

**A UNIVERSAL METAPHOR:  
AUSTRALIA'S OPPOSITION TO COMMERCIAL WHALING**

**Report of the National Task Force on Whaling**

**May 1997**

**"...Herman Melville...split the atom of the traditional novel in the effort to make whaling a universal metaphor."**

David Lodge: *Changing Places*

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This is the public report of the Task Force.

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## **Sir Sydney Frost**

During the course of the Task Force's inquiry, we were saddened to learn of the death, on 20 April 1997, of Sir Sydney Frost. Readers of our report will be aware of the enormous role played by Sir Sydney, through his Inquiry into Whales and Whaling, in shaping Australia's public policy in relation to whaling. It was Sir Sydney's report that presented the most compelling evidence to persuade the Australian Government to ban whaling in Australia and take an international lead against whaling world-wide.

Sir Sydney Frost was born on 13 February 1916 and, rising from an economically and socially disadvantaged position, graduated with great distinction in law from Melbourne University. He worked as a solicitor and served in the AIF from 1941 to 1945. After the war he practised at the Victorian Bar and was appointed as a Judge of the Victorian County Court. He moved to New Guinea as a Judge of the Supreme Court and became that country's first Chief Justice, retiring in 1978. He served in many significant community and judicial positions after his retirement in Melbourne. In 1978 the Fraser Government appointed Sir Sydney to head Australia's first national inquiry into whaling.

The members of the Task Force, together with everyone committed to whale conservation and protection, recognise their debt to Sir Sydney. We hope that our report will do justice to his memory and will continue the pioneering work he began, to bring about an eventual worldwide ban on commercial whaling.

## Executive Summary

### Our mandate

The Task Force was charged with the responsibility of advising the Federal Minister for the Environment on the most practical ways to achieve Australia's stated policy of bringing about a permanent ban on commercial whaling world-wide.

### Our principal recommendation

*It is our primary conclusion and recommendation that the best and most practical way to do this is to work, through the International Whaling Commission (IWC), for either the establishment of a global whale sanctuary or, as a less preferred option, a fifty year moratorium on commercial whaling. This should be done in a way that does nothing to disturb the existing indefinite moratorium provided for in the Schedule to the International Convention for the Regulation of Whaling (ICRW) 1946.*

### The International Whaling Commission

In our report we argue for Australia's continued active participation in the International Whaling Commission. The Commission has its faults, which we recognise, but we believe that it still offers the best international forum in which to achieve Australia's aims and is still the international organisation best placed to lead on whaling issues. This does not mean that we ignore other relevant international fora or organisations. Some of these are associated directly with the International Whaling Commission; others are specifically conservation related (for example, the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES)). Some are more technical-legal (for example, the United Nations Convention on the Law of the Sea (UNCLOS)); and yet others more political in their nature (for example, the Commonwealth Heads of Government Meeting (CHOGM) or the South Pacific Forum). Our report addresses these questions and recommends that Australia's representatives, at political, official and non-government levels, become active leaders in supporting our stated national objective.

### The International Convention for the Regulation of Whaling 1946

Ideally, we would like to see the International Convention for the Regulation of Whaling amended to prohibit all forms of commercial whaling, but we recognise that this may not be a practical option in current circumstances. Hence, our strong preference for what we see as realistic and achievable goals as outlined above.

However, there are other amendments that could, and should, be made more easily to the Schedule and/or to the Convention. These include defining more precisely 'aboriginal subsistence whaling', which is still permitted by the International Whaling Commission, but which, we argue, has been, and continues to be, open to abuse. Secondly, we recommend that Australia press for the IWC to prohibit 'special permit', often referred to as 'scientific', whaling.

### **The global whale sanctuary**

The concept of a global whale sanctuary extends an idea already understood and accepted internationally. Whale sanctuaries—the Southern Ocean Sanctuary and the Indian Ocean Sanctuary—already exist. Within their boundaries the taking or killing of whales (or other protected species) is prohibited.

As our report notes, we would like to see these sanctuaries extended to cover all of the world's oceans, including Exclusive Economic Zones (established under UNCLOS), up to the boundaries of the territorial seas of coastal States (up to twelve nautical miles). Ideally, we would like a global whale sanctuary to include all waters up to the low-water mark, but we recognise that this would involve significant difficulties with national sovereignty. Consequently, our recommendations take account of these potential problems.

The attraction of using a global whale sanctuary to establish a permanent international ban on commercial whaling lies in its simplicity. Internationally agreed whale sanctuaries already exist under the IWC and it will only be necessary to amend the designation of waters to extend these to a global sanctuary.

### **The proposal for a fifty year moratorium**

At present, paragraph 10. (e) of the Schedule to the International Convention for the Regulation of Whaling establishes, for an indefinite period, a zero quota for all whale catches—effectively an indefinite moratorium on whaling. The Task Force is anxious to preserve this situation and to resist any moves to change it. However, there may be merit in the idea of establishing a fifty year moratorium through an amendment to the Schedule to the Convention using a model such as the Madrid Protocol to the Antarctic Treaty (on conservation of Antarctic mineral resources). Australia took a leading role in developing and supporting that international environmental initiative.

### **The basis of our case: the precautionary principle and the arguments**

Australia, in line with other environmentally responsible nations, observes the 'precautionary principle' when developing its environmental policies. In short, the principle asserts that, if there is doubt about the environmental impacts of any proposed action, we should err on the side of caution in making decisions that may affect the environment adversely. Australia's stated policy is that where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. Our analysis of the available data reinforces our view that it must be this principle that directs Australia's decision making on whaling.

The Task Force has concluded that, apart from limited aboriginal subsistence whaling, there is no need for whales to be killed to provide food or other products for human consumption. We believe that whaling is inherently cruel and inhumane and could be justifiably opposed on this basis alone. However, we argue that the decision to ban commercial whaling is also the ethically, ecologically and environmentally correct one to adopt. We have considered, in this respect, questions of cultural relevance and sensitivity all of which, we believe, can be addressed adequately.

Our report presents what we believe is an unanswerable case in favour of a permanent international ban on commercial whaling and that Australia is, thus, in a strong position to argue its case with other nations and in any international forum.

### **Education and whale watching**

The Task Force does not argue that whales cannot be the basis of economic activities of a non-threatening nature and, indeed, we believe that the greater the contact that people around the world have with whales, the stronger will be both the case and the support for respecting their rights to exist unthreatened. Our report recommends that Australia take some initiatives to promote public education about whales (making use of technologies such as the internet and established links such as 'sister city' arrangements) and to help develop the emerging worldwide interest in whale watching as a scientific, cultural and economic activity.

### **The report**

The report commences with a formal outline of the processes by which the Task Force was established and how it went about its work.

Chapter 2 outlines the history of the development of Australia's opposition to commercial whaling as a precursor to Chapters 3 and 4, which outline the history and regulation of whaling and the current status of whaling activities respectively.

Chapter 5 presents in detail the arguments against commercial whaling, leading to a summary of Australia's position outlined in Chapter 6.

Finally, in Chapter 7, we recognise the important role that community action and the operation of non-government organisations have in influencing the outcome of public policy both in Australia and in other nations, even those that are nominally committed to continuing or expanding commercial whaling activities.

Technical material is provided in a number of appendices.

### **Conclusion**

The Task Force has proceeded from a clear statement of Australian Government policy that it wishes to see a permanent end to commercial whaling. We have been fortunate to receive advice from government departments, scientific sources, a large number of valuable written submissions to the Task Force and from people who attended our public open forum, all of which have allowed us to consider the various options Australia could use in pursuing this stated objective. After considering all this material carefully we have formulated our principal recommendation and subsequent recommendations which we now submit for consideration by the Minister and the Australian Government.

## Recommendations

### Recommendation 1

The Australian Government should take all reasonable steps to bring about, as expeditiously as possible, a permanent international ban on commercial whaling. The Government should identify and use all possible means to implement this policy.

Issues related to this recommendation are raised in Chapters 1, 2, 3, 5 & 7.

### Recommendation 2

The Australian Government and its representatives should be committed to applying the precautionary principle in pursuing its goals.

Issues related to this recommendation are raised in Chapters 2 & 5.

### Recommendation 3

The primary focus for achieving a permanent international ban on commercial whaling should be the International Whaling Commission (IWC). Australia should continue its membership of and participation in the IWC and its subsidiary bodies, and should support the IWC as the primary international mechanism for the conservation of whales.

Issues related to this recommendation are raised in Chapters 1, 2, 3, 4, 5, 6 & 7.

### Recommendation 4

In addition to this primary focus on the IWC, Australia should take positive steps in other relevant international fora to advance the goal of a permanent international ban on commercial whaling. Australia should also be vigilant in opposing any initiatives in other fora that would have the effect of subverting the goal of a permanent international ban on commercial whaling. This must include, *inter alia*, vigorously resisting any attempts to:

Reduce the level of protection given to whale species through the Convention on International Trade in Endangered Species of Fauna and Flora (CITES); and

Modify the references in the United Nations Convention on the Law of the Sea (UNCLOS) and Agenda 21, which recognise marine mammals as living resources to which a special regime applies and the responsibilities of the International Whaling Commission for the conservation and management of whales.

Australia's policy positions and actions in other fora must be consistent with its objective of achieving a permanent international ban on commercial whaling.

Issues related to this recommendation are raised in Chapters 3, 5 & 6.

### **Recommendation 5.**

The ultimate objective of the Australian Government should be to have the International Convention on the Regulation of Whaling 1946 amended to bring about an effective, permanent international ban on commercial whaling. However, recognising the significant legal and logistical difficulties to be overcome to achieve this outcome, this must be considered a long-term goal.

In the short term the Australian Government should carry out the following actions within the IWC:

- a. (i) Australia should support strongly the maintenance of paragraph 10 (e) of the Schedule to the Convention, as the continuation of this paragraph, without modification, results effectively in an ongoing moratorium.  
  
(ii) Australia should work towards the establishment of a global whale sanctuary in all international waters and Exclusive Economic Zones (EEZs), established under the United Nations Convention on the Law of the Sea, up to the territorial seas of each coastal State (up to twelve nautical miles), through an appropriate amendment to paragraph 7 of the Schedule to the Convention.  
  
(iii) as a complementary measure Australia should also work towards the insertion in the Schedule of a commitment to a fifty year moratorium, using a precedent such as the Madrid Protocol to the Antarctic Treaty (on exploitation of mineral resources).
- b. Australia should seek ultimately to have the Convention amended to prohibit permit (scientific) whaling. In the meantime, Australia should seek to minimise the granting of permits, and the number of whales taken under any permit, and encourage countries to forbid any permit whaling within their own EEZs.

Issues related to this recommendation are raised in Chapters 3, 4 & 6.

- c. Australia should resist any extension of the current provisions for aboriginal subsistence whaling clearly set out in the Schedule:
  - It must be necessary for both cultural and nutritional needs;
  - There must be a continuing history of such whaling; and
  - It must be carried out by aboriginal people in question, not on their behalf.

Issues related to this recommendation are raised in Chapters 2, 4, 5, 6 & 7.

- a. Australia should promote the view that all whaling not classified by the IWC as aboriginal subsistence whaling, as set out in Recommendation 5c., is commercial whaling.

