained on a sustainable basis, and the whaling ban thus conflicts with the rights of human beings to "practice their culture."

**ATTACKING WHALING VIOLATES ENVIRONMENTAL PRINCIPLES-Frøvik and Ward '01**  
[Rune and Simon; "The Whalers' Tale"; Spiked; 03 Jul 2001; <http://www.spiked-online.com/articles/00000002D164.htm>; retrieved 04 Aug 2003]

To ensure that the oceans continue to serve as one of our most important food reservoirs, there are many problems which must be addressed, notably over-fishing, wasted by-catches and pollution. But these must be addressed by improving our management in accordance with agreed principles, not by launching destructive attacks on those who engage in exactly what we are striving for - sustainable use - because our cultural bias finds a particular harvest unpalatable.

True environmentalists are concerned not with appearances but with practising the principles that they preach. In so doing, they have either reached the conclusion, or are getting there, that whaling should not only be continued but could even be increased to provide more people with a healthy and nutritious source of protein in a way that is much more environment-friendly than eating beef or pork.

**ALLOWING MINKE WHALING IS THE BEST PLAN-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

One advisable compromise would be to lift the moratorium such that Japan, Norway, and other whaling nations would be allowed to hunt minke whales commercially on a sustainable basis. Initially, the main arguments put forth by anti-whalers against such a proposition and in support of a total ban on [\*320] commercial whaling focused on scientific concerns about the endangered status of whales. n153 However, the IWC's Scientific Committee has estimated that the southern hemisphere minke whale stock is over 760,000 animals and has gone so far as to say that no adverse effects would occur from a take of up to 4,800 whales. n154 The Committee also estimated in 1996 that the Northeast Atlantic minke stock numbered approximately 112,000 whales, a level that according to RMP criteria would allow for an annual quota of about 600 whales. n155 Even the former head of the IWC, Ray Gambell, agreed that minkes were harvestable, stating "in all reasonableness we would have to say that a commercial catch could be taken without endangering [minke] stocks."

**WHALES CAN BE HARVESTED WITH MINIMAL PAIN-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

Another morality argument used to condemn whaling is the allegation that whales experience a great deal of pain when they are harpooned and subsequently take a long time to die. n162 The solution to this problem is not to punish nations which have relied on whaling for centuries by demanding an end to all whaling. Rather, an effort should be made to improve whaling techniques so that these great animals may be taken in as humane a fashion as possible. Such efforts have been underway for some time, n163 and substantial progress has been made in this area. In fact, the Japanese have developed a weapon with which they are able to kill a minke whale in an average of two minutes and twenty-four seconds in the Antarctic and only one minute and fourteen seconds in a coastal whaling situation, n164 considerably less time than it takes to steam a crab or lobster. Further, the explosive harpoons developed by Norway in the 1980s enable their fishermen to kill more than 60% of the whales they take instantly. n165 That animals experience pain when their lives are taken is perhaps inevitable. This has not stopped all humans from relying on animals for food, clothing, and other uses. And there does not appear to be a justification for singling out whales from other animals as worthy of absolute protection from the pain of death.

**CANNOT JUSTIFY SCIENTIFIC OBJECTIONS TO WHALING-Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

Scientific research shows that certain whales such as the minke now exist in numbers sufficient to allow hunting on a sustainable basis. n173 Further, none of the morality-based arguments advanced by those who support the moratorium justify singling out whales as animals worthy of protection above all others. Nonendangered whales which can be hunted on a sustainable basis have no higher right to life and deserve no greater protection than any other animal traditionally used for human consumption. Science can no longer justify the continued existence of a complete moratorium. The morality arguments advanced by many conservationists never could.

**MOST LOGICAL PLAN WOULD BE TO ALLOW WHALING ON SPECIES THAT CAN BE WHALED SUSTAINABLY- Suhre '99**

[Sarah; JD Candidate, Georgetown; "Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation"; Georgetown International Environmental Law Review; Fall 1999; Lexis]

The most logical concession for the IWC to make is to lift the current moratorium on commercial whaling to an extent which would allow Japan, Norway, and other pro-whaling nations to hunt the minke whale on a sustainable basis. At the 1997 annual meeting of the IWC, Ireland introduced a proposal to allow, among other things, "permission for closely regulated and monitored coastal whaling within 200 mile zones by communities with a long tradition for such activity," while establishing the rest of the oceans as a "global sanctuary" for whales and banning scientific takings. n250 This plan appears to be gaining [\*329] support among the IWC member nations as well as among environmental organizations such as the World Wildlife Fund and Greenpeace. n251 In light of the rising numbers of minkes and the recommendations of the IWC's Scientific Committee, there is no reason why it should not be adopted. At the very least, while proposals such as the one presented by Ireland are under consideration, the IWC should grant a subsistence quota of minke whales to those coastal communities in Japan and Norway that can establish a long history of cultural and nutritional reliance on whales.