Issues related to this recommendation are raised in Chapter 2.

- b. Australia should oppose the recognition under the Convention of any additional categories of whaling, in particular any proposal for approval of catches for small-type coastal whaling operations.

Issues related to this recommendation are raised in Chapter 6.

- c. Consistent with its opposition to commercial whaling and its aim of achieving a permanent international ban on commercial whaling, Australia should oppose and vote against any proposal to adopt the Revised Management Scheme (RMS) by resolution or to incorporate the RMS or Revised Management Procedure (RMP) into the Schedule.

Issues related to this recommendation are raised in Chapters 3, 5 & 7.

- d. Australia should seek to strengthen the 1980 Working Group definition of humane killing to establish the principle that humane killing requires that the death of the animal occurs without pain, stress or distress to the animal through a process that, regardless of the limits of technology, causes instant insensibility that lasts until the death of the animal.

Issues related to this recommendation are raised in Chapters 2, 4, 5 & 7.

#### **Recommendation 6**

Australia should undertake activities in relevant multilateral fora to progress its goals, and should recognise and establish its role as a leader of other nations on whaling issues.

#### **Recommendation 7**

Australia should engage in a series of bilateral negotiations to progress its goals.

Issues related to this recommendation are raised in Chapter 1.

#### **Recommendation 8**

The Australian Government should recognise the important role that non-government organisations (NGOs), both in Australia and overseas, will play in this initiative.

The Government should:

- Seek to use the networks and expertise of conservation NGOs; and
- Promote dialogue with relevant Australian NGOs and work with them to achieve mutually held whale conservation objectives.

Issues related to this recommendation are raised in Chapter 7.

#### **Recommendation 9**

The Australian Government should commit itself to a domestic and international educative campaign.

Issues related to this recommendation are raised in Chapters 2, 3, 6 & 7.

#### **Recommendation 10**

Australia should pursue its objectives vigorously. The status, and range of expertise, of its representatives at IWC and subsidiary meetings should reflect Australia's particular interests.

Issues related to this recommendation are raised in Chapters 2, 3 & 7.

**Recommendation 11**

The Government should demonstrate clearly its commitment to cetacean conservation through continued support and encouragement for non-lethal research to address effectively the threats posed to Australian and Southern Ocean whale populations by marine resource exploitation, habitat degradation and environmental change.

Issues related to this recommendation are raised in Chapters 4, 5, 6, & 7.

**Recommendation 12**

The National Task Force on Whaling should be continued:

- to review strategies between IWC 49 and IWC 50; and
- to provide advice on matters the Government wishes to refer to it.

Issues related to this recommendation are raised in Chapter 3.

**Recommendation 13**

The Government must be prepared to commit the necessary resources to these strategies and to place adequate priority on the goals.

Issues related to this recommendation are raised in Chapter 7.

## Glossary of Acronyms

AFZ	Australian Fishing Zone
AGPS	Australian Government Publishing Service
CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources
CHOGM	Commonwealth Heads of Government Meeting
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on the Conservation of Migratory Species of Wild Animals
CSIRO	Commonwealth Scientific and Industrial Research Organisation
EEZ	Exclusive Economic Zone.
EIA	Environmental Investigation Agency
FAO	Food and Agriculture Organisation of the United Nations
HSUS	Humane Society US
ICRW	International Convention for the Regulation of Whaling, 1946
IFAW	International Fund for Animal Welfare
IUCN	International Union for Conservation of Nature and Natural Resources
IWC	International Whaling Commission
MSY	Maximum Sustainable Yield
NAMMCO	North Atlantic Marine Mammals Commission
NGO	Non-government Organisation
PCBs	Polychlorinated biphenyls
RMS	Revised Management Scheme
RMP	Revised Management Procedure
RSPCA	Royal Society for the Prevention of Cruelty to Animals
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
WDCS	Whale and Dolphin Conservation Society
WWF	World Wide Fund for Nature (includes World Wildlife Fund in USA and Canada)

## **Chapter 1. The National Task Force and its Proceedings**

What do whales say calling to one another on their extended wave-lengths? Why suppose that it is language?

It is pain searching for an echo. It is regret for a world that has men in it.

Shadows are without weight in water yet bleed their litres to the harpoon.

They have reversed human history, so that land is the memory of whence they once came. They are drawn to it to drown, as we are to the sea.

Their immense brains cannot save them; can ours, launching us into fathomless altitudes, save us?.....

R. S. Thomas

Welsh poet

### **Part 1. The Mandate and Recommendations of the Task Force**

The National Task Force on Whaling was established in September 1996 to present options the Federal Government might pursue to end commercial whaling world-wide. Further, it was asked to recommend the strategy most likely to achieve this end.

As a result, our report suggests that the Australian Government should build a core group of like-minded nations within the International Whaling Commission (IWC), whaling's international regulatory body, to persuade, over a period of some years, a sufficient majority of IWC member nations to amend the International Convention for the Regulation of Whaling (ICRW) to prohibit commercial whaling.

In the meantime, a number of strategies that might be put in place, without such an amendment to the Convention, are suggested. These include:

- establishing a global whale sanctuary;
- tightening control of 'aboriginal' and permit (often inaccurately referred to as 'scientific') whaling; and
- mobilising international and world community opinion to support these objectives.

### **Part 2. The Proceedings of the Task Force**

The Australian Government, in November 1977, established an Inquiry into Whales and Whaling headed by Sir Sydney Frost. It reported to the Government in December 1978.

The Inquiry's central conclusion is that Australian whaling should end, and that, internationally, Australia should pursue a policy of opposition to whaling<sup>1</sup>.

Recommendation (7): 'Australia should seek to achieve a worldwide ban on whaling...'<sup>2</sup>.

The Government's response was positive:

The Government upholds the central conclusion of the Inquiry into Whales and Whaling namely, that Australia should pursue a policy of opposition to whaling and that this policy should be pursued both domestically and internationally through the International Whaling Commission and other organisations ..... The Government's decision represents a change in policy from one of conservative utilisation of whale stocks controlled by international agreement to one committed to a vigorous and active policy of protection of whales....<sup>3</sup>

This Bill (*Whale Protection Bill 1980*) provides legislative backing for Australia's policy on whale protection and it is further evidence of the Government's responsible attitude to conservation issues ..... It represents an important step towards our goal of an eventual worldwide ban on whaling.<sup>4</sup>

Since the publication of the Frost Report, the Australian Government's response to that report and the passage of the *Whale Protection Act 1980*, there has been no doubt about the Australian Government's formal policy on whaling. It is opposed to whaling and it seeks an end to whaling world-wide.

This report, however, is the first made to Government that returns to one of the central issues of the Frost Report and recommendations. That report was implemented in full in relation to whaling within Australian waters and by Australians (with the *Whale Protection Act 1980* having extra-territorial application); however, the action taken to pursue its recommendations were unsuccessful in establishing a permanent international ban on whaling world-wide.

During the course of the 1996 federal election campaign, the Liberal and National Parties re-stated their policy in relation to whaling. The Coalition environment statement, *Saving our Natural Heritage* pledged that:

The Coalition will seek to implement a permanent international ban on commercial whaling and immediately on attaining Government will establish a Task Force to examine all options. (p.38)

Such a Task Force which is now reporting to the Minister for the Environment, Senator the Hon. Robert Hill was appointed on 30 September 1996.

### **Terms of Reference**

Its terms of reference were to:

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<sup>1</sup> 1978, *Whales and Whaling* (Frost Report), Volume I, Report of the Independent Inquiry conducted by The Hon. Sir Sydney Frost, AGPS, Canberra, p. 206

<sup>2</sup> Frost Report, Volume I, p. 210

<sup>3</sup> Prime Minister Malcolm Fraser, House of Representatives, 4 April 1979

<sup>4</sup> Science Minister David Thomson, House of Representatives, 23 April 1980

- examine the status of commercial whaling activities internationally and identify areas in which there is a risk of the resumption of commercial activities;
- identify and assess the legal and other options that are available to ensure that a permanent international ban on commercial whaling is achieved; and
- recommend the option or options most likely to achieve a permanent international ban on commercial whaling.

### ***Task Force members***

The members appointed to the Task Force were:

Mr Christopher Puplick, (Chairman), President of the New South Wales Anti-Discrimination Board, former Senator for New South Wales and former Shadow Minister for the Environment;

Professor Alistair Gilmour, Professor in Environmental Studies, Macquarie University;

Professor Gillian Triggs, Professor of Law, Law School, University of Melbourne;

Ms Pam Eiser, Project Jonah (representing non-government conservation organisations);

Mr Atticus Fleming, Adviser, Office of the Minister for the Environment;

Dr David Kay, Biodiversity Group, Environment Australia, one of Australia's representatives on the International Whaling Commission;

Mr Peter Hussin; subsequently replaced by Ms Ruth Pearce, Department of Foreign Affairs and Trade.

Ms Suzanne Ferguson of the Portfolio Marine Group, Environment Australia, was appointed as Secretary to the Task Force.

It should be noted that, between the date of the appointment of the Task Force and the date of our reporting, the Australian Government has continued to make clear its opposition to various forms of whaling. On 15 December 1996 the Minister for the Environment (Senator Hill) and the Minister for Foreign Affairs (Mr Downer) issued two joint Press Releases. The first called for an end to Japanese scientific whaling, criticising Japan for its 'unnecessary practice of lethal and large-scale scientific whaling, especially in the Southern Ocean Sanctuary'. The second condemned Norway for approving a thirty percent increase in the catch limit for minke whales (to 580) for the 1997 season. Again, the Ministers described the Norwegian kills as 'both unnecessary and unacceptably cruel'.

There were seven meetings of the Task Force including two teleconferences. Written submissions to the Task Force were requested through newspaper advertising and various groups were invited directly to make submissions. All Governments that were members of the International Whaling Commission and that had representatives in Australia were also invited to make submissions. A total of forty seven submissions were received, including ten from overseas governments<sup>5</sup>.

The Task Force was most impressed with the variety, scope and quality of the submissions and wishes to thank all of those who participated in this important part of the Task Force's activities.

In addition to considering written submissions, specific requests for information were made to the Department of the Environment, Sport and Territories, the Department of Foreign Affairs and Trade and the Attorney General's Department. The Task Force greatly appreciated the timely and constructive responses from these Australian Government

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<sup>5</sup> see Appendix 2 for more detail

Departments. Through this process the Task Force informed itself about Australia's multilateral and bilateral relationships with other nations in the International Whaling Commission and in broader international environmental fora. It also consulted independent experts on complex questions of international treaty and customary law.

The Task Force held one public meeting, in Melbourne on 15 March 1997, at which it heard in open session from representatives of ten environmental organisations and subsequently conducted eight private hearings with representatives of environmental organisations. The purpose of this meeting was to engage in public discussions about options available to the Task Force to meet its terms of reference and to elucidate matters raised in individual organisations' written submissions.

The Task Force met separately with Dr Peter Bridgewater, Head of the Biodiversity Group, Environment Australia, and currently the Chair of the International Whaling Commission. Dr Bridgewater assisted the Task Force greatly, providing it with the benefit of his great experience and understanding of all the issues before it.