## **SANCTIONS WILL NOT WORK**

### **TRADE SANCTIONS ON JAPAN COULD LEAD TO A TRADE CONFLICT-Ackerman '02**

[Reuben; Senior Editor of BC Law Review; "Japanese Whaling in the Pacific Ocean: Defiance of International Whaling Norms in the Name of "Scientific Research," Culture, and Tradition"; Boston College International and Comparative Law Review; Spring 2002; Lexis]

Japan has indicated that it will pursue a claim against the United States in the WTO if the United States imposes trade sanctions. The WTO prohibits trade restrictions on a production process if the actual products being shipped into the country are not in violation of local health standards. The U.S. imposition of such trade sanctions would do exactly this, allowing the WTO to prohibit such action, which may then provide some leverage for Japan in the whaling debate. Since whales are not the byproduct kills of some other commercial catch, and no whale products are shipped into the United States directly, trade sanctions may be necessarily limited. The only option from this constrained view of U.S. trade power is to test a range of Japanese imports, such as certain perfumes, to ensure no trace amounts of whale oil are present (thus avoiding the limitation on production processes). Experts disagree on whether such testing will have a definite economic impact upon Japanese practices, at what is likely to be a high financial and administrative burden. Additionally, should the U.S. testing be deemed harassment of lawful commercial trade, the United States may face liability in the WTO on separate grounds.

### **US SANCTIONS WOULD BE CULTURAL IMPERIALISM-Ackerman '02**

[Reuben; Senior Editor of BC Law Review; "Japanese Whaling in the Pacific Ocean: Defiance of International Whaling Norms in the Name of "Scientific Research," Culture, and Tradition"; Boston College International and Comparative Law Review; Spring 2002; Lexis]

Japan also may claim that the U.S. sanctions and IWC restrictions constitute "cultural imperialism," because many Japanese have grown up eating whale meat as part of their culture. n93 The Japanese Whaling Association claims that the modern ban on commercial whaling thus strips Japan of an important part of its culture and tradition, since whale meat traditionally has been a prized delicacy for special occasions. n94 However, any threat to Japan's sovereignty in this regard is arguably outweighed, conservationists maintain, by the growing international consensus of a genuine threat to whale populations.

### **US AND IWC MUST USE ENFORCEMENT MECHANISMS THAT DON'T VIOLATE TRADE AGREEMENTS-Schiffman '96**

[Howard; "The Protection Of Whales In International Law: A Perspective For The Next Century"; Brooklyn Journal of International Law; 1996; Lexis]

Should the few remaining whaling states decide that the constant battle in the international arena is not cost effective for them, they will likely abandon their commercial whaling industries. If so, the anti-whaling forces will finally have won the war.

Until then, the United States and other members of the IWC must endeavor to find enforcement mechanisms that do not run afoul of obligations in free trade agreements. The use of unilateral trade sanctions to compel compliance with IWC regulations is becoming unworkable. We should negotiate future trade treaties in contemplation of trade sanctions to further the policy of whale preservation. All states that seek to protect whales should not only aggressively enforce their domestic laws but also work with the world community to accomplish this goal. The best such opportunity to address this problem between and among states is through the UNCLOS dispute settlement procedure.

### **GATT WOULD RULE AGAINST USE OF PELLY AMENDMENT-Schiffman '96**

[Howard; "The Protection Of Whales In International Law: A Perspective For The Next Century"; Brooklyn Journal of International Law; 1996; Lexis]

Environmental groups had frowned upon the decision in *Japan Whaling Ass'n v. American Cetacean Society*, that found Pelly to be discretionary in the first place. This finding by the GATT panel may realize their worst fears about the continuing rocky relationship between marine mammal protection and free trade.

While the GATT panel's Tuna-Dolphin decision is the only real evidence to date of a legal tension between free trade and the goal of cetacean protection, it does not augur well for future conflicts of this kind. The ultimate goal of GATT is reduced trade barriers worldwide. If the Pelly Amendment were to be applied to embargo the fish products of states that use cetacean-hazardous fishing methods, a future GATT panel would probably decide such action to be illegal.

### **US WILL CONSISTENTLY LOSE BEFORE TRADE GROUPS-Schiffman '96**

[Howard; "The Protection Of Whales In International Law: A Perspective For The Next Century"; Brooklyn Journal of International Law; 1996; Lexis]

The consideration of NAFTA is important to the whaling debate for three reasons. First, it signals the importance of free trade objectives in the post-Cold War world. Second, it exemplifies the trend toward multilateralism to resolve disputes that affect international trade. Third, its environmental side agreement demonstrates that environmental concerns can be addressed and integrated into a trade treaty where the parties are willing to do so.

The evaluation of the GATT and NAFTA highlights a potential obstacle to whale protection. The retention of U.S. power, under domestic law, to protect the environment may edify anti-whaling advocates, but the potential conflict will remain so long as trade sanctions under Pelly remain the primary enforcement mechanism of IWC regulations. Furthermore, the United States' willingness to impose sanctions will probably continue to decline as the global policy of free trade increases, especially if it consistently loses before various tribunals.

### **LAW OF THE SEA COULD BLOCK US ACTION-Schiffman '96**

[Howard; "The Protection Of Whales In International Law: A Perspective For The Next Century"; Brooklyn Journal of International Law; 1996; Lexis]

The protective scheme of the IWC regulations, and any alleged violation thereunder, is directly related to the relevant provisions of UNCLOS. Thus, the dispute settlement provisions mentioned above may preclude the United States from using unilateral economic sanctions to protect whales and other marine mammals. Any state against whom sanctions are imposed may claim that the United States did not endeavor to settle the dispute in good faith in accordance with the convention. They may then seek a judgment against the United States for damages suffered as a result of the unilateral sanctions by commencing an action themselves under the dispute settlement procedures. Since the United States is now a party, subject to the advice and consent of the Senate, such a judgment would be binding under article 296. While the preclusive effect of the UNCLOS dispute settlement procedures on unilateral sanctions is problematic, advocates of whale protection may come to rely upon the very articles cited above

## **MAKAH WHALING**

### **NO CULTURAL JUSTIFICATION EXISTS**

#### **MAKAH CLAIM IS FLAWED ON THREE LEVELS-Bradford '00**

[William; PhD; "'Save the Whales" v. Save the Makah: Finding Negotiated Solutions to Ethnodevelopmental Disputes in the New International Economic Order"; St. Thomas Law Review; Fall 2000; Lexis]

Proponents of the ASW Definitional Argument contended that the Makah proposal failed to meet IWC requirements under the ASW Clause on three counts: (1) the temporal continuity of the Makah ASW tradition had been broken by the failure of the Makah to hunt whales since 1915, and whaling was no longer central to Makah culture or religion; 2) the Makah did not have a subsistence or nutritional need for whales because their physical and economic survival had not been dependent upon whaling for more than eighty years; and (3) the planned use of modern whaling methods further demonstrated that the Makah intended to engage in commercial, rather than subsistence, whaling, which was not within the scope of the ASW Clause.

#### **MAKAH CLAIM IS NO MORE LEGITIMATE THAN OTHER NATIONS-Paul '00**

[Joel Richard; Professor; Hastings Law School; "Cultural Resistance To Global Governance"; Michigan Journal of International Law; Fall 2000; Lexis]

Why should the Makah's cultural claim be considered more authentic than Japan's or Norway's? In recent years, many indigenous nations have used cultural exceptions effectively in a variety of contexts to protect their interests and expand group rights under international law. n342 We might assume that an indigenous tribe has a traditional form of whaling that is more primitive than the modern techniques used by Japan and Norway or that the tribe has practiced whaling continuously for a longer period. However, the strength of the Makah's cultural claim clearly is not a function of authenticity or longevity. All three cultures use whale meat for some ceremonial purposes, but Norway and Japan have had a continuous tradition of eating whale meat. n343 By contrast, the Makah had never tasted whale meat and had no clear idea of what to do with the whale carcass after they killed it.

#### **MAKAH HAVE NO CULTURAL CONNECTION TO WHALING NOW-The Times '98**

["Whaling Wall—The Maklah Do Not Have a Special Case for Hunting"; Times of London; 05 Sep 1998; Lexis]

The ICRW still allocates a whaling quota to indigenous communities whose subsistence or culture depends on it. Russian Inuits can kill 140 gray whale a year. But the British Government, along with most other signatories to the ICRW, does not consider the Makah to hold a valid claim. More than 70 years have elapsed since their last whale hunt. Only a handful of elders recall it, and even fewer can remember traditional recipes for whale meat. When a whale drowned accidentally in Makah nets a few years ago, most of the flesh was dumped.

#### **MAKAH ARE NOT COMMITTED TO TRADITIONAL MEANS-The Times '98**

["Whaling Wall—The Maklah Do Not Have a Special Case for Hunting"; Times of London; 05 Sep 1998; Lexis]

The Makah people appear willing to adapt to the modern world when it suits them. Next month, rifles and motorised boats rather than traditional techniques will be used to hunt the gray whale. The US Government should capitalise on this willingness by encouraging their plans to invest in aquaculture. This sidestepping of the ICRW sets a dangerous precedent, without compelling justification for doing so.



## **MAKAH WHALING WILL HURT THEIR CULTURE**

### **WHALING WILL IMPOVERISH THE MAKAH CULTURE AND KILL WHALES-Sea Shepherd Conservation Society '03**

["The Makah Whale Hunt"; 2003; [http://www.seashepherd.org/news05\\_2.shtml](http://www.seashepherd.org/news05_2.shtml); retrieved 26 Jul 2003]

The dilemma that the Makah have now created for themselves is this: In order to kill their twenty whales over the next five years, they will have to expend tens of thousands of dollars of tribal funds to underwrite the whaling efforts. Funds will be needed to train the whalers, to hire the whalers, to purchase equipment, ammunition, and to hire consultants, public relations people, lawyers, and managers. Money will be needed to host potlatch ceremonies every time a whale is killed. Money will be needed to dispose of the whale's carcass and money will be needed for policing and security protection. This money in turn will be taken from general funds required for more important programs. This in turn will generate conflict within the tribe leading to further disunity. In the end the Makah will have demonstrated that instead of winning the right to kill whales to preserve their culture, they will be impoverishing their tribe and culture by killing whales.