The Task Force also met as a group with Mr Kazuo Shima, the Japanese International Whaling Commissioner, and a delegation from the Japanese whaling industry, Government and Embassy. The Chairman of the Task Force, Ms Pearce and Mr Fleming also met separately with Commissioner Shima. A detailed submission was received from the Fisheries Agency of Japan. Again, the Task Force is grateful to the Commissioner and the Government of Japan for their input to the Task Force's work and deliberations.

The mandate of the Task Force was to advise the Government on options to accomplish its stated policy objective of achieving a permanent international ban on commercial whaling, and it is to this specific end that our report is addressed.

Nevertheless, in so doing, we have also looked at other relevant issues such as the nature of 'special permit', also known as 'scientific', whaling and 'aboriginal' whaling. Both of these categories of whaling are permitted under the Convention (ICRW)) and it is the Task Force's opinion that either of these activities could be used to undermine the basic thrust of Australian policy—the elimination of commercial whaling.

The Australian Government supports the concept of aboriginal subsistence whaling although the Task Force believes this category of whaling should be defined more narrowly and should be more closely monitored. Support for genuine aboriginal whaling was reflected in a number of submissions, including those of the United Kingdom High Commission, which indicated that:

'the UK is firmly opposed to all whaling other than indigenous subsistence whaling.'

Similarly, WWF International recognises the legitimacy of this form of whaling but supports the concerns of the Task Force about the need for more coherent definitions and specifications to be in place to regulate this aspect of whaling activities.

Although the Government's policy objective is clear, the Task Force believes it is important to re-state the basis for Australia's public policy on international commercial whaling

## Chapter 2. Australia's Opposition to Commercial Whaling

Since 1979 it has been Australian Government policy to oppose whaling both domestically and internationally through the International Whaling Commission and other organisations. This policy has been reinforced in the terms of reference of the Task Force and in a recent statement by the Minister for the Environment Senator the Hon. Robert Hill in which he said

We believe the practice of killing whales is unjustifiable. It is time the international community stopped talking about a 'moratorium' on commercial whaling and instead adopted a permanent international ban on commercial whaling.

Australia's opposition to commercial whaling is based on a number of significant arguments discussed below and set out in more detail in Chapter 5 of this report.

### ***The precautionary principle: international best conservation practice***

In 1982 by the International Whaling Commission decided to impose an international moratorium on commercial whaling effective from the start of the 1986 whaling season. The International Whaling Commission imposed the moratorium because of the overwhelming scientific evidence that certain whale stocks had been hunted almost to the point of extinction and that failure to act would lead to the extinction of these great mammals.

Since that time, some proponents of whaling have argued that scientific evidence now justifies lifting that moratorium, thus returning to commercial whaling activity. The Task Force has considered these claims but believes that this evidence is not entirely reliable (for reasons we discuss in Chapter 5) and that, in any event, they do not provide a sufficient basis for any alteration to the current moratorium.

Chapter 5 of our report summarises the conclusions of the Task Force. We note, in particular, the weakness and flaws in the models offered to justify the scientific conclusions. These shortcomings, which are inherent in the new modelling approach, are the inaccuracies in estimates of whale stocks and whale catches, the uncertainties related to other environmental pressures and the fact that the new model, which is the foundation of the Revised Management Scheme, has not yet been proven in practice.

Chapter 5 also argues strongly for applying the precautionary principle to any decisions on the future of whaling. This principle was derived from work commenced at the Stockholm Conference on the Human Environment in 1972 and was enshrined in the Rio Declaration on Environment and Development of 1992. Principle 15 of that Declaration calls on all nations of the world, where there exist 'threats of serious or irreversible damage' to any of the world's natural resources, to act with the greatest care and to, in all instances, prefer decisions that protect and conserve to those that exploit or despoil. It further enjoins nations not to postpone such protection and conservation measures due to 'lack of full scientific certainty'.

The Task Force argues strongly that, in all respects, our knowledge of whale stocks, and the inherent weakness of models developed to predict the effects of exploitative activities on those stocks, must lead the world community to adopt the philosophy and practice of the precautionary principle and oppose any commercial whaling activity.

The precautionary principle is set out in the Australian Government's *National Strategy for Ecologically Sustainable Development* (December 1992) as follows:

where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

We are reinforced in this view by the lessons of history. Several submissions to the Task Force drew our attention to the improper behaviour of the former Soviet Union in the way in which it deliberately understated its whale catches (these include submissions from the Environmental Investigation Agency, James Cook University and the Whale and Dolphin Conservation Society). The new regime in the Russian Federation has itself admitted, in statements to the IWC at Ministerial level, that previous reports on catch numbers supplied to the Commission were deliberately misleading.<sup>6</sup>

In a report prepared for the Care of the Wild organisation, Andrew Ottaway has documented how the (then) Soviet fishing fleet killed 88 888 whales more than was reported to the Bureau of International Whaling Statistics. Official figures now available since the collapse of the Soviet Union show that these fleets killed over 48 000 humpback whales but reported a catch of less than 3 000. The fleet recorded a catch of ten pygmy blue whales while actually taking in excess of 8 000. Similar gross deception was applied to catch numbers for right, sei, sperm, Bryde's and other unspecified whales. The International Whaling Commission Secretary is quoted as stating that, 'The enormity of the deception is staggering'. The Task Force can but agree.

Similar behaviour is reported about the one of the major whaling nations—Norway.<sup>7</sup> Norway is the only nation to have resumed, legally, commercial whaling activities in recent years. Again, several submissions (including those from the Animal Welfare Institute, the Whale and Dolphin Conservation Society and the Cetacean Society International) drew attention to Norway's activities. For example, in October 1993, 3.5 tons of whale meat destined for the 'Far East' were intercepted after they had already been cleared by Norwegian Customs. They had been disguised and labelled as 'Norwegian prawns'. In April 1996, a consignment of six tons of Norwegian minke whale meat was intercepted by Japanese customs having been exported illegally from Norway. There are also numerous reports of Norwegian whaling fleets killing numbers above their allocated quotas and killing sei whales while reporting them as minkes.<sup>8</sup>

In Japan, DNA testing of whale meat on sale in local fish markets has proven that some of this meat is not from minke whales (taken as part of Japan's 'scientific' catch and subsequently offered for human consumption) but comes from entirely protected species.

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<sup>6</sup> Centre for Russian Environmental Policy 1995, *Soviet Antarctic Whaling Data 1947/1972*, Moscow

<sup>7</sup> Reports of Infractions, IWC 46, 47 & 48.

<sup>8</sup> Rep. Int. 46, 47 & 48 Discussion on Infractions

It is not possible to say whether this meat originated from stockpiles of whale meat taken before the imposition of the ban or is derived from illegal whaling activities.<sup>9</sup>

It has been estimated that, even since the moratorium came into effect, between 15 000<sup>10</sup> and 18 000<sup>11</sup> whales have been killed, under one or more of the permitted headings under the Convention, and the number taken illegally and outside the Convention can never be known.

The precautionary principle, these figures and the inability of international regimes to monitor and control even authorised behaviour all add weight to the compelling argument for a total ban on commercial whaling.

### ***Ethical considerations***

Ethics are never static. They grow and develop; they change and mature. At the height of its cultural glory Ancient Athens, from whose philosophers so much of western culture derives, maintained an extensive system of human slavery. Aristotle justified slavery, referring to slaves as ‘animated property’ on the grounds (in part) that the ‘barbarians’ (foreigners) who were made slaves were less rational than the Greeks in the hierarchy of nature and that the purpose of the less rational was to serve the more rational<sup>12</sup>.

Despite our reverence and respect for most of Aristotle’s philosophy no one now accepts his defence of slavery. Our ethics have moved well beyond that point in the way in which we think of relationships between different human beings.

Much the same may be said of our relationship with animals. The Biblical prescriptions<sup>13</sup>, that man has total dominion over all animals—while never more true in a literal sense—and Aquinas’ view of animals—that ‘it is not wrong for man to use them, either by killing or in any other way whatever’<sup>14</sup>—are no longer accepted as unqualified statements of either the law or of ethics.

Regulations about animals that:

- prohibit cruelty;
- limit their exploitation;
- control their handling in experimental situations or in zoos; and
- ensure their conservation and protection

are now all accepted as hallmarks of a civilised, ethical and moral community.

The growth of the animal rights and animal liberation movements are similar signs of changing ethical values among millions of people.

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<sup>9</sup> Simba Chan et al., May 1995, *Observations on the Whale and Meat Trade in East Asia*

<sup>10</sup> Ottaway p17

<sup>11</sup> Whale and Dolphin Conservation Society p39

<sup>12</sup> 1916, *Politics*, Dent, London, p16

<sup>13</sup> *Genesis* 1, 24-28 and 9, 1-3

<sup>14</sup> *Summa Contra Gentiles*, Book 3, Part ii, chapter CXII

Nowhere is this more apparent than in the way, historically, we have treated those animals which, in our hierarchy of classification, we have placed closest to ourselves as human beings.

In the early 1990s a number of concerned scientists, ethicists and others came together to launch the 'Great Apes' project. This project aimed to 'broaden the moral community' by including the great apes (gorillas, chimpanzees and orang-utans) in a category of living creatures with special rights and status. Cavalieri and Singer write:

We are human, and we are also great apes. Our membership of the human species gives us a precious moral status: inclusion within the sphere of moral equality. Those within this sphere we regard as entitled to special moral protection. There are things that we may not do to them. They have basic rights that are denied to those outside this sphere.<sup>15</sup>

Without going into any of the arguments of the Great Apes project, the proposal to include these creatures in the broader moral community focuses on certain special characteristics of the great apes. These are:

- their high level of intelligence;
- their advanced state of socialisation as members of a coherent and complex society;
- evidence of their linguistic capacities and abilities implying potential to communicate intelligently with the human species; and
- the more selfish argument about how much can be learned of practical benefit to humankind (for example, in medical science) by affording the great apes special status and protection.

The most important status these proposals confer on the great apes is the right not to be killed.

These characteristics go beyond the mere right to protection against cruelty, first espoused by Bentham, that such a right should extend to any creature, not because they could reason or speak, but simply on the test of asking the question 'can they suffer?'.<sup>16</sup> Once more, this reveals changes in ethics and moral values as society matures.

Questions of animal pain and intelligence have been studied with particular care in recent years<sup>17</sup>. In relation to both, developers of public policy have helped to ensure that legislation prevents unnecessary pain being inflicted on animals. This legislation tends to give special rights to animals further up the hierarchy of animal intelligence<sup>18</sup>.

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<sup>15</sup> Cavalieri, P. and Singer, P. eds. 1993, *The Great Ape Project*, Fourth Estate, London, p. 1

<sup>16</sup> Bentham 1832, *Introduction to the Principles of Morals and Legislation*, Blackwell, London, Chapter 17 fn. 1, p412

<sup>17</sup> Australian Council for the Care of Animals in Research and Teaching 1992, *Animal Pain—Ethical and Scientific Perspectives*, Glen Osmond, SA, and Gould, J. L. and Gould C. G. 1994, *The Animal Mind*, Scientific American Press, New York

<sup>18</sup> Puplick, C. 1995, 'Dolphins and Bottled Spiders' in *Animals and Science in the 21<sup>st</sup> Century—New Technologies and Challenges*, Australian and New Zealand Council for the Care of Animals in Research and Teaching, Glen Osmond, SA

If these arguments are now so well made out for certain terrestrial animals, and for larger terrestrial, intelligent mammals in particular, should they not be applied equally to the largest of all truly intelligent mammals, the whales?