### **WHALING HAS NOT REVITALIZED THE MAKAH CULTURE; THINGS ARE WORSE-Sea Shepherd Conservation Society '03**

["The Makah Whale Hunt"; 2003; [http://www.seashepherd.org/news05\\_2.shtml](http://www.seashepherd.org/news05_2.shtml); retrieved 26 Jul 2003]

What the Makah have found is that all of the solutions that they hoped to find by returning to whaling have not materialized. Their economic and sociological problems remain the same. Regaining their whaling has not lessened unemployment, reduced drug use and alcoholism, inspired the youth and brought unity and harmony to the people. If anything it has caused greater disunity and has soured relations with their neighbors, a fact that has lessened the demand for Makah artwork.

The sad thing is that with an escalation of species extinctions, with the threats faced by all marine life including whales, with the world's human population doubling every generation, so much effort is being put into a program to promote the culture of killing. Should the Makah kill whales because they have the so-called right to do so? Is this all that it is – the exercise of a right and is the exercising of a right more important than the protection and conservation of life, especially when there is no practical reason for killing a whale by the Makah?

### **MAKAH WERE DUPED-Bradford '00**

[William; PhD; "'Save the Whales" v. Save the Makah: Finding Negotiated Solutions to Ethnodevelopmental Disputes in the New International Economic Order"; St. Thomas Law Review; Fall 2000; Lexis]

Led by the Sea Shepherd Conservation Society [hereinafter "SSCS"], several aggressive environmental nongovernmental organizations n138 claimed that after eighty years of [\*193] nonwhaling the Makah had entirely lost their collective cultural knowledge of how to kill, butcher, and consume gray whales and that, by "dup(ing) white liberals with hoary ancestral legends and phoney New Age spirituality" the Makah, no longer dependent upon whaling for food or shelter despite their aboriginal status, n139 were attempting to disguise what was in fact a planned commercial whaling operation. n140 Proponents of this ASW attack on the Makah contended that the Makah, in contravention of the pledge in their Tribal Management Plan, intended to sell their catch in lucrative Japanese markets.

**MAKAH CAN ONLY REVITALIZE THEIR CULTURE BY ADOPTING AN ETHIC OF COMPASSION WITH REGARD TO ALL SPECIES-Sea Shepherd Conservation Society '03**

[“The Makah Whale Hunt”; 2003; [http://www.seashepherd.org/news05\\_2.shtml](http://www.seashepherd.org/news05_2.shtml); retrieved 26 Jul 2003]

The Makah have lain to rest the myth of the ecological Indian. In this end the Makah are as ruthless, selfish, and as arrogant as the rest of us. In the end it is the whales who are the victims, not the Makah. In the end it is the whales that are dying.

At the last Potlatch following the killing of the one whale, I could not help but ponder on the contradiction that before the Makah ate the flesh of the whale along with Coke and Pepsi, they recited the Christian Lord's Prayer, sang the National Anthem of the United States, and gave grace to a European God.

A conquered people singing the anthem of their conquerors, embracing a foreign God, saluting the flag flown by the men that took away their land and destroyed their way of life – their culture. Now here they were, allied with Uncle Sam, armed with the big guns, feeling good about themselves because they had found a scapegoat to vent their frustrations on – the whales and those who wanted to see the whale live.

It was a whale that died for the sins of the Makah and that sin was that they had long since sacrificed their culture for American materialism. Now like a Catholic accepting a wafer and wine, the Makah could taste the meat that their forefathers once tasted but it was a bitter taste because they will never again taste the freedom that their forefathers experienced.

Ironically, that freedom will only be experienced by redefining their culture, as all of us must do, and understanding that the past is the past and the sins of the past have led to the tragedies of the present and if we keep on this path – the future will see even more tragedies. We must take the path of compassion to avoid such a future, and this path must incorporate the rights of all other species upon this Earth, for only by living in harmony with those other species will we obtain harmony for our children and all our relations.

**WHALE HUNTS WILL HURT THE TRADITIONAL CULTURE OF THE MAKAH-Rossiter '97**

[William; “The Makah Whaling Dance”; Whales Alive!; Jan 1997; <http://csiwhalesalive.org/csi97106.html> ; retrieved 11 Aug 2003]

The Whaling Dance of the Makah Nation is really many dances, and if you care about whales you should study it carefully. The core dance is fascinating and traditional, with ancient words and rituals about the honor and need to whale with skin boats and stone lances; a core symbol for some of the traditional cultural values in this ancient society, now jeopardized from decades of erosion and change.

Around this core the Makah Tribal Council is in their sham dance, for they just want to kill five gray whales the modern way, perhaps becoming commercial whalers, and for some, enjoying the international attention the issue has brought. With an insular, autocratic ignorance, and decades of experience at being suspicious of Outsiders, the Tribal Council doesn't seem to be aware of the effect they are having, on their Nation and Outside. Or they don't care.

The next ring is a terrible whirl of social ostracisms and threats within the community, with those few Makah who demand a return to whaling going to cowardly and churlish lengths to silence those who oppose the whaling. Saddest of all is the impact of this on some Makah Elders and the traditional, respectful system centered on their wisdom, as the more modern, aggressive, but younger Makah work to destroy a millennium of cultural experience in the name of power. One Elder has been threatened with being taken off the tribal rolls if she continues to speak out, taking away her health care and tribal privileges, yet her ancestor signed the treaty that empowers the Council. Many Makah may not even know what's going on, or they are afraid to speak out. Many have no concept of the issue beyond Neah Bay, and the very probable economic loss of tourism if even one whale is killed. Only a few may profit from whaling, but all the Makah will suffer for it. This is not a threat of some organized boycott; who would want to visit a place that, for profit, kills the same whales that are revered by millions as they migrate along the West coast?

Outside this ring the Outsiders are dancing, with those who can benefit from the Makah whaling providing funds and persuasion to the flattered and selectively unsuspecting Tribal Council. To Norway and Japan the dance is about the Makah getting a quota from the IWC under a redefined or new category of aboriginal whaling, greatly expanding the opportunity for the worldwide and wholesale slaughter of whales for profit.

## **MAKAH EXCEPTION WILL INCREASE WORLDWIDE WHALING**

### **MAKAH EXCEPTION LIKELY TO GENERATE CULTURAL WHALING WORLDWIDE-Rossiter '98**

[William; "Makah Whaling"; Whales Alive!; October 1998; <http://csiwhalesalive.org/csi98401.html>; retrieved 03 Aug 2003]

This hunt is an odd blend of traditional and modern elements, a fascinating study but for the ominous portent: If the Makah kill a gray whale the United States will become a whaling nation in the eyes of the world. This will not be an aboriginal subsistence hunt and could even become commercial, according to some recent Makah statements.

It is also likely to encourage the "cultural whaling" movement all over the world. Because of the U.S., "cultural whaling" without nutritional subsistence need may become the new IWC standard. Established IWC criteria for "aboriginal subsistence whaling," based upon demonstrated nutritional and cultural needs, have been unilaterally abrogated by the United States through its contention, after a failed attempt to justify Makah subsistence needs for whale meat, that only a cultural need is required.

### **MAKAH CLAIMS VALIDATE THE CLAIMS OF ALL OTHERS WHO WANT TO WHALE-Coronado '00**

[Rod; "Intro to the Makah Whaling debate"; Earth First! Journal; 2000; <http://www.earthfirstjournal.org/efj/feature.cfm?ID=29&issue=v19n4>; retrieved 01 Aug 2003]

Anti-whalers argue cultural preservation doesn't justify killing intelligent animals emblematic of the larger environmental and animal rights struggle. They fear that by exercising treaty rights to whale, the Makah will pave the way for whaling countries like Japan and Norway to also claim cultural whaling rights and undermine the moratorium on commercial whaling. Historically, the Makah are whalers. But their survival no longer depends on it. By asserting cultural, rather than subsistence whaling rights, the Makah validate other nation's attempts to call commercial whaling "cultural heritage" (and while the US government supports Makah whaling rights, it is not a champion of indigenous sovereignty). If the US was truly concerned with treaty rights, it would uphold its 1,200 broken treaties instead of supporting tribal sovereignty only when it circumvents environmental laws.

### **GRANTING AN EXCEPTION TO THE MAKAH WILL DRAMATICALLY INCREASE EXCEPTIONS-Fowles '01**

[Rosemary; JD Candidate, University of Miami; "METCALF V. DALEY: CONSIDERATION OF THE SIGNIFICANT IMPACT ON THE GRAY WHALE POPULATION IN AN ENVIRONMENTAL ASSESSMENT"; Ocean and Coast Law Journal; 2001; Lexis]

After a successful Makah proposal, other tribes also will likely submit proposals for a quota. n81 The CEQ regulations require an agency to consider "the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration." n82 Presently, thirteen Canadian tribes are claiming a treaty right similar to that of the Makah Tribe to hunt whales. n83 The likelihood of granting quotas to these tribes under the aboriginal subsistence exception must be considered in a threshold determination of significance.

Moreover, because the Makahs have not hunted whales for seventy years, giving them a quota under the aboriginal subsistence exception may [\*408] alter the definition of the exception. A nutritional need would no longer be included as a requirement to the exception. Other indigenous people who included whaling in their cultural background would thus be inclined to request a quota.

## **MAKAH EXCEPTION WILL INCREASE ODDS OF AN EXCEPTION FOR JAPAN, ENDANGERING WHALE POPULATION-Fowles '01**

[Rosemary; JD Candidate, University of Miami; "METCALF V. DALEY: CONSIDERATION OF THE SIGNIFICANT IMPACT ON THE GRAY WHALE POPULATION IN AN ENVIRONMENTAL ASSESSMENT"; Ocean and Coast Law Journal; 2001; Lexis]

Additionally, some commentators note that approval of the Makah plan may create adverse repercussions from other IWC nations, most notably Japan. n85 Allowing Makah to whale on purely cultural grounds might seem inconsistent and unfair to Japanese whalers. n86 Japan has repeatedly made petitions to the IWC for whaling rights for small-type coastal whaling (STCW). n87 Japan asserts that STCW is very similar to aboriginal subsistence whaling and that cultural dependency on whales exists in some coastal villages in Japan. Japan has argued that this dependence should qualify them for an exception to the IWC ban on whaling. n88 A successful Makah proposal could conceivably result in the IWC feeling the pressure to grant an exception to Japan, thereby further affecting the whale population.