Peter Singer, for one, has long argued for the special status of whales in this regard. In his original submission to the Frost Inquiry he commented on several relevant characteristics of whales entitling them to special status. These included:

- the nature of the mother/child bond;
- their social arrangements;
- their intelligence;
- the fact that they appear to be ‘capable of enjoying life’; and
- the complexity of their nervous system.

More recently, Singer has written that, in relation to arguments about using whales as merely a resource, that:

For me these arguments were always irrelevant: whales are conscious beings - “minds in the waters” - and to treat them as so much oil and blubber was an obscenity. I think that, as far as whales are concerned, the viewpoint has now prevailed, everywhere except perhaps Japan, Norway, Iceland and one or two other nations. We want to protect whales from whaling, even if they are in no danger of extinction, because we do not think of them as resources.<sup>19</sup>

Dr Robbins Barstow, an internationally renowned scientist who has attended most meetings of the International Whaling Commission since 1976, frequently as a member of the United States Government delegation, has advanced five reasons why whales are uniquely special.

Whales are:

- biologically special given their physical size, the size and complexity of their brains and the nature of their evolutionary processes;
- ecologically special given the nature of their evolution and their position in the ecology and food chains of the world’s oceans;
- culturally special given the particular nature of their interaction with the human species throughout recorded history;
- politically special because, unlike most land animals, they do not live with clearly defined national boundaries but roam the world’s oceans, belonging in that sense to no-one and no nation on earth;

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<sup>19</sup> paper, ‘The Ethics of Commercialising Wild Animals’, September 1995

- symbolically special in that they represent, perhaps above all other animals, a test case for how we, as the most powerful of the animal species, discharge our responsibilities to protect the environment in which we all have no choice but to live.<sup>20</sup>

Commercial whaling, unlike whale watching, or certain other potentially exploitative uses of whales, involves killing. One of the marks of our maturing levels of ethical concerns for other living creatures has been our sensitivity to the way in which animals are killed when they must be. After examining all the evidence available to it the Task Force has concluded that there is simply no humane (and thus potentially acceptable) way of killing whales. All forms of whale killing involve unacceptable cruelty and barbarity. They involve a form and degree of pain, anguish, agony and suffering which, in the opinion of the Task Force, should not be tolerated or accepted by anyone.

In their submission, the RSPCA Australia said that:

(it) firmly believes that all the available evidence demonstrates that no method of killing can be considered humane. If whales cannot be killed humanely they should not be killed at all.

A similar view was expressed in a paper, by Professor D. K. Blackmore, attached to the submission of the World Society for the Protection of Animals. The paper, which was presented to the IWC, concluded, after a thorough review of all the scientific data available, that 'none of the methods used for killing whales can be considered humane'.

Current techniques fail even the most basic of Benthamite tests, let alone the more sophisticated tests now universally recognised as required.

Consequently, the inhumaneness of whale killing methods alone is sufficient reason for the Task Force to recommend and endorse all moves to abolish all commercial whaling.

Such considerations must, and will, also shape what we have to say about other reasons for killing whales.

The issue of whale intelligence is one that is still debated extensively. Appendix 16 of Volume I of the Frost Report discussed this matter at some length and there has been great progress made in our understanding of this issues since that date. This furthers the argument for using the precautionary principle when developing policy—we should accept the evidence suggesting a special degree of intelligence for these mammals until (in the unlikely event) it shows otherwise.

This was best encapsulated in Australian public policy in the Report of the Senate Select Committee on Animal Welfare, *Dolphins and Whales in Captivity* (1985), where the Senate Committee stated, as part of its recommendations against the keeping of cetacea in captivity, that:

7.21 The Committee is unaware of any recent research that throws more light on the nature and level of cetacean intelligence than the research available to Sir Sydney Frost during his inquiry. It agrees with the views expressed in the Frost Report and, in view of the possibility that cetacea have a high level of intelligence, they should be given the

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<sup>20</sup> Barstow, R., 'Whales are Uniquely Special' in *Why Whales?* Whale and Dolphin Conservation Society

benefit in decision on their captivity. They should, therefore, not be subjected to the possibility of deprivation or suffering which conditions and quality of life in captivity might occasion.

Our greater understanding of: the scientific data; aspects of animal behaviour and intelligence; and the ecology of whales in particular, developed in the decade since 1985, all reinforce the Senate Committee's perceptive conclusion.

The Task Force believes that all of these arguments, taken either separately or together, present an overwhelming case for according special protection to whales—above all, the protection against killing.

There is no doubt, from all that we know, that whales are such developed and complex creatures that they can be said, in the established philosophical sense, to have real interests and not just rights, thereby overcoming one of the most powerful arguments against according special protection to animals<sup>21</sup>. The problem is not so much presenting a case for the whales but overcoming what Michelle Gilders<sup>22</sup> calls the 'human problem' of our inability to see beyond our own species when considering what civilised limits to impose upon ourselves in the exercise of our almost unlimited power over other living creatures.

### ***The lack of necessity for commercial whaling***

The Task Force is aware of the worldwide debate about security of food resources and the problems of feeding the world's increasing human population. In particular, we have noted the Declaration made at Kyoto about the sustainable contribution of fisheries to food security. However, the Task Force also notes the statement made to that Conference by Argentina, Australia, New Zealand and the United States that the Kyoto Declaration and Plan of Action are:

without prejudice to our rights and obligations in international law. The above countries explicitly stated in the Drafting Committee that we accepted this solution on the basis that it was not intended that the provisions of the Kyoto Declaration and Plan of Action would affect the competency of, or change the current status in, other international organisations, including the International Whaling Commission.

It has long been accepted that there is no need for whales to be taken for the production of anything other than food. We no longer need any part of the whale for any other purpose, be it scrimshaw, whalebone, ambergris or oil.

There is a very strong case that, even where whaling has been a traditional employer of labour in any particular geographic area, the ending of whaling need not be excessively damaging to local economics or populations. This is certainly the experience of Australia's own Cheynes Beach whaling facility near Albany in Western Australia. The Frost Inquiry looked specifically at the impact that the end of commercial whaling would have on that locality and concluded that it would not be fatal to the local area. Indeed, since the ending of whaling, the old whaling station has been converted into a remarkably successful tourist

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<sup>21</sup> Frey, R. G. 1980, *Interests and Rights—The Case Against Animals*, Clarendon,

<sup>22</sup> Oxford Gilders, M. 1995, *Reflections of a Whale Watcher*, Indiana University Press

attraction and now serves a useful purpose in educating the public in support of whale conservation measures.

Elsewhere, the growth of the whale watching industry has been remarkable. Ron Patterson of Dolphin Charters, California, a former member of the IWC Scientific Committee, refers to Erich Hoyt's work, *The World Value and Extent of Whale Watching, 1995* and to the Report IWC/47/WW2 and concludes that:

...preliminary figures suggest that whale watching is currently practised by a minimum of 5.4 million people per year in as many as 65 countries on every continent. The total estimated revenue from whale watching has now increased to US\$504 million. What is even more impressive is the rapid increase from US\$50 million in 1988 to over US\$500 million in 1995.

In Japan itself over 55 000 people participated in formal whale watching activities in 1994 and there are at least eight formal commercial whale watching locations<sup>23</sup>. A similar point is made in the submission from Eric Hoyt about the increase in interest in developing such an industry in Iceland.

Australia's potential leadership role in encouraging well organised and economically profitable whale watching is demonstrated in the submission from Whales Alive Australia. WWF Australia's submission makes the point that appropriate Codes of Practice should be developed to avoid whale watching becoming a potential danger to whales. The Task Force agrees with this observation. We note that Australian authorities have already developed excellent Codes and Regulations in this regard<sup>24</sup>.

The Task Force notes that during May 1997 a major international symposium on 'The Educational Values of Whale Watching' was held in Provincetown, Massachusetts. This was attended by delegates from fifteen countries including Australia, the USA, the United Kingdom, Italy, Mexico, Iceland, Chile, South Africa, Finland, New Zealand, Colombia, Argentina and Japan. Papers presented suggested that the global economic value of whale watching had doubled in recent years (to an estimated value of \$504 million annually) and that whale watching activity had been reported in sixty five countries. Particular success was reported with the development of whale watching as an activity in Iceland. The report from this symposium is to be presented to the 49th meeting of the IWC in October 1997.

Consequently, the Task Force recommends that Australia take a lead internationally in promoting whale watching and host an appropriate forum in Australia to promote this activity.

Is there, then, any necessity for whales to be taken to provide food? There is no evidence to say that there is, and much to say that there is not.

Among whaling nations, the consumption of whale meat is negligible and in each of the whaling nations this limited consumption can be replaced easily by some alternative.

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<sup>23</sup> submission from Dolphin Charters

<sup>24</sup>see, for example, those set out in the Victorian Department of Conservation, Forests and Lands publication *Whales in Victorian Waters*, 1988. See also 'Witness Whales' in *Daily Telegraph* 6 July 1996

As far back as June 1977, when commercial whaling on an enormous scale was still practised, official Japanese statistics revealed that whale meat made up only 0.33% of the Japanese diet<sup>25</sup>.

Data given to the Task Force by the Japanese Embassy suggest a dramatic decline in domestic whale meat consumption. The data show that production of whale meat by the Japanese whaling industry fell from 180 215 tonnes in 1966 to 14 885 tonnes in 1985. Presumably, it has continued to decline substantially since then, particularly given the requirements of the moratorium. In 1985 this amount was 0.017% of the total Japanese domestic consumption of fish products. Even if 1995 consumption was the same as in 1985, this amounts to 100 grams of whale meat for each Japanese man, woman or child. In 1993 total per capita Japanese domestic consumption of marine products was 678 kilograms (678 000 grams).

A table for whale meat consumption per capita in Japan, at Appendix 4, contains statistics from the Fisheries Agency of the Japanese Ministry of Agriculture, Forestry and Fisheries. These show annual consumption per person falling from 2 359 grams in 1962 to 261 grams in 1985, a fall of almost 90%.

The submission to the Task Force from the Whale and Dolphin Conservation Society noted that recent public opinion polls in Japan showed that 80% of the population felt that it was not necessary for them to eat whale meat. A similar point was made in an editorial in the *New Scientist* (29/6/96) which reported that young Japanese, in particular, were increasingly opposed to whaling. We know that the price of whale meat in the Japanese market is exceptionally high<sup>26</sup>. Prices have been increasing each year<sup>27</sup> even with covert price subsidies from the industry which also campaigns regularly to promote whale meat consumption amongst the Japanese population.

A TRAFFIC East Asia report<sup>28</sup> found some whale meat priced as high as US\$500 per kg. but, disturbingly, reported that some of the whale meat on sale in markets in thirteen cities came from protected species (established by DNA testing) although it was not possible to determine if any of this was from existing pre-moratorium frozen stocks.