## **MUST REJECT MAKAH WHALING TO AVOID SPREAD OF "CULTURAL" HUNTS WORLDWIDE-Markarian and Rose '03**

[Michael; president of The Fund for Animals; and Naomi; marine mammal scientist; "Makah Whale Hunts Illegal"; Seattle Times; 12 Feb 2003; Lexis]

Americans decided long ago that hunting whales for commercial, recreational and other non-subsistence purposes is simply unacceptable. Allowing the Makah tribe to hunt even a small number of whales for "cultural" reasons sets a dangerous precedent for allowing other "cultural" whale hunts around the world. Japanese, Norwegian and some Native hunters are just waiting for the chance to reopen commercial whaling under the guise of culture, and the Japanese have already pointed to the Makah hunt as illustrative of American duplicity on this issue.

We must oppose all non-subsistence whale hunting, regardless of whether the whale hunters are European, Asian, Native American or any other ethnicity.

We respect the culture and treaty rights of the Makah, but insist that our federal government must respect domestic environmental laws and international treaty obligations to protect whales. Our federal agencies should stop wasting tax dollars to promote whale killing in the U.S., and the Makah - many of whom do not support whale hunting - should look toward whale watching and other humane opportunities to benefit from the presence of whales in Puget Sound.

## **NORWAY AND JAPAN ARE SUPPORTING THE MAKAH TO INCREASE CHANCES OF THEIR OWN WHALING-In Defense of Animals '01**

["Makah Environmental Assessment"; In Defense of Animals Action Alert; 16 Feb 2001; [http://www.idausa.org/alert/currentalerts/a\\_makah.html](http://www.idausa.org/alert/currentalerts/a_makah.html); retrieved 08 Aug 2003]

The Makah people has not hunted whales for more than 70 years until recently. There is no need nor cultural excuse for tolerance of this atrocities to continue being perpetrated against this majestic, intelligent, sentient beings.

"Norway and Japan, traditional whaling nations that oppose the Whaling Commission's ban on whale hunting, are giving the tribal leaders their full support because they believe the Makah request could yield the precedent they need to resume commercial whaling at full capacity.

## **ARGUMENTS ARE IMPERIALIST**

### **RELIANCE ON EXCEPTIONS FOR ABORIGINAL PEOPLES DENIES THEM A RIGHT TO DEVELOP ON THEIR OWN TERMS-Kalland '94**

[Arne; "Aboriginal Subsistence Whaling: A Concept in the Service of Imperialism"; 11 Essays on Whales and Man; 2<sup>nd</sup> Edition; 1994; reprinted section at <http://www.highnorth.no/Library/Culture/a-con-in.htm>; retrieved 04 Aug 2003]

The principle has been laid down in international fora that special considerations shall be given to aboriginal people when it comes to the exploitation of renewable natural resources for the purpose of subsistence. This privilege is, however, a double edged sword because it implies a static view of a people and its culture and can be used to deny aboriginal people their obvious right to develop on their own terms. When "aboriginal subsistence whaling" was accepted by the International Whaling Commission, for example, the concept became a powerful weapon in the hands of environmental organizations.

### **SUBSISTENCE EXCEPTION IS VAGUE AND IMPERIALIST-Kalland '94**

[Arne; "Aboriginal Subsistence Whaling: A Concept in the Service of Imperialism"; 11 Essays on Whales and Man; 2<sup>nd</sup> Edition; 1994; reprinted section at <http://www.highnorth.no/Library/Culture/a-con-in.htm>; retrieved 04 Aug 2003]

The term "subsistence" is as ambiguous as "aboriginal", and has been used at least in two ways. Firstly, it might mean selfsufficiency in that products are not allowed to enter the market but must be consumed locally to meet the nutritional, subsistence and cultural requirements of indigenous or native communities (IWC 1981 ). Similar sentiments have been expressed in British Columbia where the authorities imposed restrictions on sale of fish caught by Indians inside their reserves, and on Pribilof Islands where the Aleutes have been prohibited to sell their seal skins. Commercialism in itself seems to be considered bad by the majority of the contracting governments at the IWC. It is ironic that this view is expressed by governments that usually are strong advocates of free trade and movement of capital. But apparently, some people shall be denied access to the world market. And if they want to partake in the world economy, it shall not be on their own terms but on the outsiders. Such an attitude is usually called imperialism.

### **EXCEPTIONS LEAD TO CONTROL AND DOMINANCE OF INDIGENOUS PEOPLES-Kalland '94**

[Arne; "Aboriginal Subsistence Whaling: A Concept in the Service of Imperialism"; 11 Essays on Whales and Man; 2<sup>nd</sup> Edition; 1994; reprinted section at <http://www.highnorth.no/Library/Culture/a-con-in.htm>; retrieved 04 Aug 2003]

Terms like "aboriginal", "native" and "indigenous" have been used rhetorically by minority groups themselves in order to muster support for their struggle to gain recognition as distinct peoples with their own cultures and with just rights to self- determination. But this can easily become a double-edged sword because concepts such as ASW imply a static view of a people and its culture. Whaling as well as sealing is allowed only as long as it is conducted by small non-White, oppressed minorities perceived as lacking unifying political institutions, use "simple" technologies, and whose economic exchanges are believed to exist within the confinement of a non-commercial economy. Only "traditional" usage is allowed, and it tends to be the outsiders who define what is "traditional" (Wenzel 1991 ).

To allow whaling and sealing under the above conditions gives the anti-whalers a way to control ethnic minorities and keep them in a position of dependency. And this weapon has been used.

## **MAKAH EXCEPTION HARMS INTERNATIONAL NORMS**

### **ALLOWING MAKAH EXCEPTION THREATENS IWC AND INTERNATIONAL ENVIRONMENTAL LAW-Bradford '00**

[William; PhD; ""Save the Whales" v. Save the Makah: Finding Negotiated Solutions to Ethnodevelopmental Disputes in the New International Economic Order"; St. Thomas Law Review; Fall 2000; Lexis]

At the 1995 IWC Meeting in Dublin opponents of the moratorium had shaken the fragile anti-whaling coalition IWC by contending that it "smacks of hypocrisy to allow one group of people to hunt whales as an indigenous right, but to condemn others for claiming the same right." n153 Although Japan conceded at Dublin that the activities of its coastal whaling communities did not qualify for an ASW exemption n154 opponents of the Makah proposal feared that a favorable response would undermine resistance to decade-long Japanese efforts to force a new exemption from the moratorium for "small-type coastal whaling" [hereinafter "STCW"] through the IWC. n155 Furthermore, advocates of this "Floodgates Argument" expressed concerns that granting the Makah an ASW quota would establish a precedent for similar claims from increasingly sophisticated, activist, and well-funded n156 aboriginal groups worldwide against whom the moratorium had been operating to inflict serious economic deprivation. n157 In particular, the efforts of the WCW, a renegade [\*197] alternative international organization which approached the Convention on International Trade in Endangered Species [hereinafter "CITES"] to request the downlisting of several whale species from Appendix I (threatened and trade strictly prohibited) to Appendix II (regulated but permitted) in order to permit hunting by several of its member groups, underscored to proponents of the Floodgates Argument the dangers relaxing the clear and consistent international moratorium. Therefore, the argument went to permit a Makah ASW quota might pose to formal institutional arrangements for preserving not only endangered species but also general principles of international law and order.

### **WE CANNOT ALLOW CULTURAL EXCEPTIONS TO JUSTIFY WHALING; RESULT WOULD BE CHAOS-The Times '98**

["Whaling Wall—The Maklah Do Not Have a Special Case for Hunting"; Times of London; 05 Sep 1998; Lexis]

What would happen if the peoples of every nation were licensed to practice their ancestral habits? Danes would take boat trips to Scotland to rape and pillage. Londoners would create traffic havoc by driving sheep across Tower Bridge. And President Clinton would be expected to exercise droit de seigneur over all internees. The world would mill in a state of social tumult similar to that which will be seen in microcosm next month when, in an extreme northwestern outpost of the United States members of the Makah nation take to the seas for a whaling expedition amid flotillas of irate conservationists.

The history of the Makah tribe, now numbering some 18,000 members and mainly confines to the remote Neah Bay area of Washington State, is steeped in epic tales of whale hunts. Whale flesh was once a staple of Makah diet and, when their tribal lands were expropriated in 1855, elders signed a treaty with the Government providing for the continuance of ancestral customs. Shortly afterwards, however, finding commercial sealing more lucrative, they almost abandoned whaling. And since then, as cetacean populations dropped to dangerous levels, America became a signatory to the 1946 International Convention on the Regulation of Whaling (ICRW).

## **MAKAH WILL NOT HUNT, EVEN WITH EXCEPTION**

### **MAKAH CANNOT EVEN AFFORD TO WHALE; EXCEPTION WILL NOT MATTER-Mapes '02**

[Lynda; "Makah leaders say more pressing needs than whale hunts face their people"; Seattle Times; 15 Apr 2002; Lexis]

For the Makah who chased the behemoths three years ago and killed one, the spring migration is stirring passions for another tribal hunt.

But even as the grays meander in near-shore waters, no whaling permits have been issued this year. It's an open question whether a hunt will even take place this spring.

Not only has a new slate of Makah council leaders slashed funding for whaling — arguing other needs are more pressing — the federal government says it has no plans to help pay for another hunt. The office of the Makah Whaling Commission is shuttered. Its budget: zero.

In contrast, the first hunt was championed and bankrolled in part by the government and the tribal council.