Another submission to the Task Force, from the Animal Welfare Institute, claimed that Norway's 1996 catch fell short by some forty four whales of the quota allocated by the Government. The Norwegian Fish Sales Association subsidises the purchase of minke whale meat to keep the Norwegian industry alive. Meat from the 1995 kill equal to at least thirty whales was still in cold storage when the 1996 hunt began. This submission drew our attention to a report in the *Vancouver Sun* (6/10/96) that a stockpile of some 300 tons of decomposing minke whale blubber was being kept in cold storage because Norwegians do not eat blubber and can find no use for it.

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<sup>25</sup> see speech of Senator Puplick, Senate, *Hansard*, 29/3/79 p. 1191

<sup>26</sup> at \$50 per kilo according to the Sydney Morning Herald of 9/11/96

<sup>27</sup> for example, according to a recent TRAFFIC Report, *Bulletin*, vol 15(1), 1994 from 29 000 yen in 1993 to 59 000 yen in 1994 per 15 kg

<sup>28</sup> Simba Chan et al., May 1995, *Observations on the Whale and Meat Trade in East Asia*

The Task Force has concluded that, apart from aboriginal subsistence whaling, there is no need for whales to be killed to provide food for human consumption.

However, even with aboriginal subsistence whaling, there is some evidence that, although the practice may have continuing cultural value, the necessity for this whaling as a food resource is highly questionable

Simply because whales can be killed, there is no case made out that they should be. We are currently faced with new ethical dilemmas arising from progress in reproductive biology that has cloned a complex mammal from the most basic cells of another member of its species. Our initial reaction has been to set some self denying limits on the practice of cloning and to declare that even if it were technically possible to clone human beings, there would be an overwhelming moral case not to do so. Furthermore, that case should be reinforced with legal as well as moral and ethical sanctions. Thus, the idea that just because something can be done, it should be done, is rejected universally.

There being no reason that whales should be killed, the Task Force finds no difficulty in endorsing the proposition that they should not be.

It has been alleged by some critics that such a proposition is 'cultural imperialism' against 'non-western' societies by people from a basically 'western' society. The Task Force rejects that criticism. The Task Force is concerned simply to codify what is widely practised international behaviour. The vast range of international instruments that shape the conduct of international behaviour reflect universal norms and standards and do not represent any distinct culture and its values. Adherence to such international instruments does not, therefore, amount to the imposition of cultural dominance but rather represents the universal observance of such norms and practices.

The Task Force is thus reinforced in its support of the Australian Government's position opposing any form of commercial whaling.

The case for the permanent international ban on commercial whaling is:

- the ethically compelling one to adopt;
- the ecologically and environmentally correct one to adopt;
- one based on the lack of necessity for such a cruel practice to continue; and
- one based upon the proper application of the precautionary principle which should be accepted as the foundation of all our environmental decision making.

Consequently, the Task Force recommends that a permanent international ban on commercial whaling should be the long term principal objective of Australian national policy.

However, in recommending this we acknowledge that persuading all of the members of the International Whaling Commission to adopt such a view, and to translate such a view into an amendment of the Convention itself, will not be easy.

Our report recognises that such an objective will take time to achieve. In the interim there is a variety of measures that can and should be taken to implement, eventually, the formal

banning of commercial whaling. These are outlined in the body of the report and in the recommendations.

Some are matters that must be dealt with through formal diplomatic and government channels. Some relate to amendments of the Schedule to the Convention (ICRW) or the definitions within the Convention and are designed to eliminate or constrain the operation of loopholes that otherwise threaten the overall integrity of the current moratorium and the Convention's conservation objectives.

We have made recommendations about scientific and management issues within the Convention and within other international conservation regimes or treaties.

Other recommendations call for less formal activities and involve contacts with non-government organisations and mobilising informed public opinion or, more accurately, re-mobilising informed public opinion, as this was the force that propelled Australia to the forefront of international efforts to conserve whales and turned Australia from a whale-killing into a whale-saving nation.

Without in any way reflecting upon the quality, integrity and dedication of people who have represented Australia at various international meetings, we expect that Australian representatives who are public servants will pursue support of formal Government policy with vigour and dedication but we also recommend that, where others are invited to represent Australia at meetings or in delegations, they should be selected not only for their expertise but also because they are personally committed to supporting Australia's anti-whaling policy.

Consequently, the Task Force recommends that the Australian Government ensures that Australia's representatives at the International Whaling Commission and related meetings take an effective leadership role in promoting the Government's clearly stated anti-whaling policy.

It may be appropriate, especially at IWC 50, a landmark meeting in the history of this international organisation, for the Minister to be present to advance Australia's case in line with our recommendations.

An editorial in the *New Scientist* (29/6/96) analysed the proceedings of the International Whaling Commission for that year and concluded:

A long battle (to end commercial whaling) may not be necessary. Whales have become symbolic of efforts to live in harmony with nature. Scientists may say hunting selected species will not drive them to extinction, but for the poets and the public this is beside the point. It is time to leave the whales alone.

It is upon this basis that the Task Force now proceeds to fulfil its terms of reference and advise the Australian Government on how best to go about the realisation of its stated policy.

### Chapter 3. The History of Whaling and its Regulation

Whaling has been carried out around the world for centuries. It has spread from coastal to international waters and from pole to pole. The first international steps to control whaling did not occur until the 1920s.

Unsuccessful efforts to regulate whaling were made by the League of Nations in 1924 and 1927. Its first success came in 1931 when twenty one countries (including Australia) signed the *Convention for the Regulation of Whaling*. This was, at best, a tentative step; the Convention did not enter into force until 16 January 1935, when the necessary number of ratifications had been received.

It was not long before it became clear that the 1931 Convention was ineffective so, in 1937, a new *International Agreement for the Regulation of Whaling* was signed by nine nations. This gave greater protection to depleted gray and right whale stocks and set minimum size limits for a range of other species. A further international conference in 1938 adopted additional regulations, as a Protocol to the 1937 agreement, including the designation of a sanctuary in the Pacific sector of the Antarctic.

Pelagic (open ocean) whaling virtually ceased during the second World War and, since many of the whaling factory ships were sunk during the hostilities, it was practicable in 1944 to add an important Protocol, restricting maximum catch limits in the Antarctic whale fishery. Whaling resumed with increased vigour following the war, however, despite increased effort the catches in the 1945-46 season were disappointing for whalers.

In the post-war spirit of international cooperation, the USA convened an International Whaling Conference in November 1946 which drafted a new Convention, the *International Convention for the Regulation of Whaling* (ICRW) which was subsequently ratified and entered into force in 1948. Australia was an original signatory to this Convention, in the Preamble to which, *inter alia*:

The Governments:

Recognising the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks;

Considering that the history of whaling has seen overfishing of one area after another and of one species after another to such a degree that it is essential to protect all species of whales from further overfishing;

...decided to conclude a convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.

#### ***The International Whaling Commission***

The 1946 Convention established the International Whaling Commission, comprising one Commissioner nominated by each State Party (Contracting Government), which formulates regulatory measures and is responsible for their application. Membership of the Commission has varied somewhat over the years; the current membership is shown in Appendix 3. Australia has been an active member of the Commission and its Scientific Committee since its beginning; the Australian Commissioner currently chairs the

Commission<sup>29</sup> and an Australian scientist chairs its Scientific Committee. The Commission has endeavoured to dictate the pattern of whale management from the time of its establishment to the present. It meets whenever necessary; on average once a year.

The history of the Commission's early years were quite dismal from a conservation viewpoint, particularly for whale stocks in the Antarctic. The regulations first adopted were modelled on the agreements reached among whaling nations in the pre-war years. Despite the obvious decline in whale stocks, catch limits, based on Blue Whale Units<sup>30</sup> rather than on individual species, were maintained at far too high a level at the insistence of whaling nations, which simply reflected the demands of their whaling companies. Because the Convention explicitly prohibits the Commission from restricting the number or nationality of factory ships or land stations or allocating quotas to them, individually or in groups, the overall quota system led to each whaling operation racing to take the largest share of the total catch permitted.

Attempts to agree on national quotas outside the Commission also failed and, as a consequence, in 1959 the Netherlands and Norway withdrew from the Commission. No catch limits at all were set for the next two seasons and whaling activity reached a peak of 66 090 whales in the 1961-62 season. In 1962 an agreement was reached outside the Commission among the five Antarctic whaling nations establishing national quotas as percentages of the IWC catch limit, and the Netherlands and Norway rejoined the Commission.

The first steps towards basing management of whaling on science resulted from the problems in reaching agreement on national shares of the Antarctic catch. In 1961 the IWC appointed a committee of three experts in population dynamics to make an independent analysis of baleen whale stocks in the Antarctic and make recommendations to the Commission. Catch data and biological information available were subject to rigorous analysis to determine the size of stocks and the level of yield they could sustain.

As a result of the recommendations of this special committee, in 1963 humpback whales were given complete protection south of the equator and blue whales in most of the area south of 40° S. The Commission also expressed its intention of bringing the Antarctic catch limit into line with the scientific findings in 1964. However in the event, those countries engaged in whaling would not accept the necessary drastic reduction in the catch limit indicated by the scientific evidence, while the non-whaling countries were unwilling to vote for any limit substantially higher than warranted by this evidence.

Because of this impossible situation, a special meeting of the IWC was held in May 1965 to resolve the problem of Antarctic quotas. It was agreed that over a three year period the catch limits would be reduced to below the sustainable yield of the stocks (estimated on the best scientific advice available). Unfortunately, full implementation of this decision was delayed because, through a better understanding of age determination and life span of whales, calculations of sustainable yield were revised downwards.

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<sup>29</sup> until 31 December 1997

<sup>30</sup> one blue whale equals two fin, two and a half humpbacks, six sei etc.

Disagreements continued for a number of years and it was not until 1972 that catch limits in the Antarctic were set by individual species rather than by Blue Whale Units, at the same time that an International Observer Scheme was also implemented.

### ***The moratorium.***

In 1972 the United Nations Conference on the Human Environment, held in Stockholm, resolved (almost unanimously) to call for a ten year moratorium on commercial whaling. Despite this clear expression of world opinion, it was not until ten years later that the IWC adopted a zero catch limit (establishing a moratorium), and then only to come into effect a further four years later in 1986. The zero limit was to be re-assessed in 1990, but this has not yet happened.

At the annual meeting of the IWC held two weeks after the Stockholm conference, a resolution which would have put the proposed moratorium into effect by setting all quotas at zero was defeated. In the following year (1973) a resolution to end all commercial whaling within three years achieved a majority but not the three quarters necessary to amend the Schedule. In 1974 the same resolution was put forward but was replaced by an amendment put forward by Australia.

The Australian amendment, which was adopted by the Commission, proposed a formal management procedure designed to regulate the catches from each stock individually, on the scientific committee's advice. The procedure classified stocks into three categories based on abundance and application of a maximum sustainable yield.

Unfortunately, whilst this procedure looked very attractive in principle, the Scientific Committee found that full implementation was difficult. Efforts to apply the procedure led increasingly to disputes amongst scientists. By the early 1980s the Scientific Committee found it almost impossible to agree on any recommendations for classification or catch limits of stocks subject to commercial whaling, other than those for protection stocks. This was an important factor in the Commission's 1982 decision to implement the zero limit (moratorium) from the 1986 season.

In 1982 the Commission adopted a proposal to include in the Schedule :

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 on 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.