### **MAKAH WILL NOT BE ABLE TO IMPLEMENT SIGNIFICANT WHALING-Sea Shepherd Conservation Society '03**

["The Makah Whale Hunt"; 2003; [http://www.seashepherd.org/news05\\_2.shtml](http://www.seashepherd.org/news05_2.shtml); retrieved 26 Jul 2003]

So will the Makah kill again? Possibly. Will they take 20 whales in the next five years? The answer is that they will not. Without the economic incentive, the motivation will simply not exist to justify the expense and effort. It is one thing for the Makah to kill whales if the United States taxpayer is paying the bills. It is quite another to allocate tribal funds to support a whale hunt when the tribe is hurting for funds to support essential services. In addition there is the issue of relations with their neighbors. The fact is that Makah whaling does not set well with a large majority of people on the Olympic Peninsula, in Washington State, across the water in British Columbia, and throughout the United States as a whole. The "right" to kill a whale carries the price of unpopularity and scorn from people who disagree that killing is essential for the preservation of culture.

### **US ENDORSEMENT OF THE MAKAH CLAIM HURTS US CREDIBILITY-Lindemann '98**

[Jeffrey; JD Candidate; "THE DILEMMA OF THE INTERNATIONAL WHALING COMMISSION: THE LOOPHOLE PROVISIONS OF THE COMMISSION VS. THE WORLD CONSCIENCE"; Detroit Journal of International Law & Practice; Fall 1998; Lexis]

The even larger question arises as to why the United States chose to petition the IWC on behalf of the Makah Tribe. The damage that has been done to the United States reputation has been large in the arena of the IWC. No longer can the United States have the leverage and power that they once boasted. Anti-whaling states will have their confidence in the United States political positioning eroded and the pro-whaling states will only use the United States as an example for why they too should be able to whale if the largest anti-whaling nation has secured the rights to whale off its own coast line. Once a staunch supporter of the IWC and its policies, the United States, through its actions with the Makah Tribe, has only diminished its persuasive authority, thereby opening the door for the pro-whaling states to bolster their arguments for the resumption of whaling.

## **SUBSISTENCE ARGUMENTS DO NOT JUSTIFY THE HUNT**

### **SUSTAINABILITY ARGUMENT IS INSUFFICIENT TO JUSTIFY HUNT-Paul '00**

[Joel Richard; Professor; Hastings Law School; "Cultural Resistance To Global Governance"; Michigan Journal of International Law; Fall 2000; Lexis]

A second possible distinction is that the Makah hunting is limited to a sustainable level. n345 The Makah will only hunt 20 grey whales over five years, whereas Japan hunts 300 minke annually. This distinction is not entirely persuasive, either. As a percentage of the total whale population, the Japanese quota is half the percentage of the Makah quota, and grey whales are still considerably scarcer than minke. n346 Moreover, as [\*70] was discussed above, the whaling ban is only partly a function of the scarcity of whales. Many believe that whales simply should not be killed because of their intellect.

### **IMPOSSIBLE TO DISTINGUISH SUBSISTENCE HUNTING FROM COMMERCIAL-Paul '00**

[Joel Richard; Professor; Hastings Law School; "Cultural Resistance To Global Governance"; Michigan Journal of International Law; Fall 2000; Lexis]

Third, we cannot distinguish tribal "subsistence" hunting from "commercial" hunting. Obviously, the Makah do not need whale meat to "subsist," since they have lived without it for generations. If subsistence implies that the tribe will use the meat itself and will not resell it, it is unclear what the tribe intends. Some authorities have argued for a broad definition of subsistence that would include selling whale meat to provide financial support for the community. n348 The Makah have said that they have no plans to sell whale meat on the Asian market, where a single gray whale is worth up to \$ 500,000. n349 However, the I.W.C. does not prohibit the tribe from selling whale meat, and it is clear that the tribe itself does not have a "taste" for whale. Granted that the tribe has suffered economically, it seems only a matter of time before the Makah begin selling to the Asian market. Indeed, some tribal elders placed a newspaper ad opposing the whale hunt in which they stated "we think the word 'subsistence' is the wrong thing to say when our people haven't used or had whale meat/blubber since the early 1900's. For these reasons, we believe that the hunt is only for the money."

### **CLAIMS OF SOCIAL NEED CANNOT BE EVALUATED AND WILL LEAD TO INCREASED WHALING-Paul '00**

[Joel Richard; Professor; Hastings Law School; "Cultural Resistance To Global Governance"; Michigan Journal of International Law; Fall 2000; Lexis]

The social need approach may provide an open door for claims from almost any group occupying a lower socio-economic position. Moreover, given that the IWC does not have a mechanism by which all the signatories can evaluate the economic status of applicant groups, psychological, social, and cultural need-based claim evaluation could become a very arbitrary process. In addition, claims of low socio-economic status do not even address the possibility of alternative food supplies. Rather, claimants rely on the unproven assumption that low economic status means no alternative food sources. Finally, as member states have pointed out, even if there is a connection between socio-economic status and the availability of food alternatives, that in itself does not necessarily imply that relief from such a situation is the responsibility of the IWC, as opposed to national governments.