Following the 1982 decision the IWC began what came to be known as the 'comprehensive assessment' of whale stocks—an in-depth evaluation of the status and trends of stocks in the light of management objectives and procedures. The aim was to overcome the problems associated with the existing concept of 'maximum sustainable yield'. Comprehensive assessment could not be developed by the original 1990 deadline and, whilst a number of components of a Revised Management Scheme (RMS) have been approved by the Commission, a totally new regime that might permit catch limits other than zero to be set seems to be some way from being agreed.

The Governments of Japan, Norway, Peru and the USSR lodged objections to the 1982 amendment, as provided for under the Convention. The Government of Peru withdrew its objection on 22 July 1983. The Government of Japan withdrew its objection from 1 May 1987 with respect to commercial pelagic whaling, from 1 October 1987 with respect to coastal whaling for minke and Bryde's whale and from 1 April 1988 with respect to coastal sperm whaling. The objections of Norway and the Russian Federation have not been withdrawn and the moratorium is not binding on these Governments. However, the Russian Federation is currently not whaling and Norway claims that it is confining its catches to fall within the guidelines so far developed for the RMS.

The main scientific component of a Revised Management Scheme for baleen whales was completed by the Scientific Committee in 1993. They recommended that the Commission formally adopt the Revised Management Procedure (RMP) developed. The Commission adopted the procedure at its 1994 meeting but, in a resolution adopted by consensus, agreed that the procedure would not be implemented until all aspects of the broader Revised Management Scheme (RMS), including the development of a fully effective inspection and observation scheme, had been completed.

In 1996 the IWC accepted a further component of the RMS, the revised Requirements and Guidelines for Conducting Surveys and Analysing Data within the Revised Management Scheme. The aspects of the RMS that remain to be agreed include:

- an effective inspection and observation scheme;
- arrangements to ensure that total catches over time are within the limits set under the RMS; and
- incorporation of all elements of the Scheme into the Schedule.

Once these outstanding issues have been finalised there will be an increased possibility of catch limits other than zero being set for certain stocks that have been subject to the comprehensive assessment process.

The perception of many observers that the 1946 Convention has been unsuccessful in its attempts to conserve whales has led to calls over the years for the Convention to be revised or amended to make it more effective and bring it up to date. Indeed, several parties have suggested that the fiftieth meeting of the IWC (to be held in 1998) would be an appropriate time to undertake such a revision. Unfortunately, whilst the Convention makes clear provision for amendment of the Schedule by the IWC, no provision is made for amendment of the text of the Convention itself. The only avenue for such a change would be through a diplomatic conference to agree either the text of a new convention or a protocol to the existing Convention. To date there has not been any consensus among parties to the Convention that such a course of action is appropriate.

### ***Other international agreements relevant to whales***

The 1946 ICRW predates most major developments in international environmental law and its existence has had considerable influence on the manner in which whales have been treated in subsequent international agreements. The Convention applies to all waters in which whaling is carried out by factory ships, land stations and whale catchers under the jurisdiction of Contracting Governments. Whilst it is anachronistic with respect to more

recent developments in international law, it is regarded by many as one positive feature of the Convention.

### **Law of the Sea**

The most far reaching recent development regarding marine resources is undoubtedly the United Nations Convention on the Law of the Sea (UNCLOS) which was finalised, after many years of negotiations, in 1982. UNCLOS establishes the principle of the sovereign rights of coastal States within their 200 nautical mile exclusive economic zone. The Convention sets out an objective of optimum utilisation of living resources within that zone and all States have a duty to ensure the conservation of the living resources of the sea and to cooperate with other States in so doing. Marine mammals are recognised as living resources to which a special regime applies. Article 62 notes that nothing restricts the rights of a coastal State or the competence of an international organisation to prohibit, limit or regulate exploitation of marine mammals more strictly than otherwise provided. Article 67 requires States to cooperate with a view to the conservation of marine mammals and, in the case of cetaceans, shall, in particular, work through appropriate international organisations for their conservation, management and study.

The UNCLOS text does not specify which international body is the appropriate international organisation through which coastal States are to cooperate on managing and conserving whale resources. It does, nevertheless, strongly support the IWC whilst the Commission remains broadly representative. This is perhaps best reflected in the discussions on marine conservation, and cetacean conservation in particular, at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992. Whilst the text of the final declaration of this Conference, Agenda 21, mirrors UNCLOS in much of its language referring to the conservation and sustainable use of marine living resources, but in relation to cetaceans states:

17.61. States recognize:

- (a) The responsibility of the International Whaling Commission for the conservation and management of whale stocks and the regulation of whaling pursuant to the 1946 International Convention for the Regulation of Whaling;
- (b) The work of the International Whaling Commission Scientific Committee in carrying out studies of large whales in particular, as well as of other cetaceans;
- (c) The work of other organizations, such as the Inter-American Tropical Tuna Commission and the Agreement on Small Cetaceans in the Baltic and North Sea under the Bonn Convention, in the conservation, management and study of cetaceans and other marine mammals.

17.62. States should cooperate for the conservation, management and study of cetaceans.

### **Trade in endangered species.**

The issue of regulation of trade in whale products is not mentioned in the ICRW resulting in debate on the competence of the IWC to consider trade issues. Nevertheless, the IWC has adopted a number of resolutions on trade in whale products, most recently in 1996. Because there is no agreement on IWC competence, the Convention on International Trade

in Endangered Species of Wild Fauna and Flora (CITES) has been used to control trade and thus reinforce the IWC moratorium.

CITES was negotiated in 1973 and currently has 134 States Parties. The Convention aims to regulate international trade in certain species of wild fauna and flora so as to protect them against over exploitation.

The Convention lists species subject to regulation on three Appendices.

Appendix I lists species threatened with extinction that are or may be affected by trade. Trade in these species is subject to particularly strict regulation and may only be authorised in exceptional circumstances: export is permitted only if it will not be detrimental to the survival of the species and import only when the specimen is not to be used for primarily commercial purposes.

Appendix II lists species that are not currently threatened with extinction but may become so unless trade is strictly regulated. Trade in these species requires a permit issued by the export State which must only be issued if it will not be detrimental to the survival of the species involved.

Appendix III lists species that are subject to regulation within the jurisdiction of a party and for which the cooperation of other parties is needed to prevent or restrict their exploitation.

In 1978 the IWC passed a resolution requesting that CITES

take all possible measures to support the International Whaling Commission ban on commercial whaling for certain species and stocks of whales as provided in the Schedule to the International Convention for the Regulation of Whaling.

The CITES parties responded, at the Second Conference of the parties in 1979, by adopting a resolution recommending that 'the Parties agree not to issue any import or export permit or certificate for introduction from the sea under CITES for primarily commercial purposes' for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling.

When the 1978 IWC resolution was passed, some populations of whales were listed on Appendix I and some on Appendix II of CITES. From 1979 to 1983, as zero catch limits were set in the ICRW Schedule for additional populations of whales, the CITES Conference of Parties added those populations of whales to Appendix I. Most importantly, the Fourth Conference of the Parties in 1983 decided that:

All cetaceans for which the catches are regulated by the IWC and for which the Commission has set catch limits for commercial whaling (except for the West Greenland population of minke whales) and not already on Appendix I would be transferred to that Appendix in 1986, when the IWC decision to implement a pause in commercial whaling comes into effect.

This action by the Fourth Conference of Parties established a strong relationship between the two organisations whereby CITES has agreed to reflect IWC decisions in its Appendices.

The next Conference of the Parties to CITES is to be held in June 1997 and both Norway and Japan have submitted proposals that certain whale species be down listed from

Appendix I to Appendix II of the Convention. In addition, Japan has submitted a resolution proposing that the Conference affirm that:

- CITES and the ICRW are independent international instruments that are not automatically linked in arrangements for implementation; and
- decisions on listing of species on CITES Appendices should be based on scientific data in accordance with criteria established in previous CITES resolutions.

Parties to CITES may make a reservation with respect to the listing of a species. Such a Party is to be treated as a State not Party to the Convention with respect to trade in the species concerned. Although all the great whales and many small cetaceans are listed on Appendix I of CITES with the remainder of the Order Cetacea on Appendix II, a number of Parties, including Japan, Norway, Peru and the Russian Federation, have made reservations with respect to these listings (Table 3.1).

### **Migratory species**

Most cetacea migrate extensively and, apart from some stocks of the smaller cetaceans, are not confined to the jurisdiction of any particular country. Consequently, conservation action requires international cooperation. Endeavours to engage the IWC in conservation action on smaller cetaceans has led to debate and disagreement about the IWC competence in this area. As a consequence, other international instruments have also been employed to this end.

The Convention on the Conservation of Migratory Species of Wild Animals (CMS) provides for international action to conserve terrestrial, marine and avian migratory species and their habitats throughout their range. This Convention was negotiated in 1979 and entered into force in 1983. As at 1 May 1996 it had forty five State Parties.

The Convention provides for endangered migratory species to be listed on Appendix I and migratory species that have unfavourable conservation status on Appendix II. If circumstances so warrant migratory species may be listed on both appendices.

Article III(5) requires that parties prohibit the taking of Appendix 1 listed species, although exemptions may be made for scientific purposes and to accommodate the needs of traditional subsistence users of such species. Five species of whales are currently listed on Appendix 1 (blue, bowhead, humpback, northern right and southern right whales).

Article IV requires that Parties that are Range States of species listed on Appendix II shall endeavour to conclude agreements to improve the conservation status of those species. In relation to such agreements Article V(4)(f) states:

at a minimum, prohibit, in relation to a migratory species of the Order Cetacea, any taking that is not permitted for that migratory species under any other multilateral agreement and provide for accession to the agreement by States that are not Range States of the migratory species.

Appendix II lists twenty six species of small cetaceans (beaked whales, bottlenosed whales, dolphins, killer whales, porpoises and toothed whales). An Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas has been concluded under the auspices of the CMS and entered into force in March 1994. More recently, an

Agreement on the Conservation of Cetaceans of the Black Sea and Mediterranean Sea and Contiguous Atlantic Area, which applies to small cetaceans and great whales, was concluded in November 1996.

### ***Conclusion***

From a conservation viewpoint the history of developing international controls on whaling activities has been most disappointing. Within the IWC catch limits were maintained at far too high a level for far too long at the insistence of the whaling countries wishing to protect the interests of their whaling companies. Developments in international law have, nevertheless, treated marine mammals, and cetaceans in particular, as different from other marine living resources and have, to some extent, entrenched the position of the IWC as the competent international organisation for the conservation and management of the great whales. Other international fora and organisations have generally deferred to the IWC on matters relating to whales and have strongly supported conservation measures taken by the IWC.



## Chapter 4. Current Whaling Activities and the Potential for Resumption of Commercial Whaling

### Part 1. Current Whaling Activities

Even though the IWC has had a zero catch limit in place since the 1986 season, some nations continue to whale under the Convention. Also, a large range of cetacean species not presently controlled under the ICRW are harvested, but data on the scale of these harvests are not readily available. Activities under the Convention fall into three separate types:

- under special permits issued in accordance with Article VIII;
- under the provisions for aboriginal subsistence whaling; and
- by States that lodged objections to the zero catch limits and are thus not legally bound to observe them.

#### ***Special permits.***

Article VIII of the Convention provides *inter alia* that

...any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit, and the killing, taking, and treating of whales in accordance with the provisions of this Article shall be exempt from the operation of this Convention.

The large majority of IWC members have refrained from issuing permits under this provision and, in recent years, have supported resolutions recognising that, with the development of modern scientific techniques, it is no longer necessary to kill whales to obtain the information needed for stock assessment and management. The provision has nevertheless been used and continues to be used by some countries, despite a number of resolutions from the IWC requesting that countries refrain from using lethal research techniques and from issuing special permits.

Since the moratorium on commercial whaling came into effect, Japan, Norway and Iceland have used this provision to continue whaling activities which many regard as commercial. Iceland undertook a four year program taking fin, sei and minke whale before it withdrew from the IWC in 1992. Norway conducted a program on minke whale which terminated in 1994, the season after it unilaterally authorised recommencement of commercial whaling.

Japan continues to use this provision and issued permits for a take of 100 minke whales in the NW Pacific in the 1996 season and 440 minke whales from within the Southern Ocean Sanctuary in the 1996/97 season. These catch levels have increased substantially in recent years, despite increasingly strident criticism from the large majority of IWC members.

Australia has consistently argued that scientific whaling is unnecessary, arguing that the information required for management and conservation of cetaceans can be obtained by non-lethal means.

### ***Objections***

Norway is currently the only nation whaling commercially, having lodged an objection to the inclusion of zero catch limits in the Schedule and thus not being legally bound by this provision. (The Russian Federation also has an objection lodged and is thus not bound by the provision, although, of course, the Russian Federation does not currently undertake any significant commercial whaling activities.)

Norway recommenced commercial hunting of minke whales in the north Atlantic in 1993, unilaterally setting quotas purportedly based on the management procedures agreed within the IWC. The quotas have risen from 206 in 1993 to 580 in 1997. Norway's action has been criticised repeatedly in IWC resolutions which have called on the Norwegian Government to reconsider its objection and halt all whaling activities under its jurisdiction. In December 1996, in a joint statement with the Hon. Alexander Downer, Minister for Foreign Affairs, Senator the Hon. Robert Hill, the Minister for the Environment, condemned strongly the Norwegian Government for increasing its catch limit for minke whales by 30% over the 1996 catch. The Norwegian response to criticism has been to state clearly that it will continue to operate its whaling fleet without the IWC approval but will not withdraw from the Commission (IWC 48).

### ***Aboriginal subsistence whaling.***

Subsistence whaling by Alaskan Eskimos is estimated to have taken place as early as 1500 BC. Aboriginal subsistence whaling has been recognised by international treaty for over sixty years as in some way being different and having a distinctive character, and exempt from the restrictions and requirements governing commercial whaling activity.

In the late 1970s whilst the IWC was putting into effect new management procedures, the Scientific Committee was expressing increasing concern over the trend in catches of the bowhead whale by Alaskan Eskimos. Consideration of these issues led to the adoption by the IWC of agreed definitions, management principles and guidelines for aboriginal subsistence whaling.

In 1981 the IWC accepted three broad management objectives for any aboriginal subsistence whaling

- (i) to ensure that the risks of extinction to individual stocks are not seriously increased by aboriginal whaling;
- (ii) to enable aboriginal people to harvest whales in perpetuity at levels appropriate to their cultural and nutritional requirements, subject to the other objectives; and
- (iii) to maintain the status of whale stocks at or above the level giving the highest net recruitment (that is, the maximum number when natural deaths are subtracted from live births) and to ensure that stocks below that level are moved towards it, so far as the environment permits.

*Aboriginal subsistence whaling* means whaling, for purposes of local aboriginal consumption carried out by or on behalf of aboriginal, indigenous or native peoples who share strong community, familial, social and cultural ties related to a continuing traditional dependence on whaling and the use of whales.

*Local aboriginal consumption* means the traditional uses of whale products by local aboriginal, indigenous or native communities in meeting their nutritional, subsistence and cultural requirements. The term includes trade in items which are by-products of subsistence catches.

*Subsistence catches* are catches of whales by aboriginal subsistence whaling operations.

Subsistence use of whale products was defined as:

- (i) The personal consumption of whale products for food, fuel, shelter, clothing, tools, or transportation by participants in the whale harvest.
- (ii) The barter, trade, or sharing of whale products in their harvested form with relatives of the participants in the harvest, with others in the local community or with persons in locations other than the local community with whom local residents share familial, social, cultural or economic ties. A generalised currency is involved in this barter and trade, but the predominant portion of the products from each whale are ordinarily directly consumed or utilised in their harvested form within the local community.
- (iii) The making and selling of handicraft articles from whale products, when the whale is harvested for the purposes defined in (1) and (2) above.

The Schedule to the ICRW specifies quotas for the 1996 season for four aboriginal subsistence hunts, where the meat and products of the whales are used exclusively for local consumption:

- 140 gray whales from the Eastern stock in the north Pacific, for the Russian Inuit people of the Chukotka peninsula;
- sixty seven bowhead whales from the Bering-Chukchi-Beaufort stock, for the Alaskan Eskimos;
- nineteen fin whales and up to 177 minke whales from the West Greenland and Central stocks, for the native population of Greenland; and
- two humpback whales for the Bequians of St Vincent and the Grenadines.

Two further requests were considered but not approved by the IWC at its 1996 meeting: a request from the USA for a catch limit of five gray whales for the Makah Indian people of Washington State and a request by the Russian Federation for a take of five bowhead whales for the Chukotka Peninsula Inuit. Whilst the request from the Russian Federation was not approved, the Russian authorities subsequently issued a permit for the whales to be taken.

Aboriginal subsistence whaling quotas have been of particular concern because some of the species and stocks from which whales have been taken are at very low levels. Continued take is justified only on grounds of essential local traditional cultural and nutritional needs. As catch limits have a direct impact on some minority groups under national jurisdictions, regional and national political and social issues compound consideration of the biological basis for establishing any catch limits.

There has also been debate over the use of whale products from some hunts, where semi-commercial or non-traditional use may occur, and the Commission has initiated several measures relating to aboriginal subsistence hunting:

- use of more humane methods of hunting;
- reduction of struck and lost ratios;
- improvement of national inspection of hunts to ensure compliance; and
- improvement of reporting.

The distribution of whale products from hunts currently managed under aboriginal subsistence provisions ranges from:

- *Alaskan Bowhead hunt* prohibition on any sale of any product other than worked whalebone artefacts from the bowhead hunt, meat and blubber may be distributed from whaling villages;
- *Greenlandic hunt* minke and fin products are marketed centrally in the villages and so some may find its way to Greenlanders in mainland Denmark;
- *Russian Federation* there were reports that gray whale meat was being used to provide protein for use in fur farms run by the local cooperative—more recent developments have indicated a change and return to more active involvement of local Inuit and a reduction in level of need— material presented recently indicates a widespread traditional trading circuit involving distribution of blubber and some meat to inland settlements, either in trade or exchange for furs and other material; and
- *Bequia* humpback products were reputedly on open sale in the market place.

Australia has generally accepted the distinctive character and special circumstances applying to aboriginal subsistence whaling. Acceptance of continued aboriginal subsistence whaling has had to be accommodated within an overall policy of opposition to all whaling, in recognition of the special requirements of some communities.

To most Australian Aboriginal communities whales are animals of special significance. Although some coastal communities do take other marine mammals, such as dugong, there is no history of a sustained subsistence take of small cetaceans or of the large whales that once moved, on their annual migrations, in large numbers through Australian waters, waters in which whales are now to be protected.....My Government appreciates the special problem of subsistence whaling where some harvesting is agreed to be an essential component of the culture of native people. However Australia does

not believe it is in the interests of indigenous people to condone catch levels which place endangered species at further risk.<sup>31</sup>

## **Part 2. Whaling outside the ICRW**

Whaling activities known to be occurring outside the controls of the IWC are largely those targeting species of small cetaceans, particularly those not listed in the Schedule to the Convention, and some aboriginal subsistence whaling.

Recent information indicates that some whaling occurs in the Philippines (a former IWC member), with catches in the range of forty to sixty per year, possibly Bryde's whale. The recent discovery of attempts to illegally import Bryde's whale meat into Japan imply that whaling outside IWC controls may be more extensive than has generally been suspected.

Direct hunting of small cetaceans, both for commercial purposes and aboriginal subsistence, is known to occur in a wide range of countries. To date the IWC has not examined this issue in any depth, primarily because there is no consensus amongst its members on whether the organisation can deal with this issue. Nevertheless, in recent years the Scientific Committee of the IWC has been giving increasing attention to issues affecting the conservation status of small cetaceans and has established a permanent sub-committee to develop improved information on harvesting and other threats to small cetaceans..

With regard to aboriginal subsistence whaling, in 1996 Canada issued permits allowing Inuit groups to take two bowhead whales, one from a very small stock (the Eastern Arctic stock) which has endangered species status. In addition, as mentioned above, the Russian Federation issued a permit for a take of bowhead whales, despite this not having IWC approval. An intermittent take of large whales for subsistence use was reported to have occurred in two villages in Indonesia.

## **Part 2. The Potential to Resume Commercial Whaling**

### **Whaling under the IWC**

There is, quite clearly, potential for commercial whaling to resume should the IWC moratorium be lifted. It is clear from the statements made at IWC meetings that there is strong interest, by a small but growing number of countries, in resuming commercial whaling activities, however, several factors mitigate against a rapid resumption of pelagic or coastal whaling on a large scale.

The large majority of those nations engaged actively in commercial whaling in the post war years had ceased such activities voluntarily prior to the moratorium coming into effect in 1986. By the 1980s only three countries— Japan, Norway and the USSR—were engaged

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<sup>31</sup> excerpt from the opening statement by the Australian Commissioner to IWC 31, 1979

in commercial whaling on the high seas and a further seven—Argentina, Brazil, Chile, Iceland, South Korea, Peru, and Spain—in commercial whaling activities of various sorts in coastal waters. As has happened with Australia, many of those that were major whaling nations in the '50s and '60s have now adopted firm policy positions against any resumption of commercial whaling and it is not likely that these policies would change if the moratorium were lifted.

Whilst political factors may influence the potential to resume whaling, economic factors are most likely to dictate the extent to which whaling resumes. After more than a decade of inactivity, little remains of the great whale catching fleets. Norway and Japan, through their commercial and scientific whaling activities, have retained some whaling capacity that could be deployed immediately, but other would-be whalers would almost certainly have to build a new whaling fleet or refurbish existing vessels. The relative scarcity of whales and the strict regulatory regime that the IWC would be expected to impose would not make this an attractive investment for many.

Probably a key factor in determining the scale and speed of resumption of commercial whaling is likely to be access to the Japanese market. Under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), international trade in whale meat is currently prohibited, in recognition of the IWC moratorium. Both Norway and Japan, having lodged objections/reservations to the CITES provisions in relation to certain species and stocks of whales, could, therefore, trade such products legally. However, currently neither government has been willing to permit such trade.

Whale meat currently commands a high price in Japan; whether this is because of scarcity or because it is considered a luxury that will always command a premium price is, however, open to debate. Were the price to remain high and Japan to permit imports then the incentive for countries to recommence whaling would increase.

Whilst the IWC moratorium and CITES controls on trade in whale products remain in place the risk of a resumption of commercial whaling is considered remote. Certainly Norway will continue the whaling activities in which it is already engaged and Japan's scientific whaling, which is *de facto* commercial, will continue.

In 1991 Iceland and Norway stated that, since the IWC seems reluctant to allow a resumption of commercial whaling, it might be necessary for them to turn to alternative fora where the issues of catch limits could be discussed. Japan has also hinted occasionally that it would withdraw from the IWC.

Whilst Iceland subsequently withdrew from the IWC in 1992, Japan and Norway remain active members. Both countries have been careful to stay within the bounds of the provisions of the Convention; indeed in some respects they have imposed restrictions beyond those which they are legally required to observe. Both continue to give strong signals that they desire to be considered as responsible members of the international community. Both are engaged in strenuous efforts to convince other members that commercial whaling can be carried out in a responsible and ecologically sustainable way, without risking any species becoming extinct; that such an industry is culturally acceptable/appropriate and should be officially sanctioned under international law.

In view of the status given to marine mammals in general and cetaceans in particular under international law (see Chapter 8), it would be difficult to maintain a respectable international image if they deliberately and openly flouted the IWC. In particular, UNCLOS requires that States cooperate with a view to the conservation of marine mammals and, in the case of cetaceans, to work through the appropriate international organisations for their conservation, management and study. Neither country seems prepared to risk the international reaction that would be expected were they to leave the IWC and unilaterally engage in commercial whaling.

The UNCLOS text does not specify which international bodies are the appropriate organisations through which States are to cooperate with respect to conservation and management of whales. There is precedent for regional bodies to oversee whaling activities in parts of the world: in 1952 Chile, Ecuador and Peru formed the Permanent Commission on the Use and Conservation of the Marine Resources of the South Pacific and established catch regulations for whales broadly similar to those in force in the IWC. [Subsequently all these countries joined the IWC—Chile and Peru in 1979 and Ecuador in 1991.]

In this context the recent establishment of the North Atlantic Marine Mammals Commission (NAMMCO) is seen as potentially increasing the risks. NAMMCO comprises government representatives from the Faroes, Greenland, Iceland and Norway and has been active in establishing guidelines for control and inspection of marine mammal hunts in the north Atlantic. There is a concern that NAMMCO could be developed into an ‘appropriate international organisation to regulate whaling’ and some pro-whaling nations are clearly attempting to promote such a development. To date, however, NAMMCO has failed to entice other key players to become members. Iceland, which withdrew from the IWC and is a member of NAMMCO, has not, to date, recommenced whaling despite statements that it intends to do so. On 7 May 1997 the Althing (Iceland's Parliament) adopted a resolution accepting a report by its Working Group on Whaling which recommends, *inter alia*, that ‘A political consensus should be sought on the passing of a resolution by the Althing stating that the exploitation of whale stocks off Iceland should be begun as soon as possible’ and commissioning the Government to make preparations for doing so. It seems that questions about the economic viability of commercial whaling and the risks of heavy losses in trade with anti-whaling nations remain significant concerns for the Icelandic Government.

The Task Force has previously noted that, during the May 1997 Antarctic Treaty Consultative Meeting in New Zealand, concern was expressed about the increase in illegal fishing activities in the Antarctic by vessels flying flags of convenience. Chapter 5 of our report mentions recent reports of extensive illegal fishing for Patagonian toothfish by vessels operating under flags of convenience in areas under the jurisdiction of CCAMLR and comments that these reports suggest strongly that international controls on exploitation of marine living resources are still far from adequate. The Task Force recalls the notorious activities of the pirate whaling vessel the MV Sierra, amongst others, in earlier days. Any increase in illegal whaling activities would be of great concern and the Task Force is strengthened in its support of operating within the regime of the IWC as the

best way for an internationally united front to be maintained against illegal activities of this type in the future.

### ***Conclusions***

Despite the adoption from the 1986 season of zero catch limits for commercial whaling in the Schedule to the Convention, in 1996 whaling activities permitted under the Convention are estimated to have killed of the order of 1 400 individuals of some six species of great whales. Unknown numbers of smaller cetaceans are also killed, either hunted directly or as incidental/bycatch in other fishing operations.

It is clear from the statements made at IWC meetings that there is strong interest, by a small but growing number of countries, in resuming commercial whaling activities. Several factors mitigate against a rapid resumption of pelagic or coastal whaling on a large scale and whilst political factors may influence the potential to resume whaling, economic factors are most likely to dictate the extent to which whaling resumes.

## Chapter 5. The Arguments against Commercial Whaling

### Part 1. The Inhumaneness of Whaling

#### *Introduction*

In his 1978 report<sup>32</sup> Sir Sydney Frost said:

Our conclusion then as to whether the method used to bring about the death of a whale is inhumane or not does not admit of doubt. The death of the whale is caused as a result of its organs being shattered by iron fragments from the head of the harpoon. We leave on one side the fear and terror of the chase and the exacerbation of the pain as the whale is being winched into the boat. Although death is brought about by a most horrible method, in the cases where it occurs instantaneously, the act of killing may be said to be not inhumane. But if the death is not instantaneous, or does not happen quickly, the animal is required to suffer from these truly terrible injuries for at the least three minutes and more usually up to five or seven minutes until a killer harpoon can be fired. There can be only one conclusion: that in these cases death is caused most inhumanely. The fact that these cases are a significant proportion of the total leads to the inevitable conclusion that the technique for killing whales at present used is not humane.

Nearly twenty years later, have there been such significant advances that this conclusion would no longer apply?

In its submission to the Task Force, the RSPCA Australia expresses the firm belief that 'all the available evidence demonstrates that no method of whaling can be considered humane'. It continues that 'If whales cannot be killed humanely then they should not be killed at all'.

#### *Developments in whale killing methods*

The history of modern whaling is generally taken as commencing in about 1870 with the invention by the Norwegian Svend Foyn of the explosive harpoon cannon. This technology made possible the hunting of the larger, faster swimming species of whales and, combined with the development of steam powered catcher boats and factory ships, saw the extension of whaling operations to the Antarctic.

Using this killing method, a harpoon was fired from a cannon on board ship into the whale. The head of the harpoon consisted of two or four barbs and an explosive grenade. If the timing was right, a delayed action trigger mechanism saw the grenade explode inside the whale's body. (In other cases, the harpoon may pass right through the whale's body.) The barbs opened out and ensured that the harpoon did not pull out of the whale as it was being winched back towards the ship. Today, whales are still killed by the same

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<sup>32</sup> 1978, *Whales and Whaling* (Frost Report), AGPS, Canberra

basic techniques, although the form of explosive used in the harpoon's head has changed from black powder to penthrite.

The story for minke whales, however, has been slightly different. Traditionally, minke whales have been killed using a non-explosive, or cold, harpoon. The principle was the same—the harpoon was fired from a cannon mounted on the ship—but, as the name implied, the head of the harpoon did not contain an explosive charge. As the minke whale is a smaller species than the more favoured larger whales, such as blue, fin and sei, the cold harpoon was preferred as it destroyed less of the meat than the explosive harpoon. As the populations of larger whales were decimated, the attention of the whaling fleets turned increasingly to the minke whale where the cold harpoon continued to be used.

The cold harpoon, however, resulted in longer median times to death than for the explosive harpoon using black powder and the issue of the inhumaneness of the method drew attention within the IWC. With increasing concern being expressed about using the cold harpoon, research was begun to find a new explosive that would kill the whale more quickly while damaging less of the meat than the black powder explosive harpoon. Experiments using penthrite as the explosive charge began in Japan in 1979 and, in 1983, Norway began work to develop its own penthrite grenade harpoon. In 1979 the Commission, by Schedule amendment, banned the use of the cold harpoon in commercial whaling operations for all whales except minkes, commencing from the 1980-81 pelagic and 1981 coastal seasons. The following year a further Schedule amendment, proposed by Australia, was adopted, extending the ban to minke whales from the 1982-83 pelagic and 1983 coastal seasons.

Over the years an array of alternative methods to kill whales have been used and/or considered. These have included:

- electrical harpoons;
- carbon dioxide harpoons;
- compressed gas (air) harpoons;
- drugs; and
- high-velocity projectiles.

None of these proved to be satisfactory alternatives and the explosive grenade harpoon has continued to be the method of choice in commercial hunting of whales since the 1860s (with the exception of the cold harpoon for minke whales up until 1983 as outlined above). Since the introduction of the penthrite grenade harpoon in the early 1980s, efforts concerning killing methods have concentrated on refinements to the penthrite harpoon, ensuring the reliability of equipment and enhancing the skill of the operators. The Task Force is not aware of any major new technology either in development or being considered.

## ***Current methods of killing whales***

### **Primary killing methods**

In commercial whaling operations today, the primary method used to hunt whales is the explosive, penthrite grenade harpoon. In a paper submitted to the IWC's 1995 Workshop on Whale Killing Methods Kestin<sup>33</sup> describes current hunting practices:

The principal whaling nations, Norway and Japan, use very similar equipment consisting of a whaling cannon and harpoon. The cannon is a short-barrelled 50, 60 or 75mm calibre weapon mounted on the bow of a catcher vessel 4 to 6m above the waterline (Øen 1992a). Whale catchers vary in length from 16 to 30m. The cannon is mounted on the gimbals, has primitive bead sights similar to a shotgun, is hand aimed and is designed for rapid action. Loaded in the muzzle of the cannon is the harpoon. This weighs from 14 to 18kg and has two or four hinged steel barbs or claws secured closed with a line. Screwed to the head of the harpoon is an explosive grenade which is fused to explode within the whale's body.

Connected to the shaft of the harpoon by a sliding link is a strong synthetic rope called the forerunner. The link ensures that the forerunner trails from the back of the harpoon and does not disturb its flight. The end of the forerunner is connected to a power winch.

Hunting methods for the currently hunted species (the minke whale, *Balaenoptera acutorostrata*) vary. The Norwegian whalers try to position their boats in approximately the place where a whale will surface to breathe, though animals can be chased for up to six hours. As the whale approaches the surface, the cannon is rapidly aimed and fired as the whale surfaces (Øen 1992a, 1993). Japanese Antarctic whalers pursue whales at moderate speed, using sonar to frighten them to the surface if necessary and fire at the whale as it swims away from the ship (Government of Japan 1993a). The harpoon travels at a velocity of 70 to 80m s<sup>-1</sup> and accuracy drops considerably as ranges exceed 60m (Øen 1992b). If possible, whalers aim so that the harpoon strikes the whale obliquely, entering just behind the flipper, hoping to explode the grenade in the viscera (thought to be the best site to inflict fatal damage)(Government of Japan 1993a). On striking the whale the harpoon penetrates the animal's body. The grenade is fused to detonate approximately 0.5m inside the whale's body (Øen 1992b). Minke whales are relatively small and the harpoon often exits on the far side of the whale. When the line is tensioned the barbs open and prevent the harpoon drawing through the animal's body.

The harpoon is designed to kill either by the trauma or laceration to vital organs or by the creation of shock waves to the brain. The placement of the harpoon is crucial in ensuring instantaneous, or minimal times to, death.

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<sup>33</sup> Kestin, S. C. 1995, 'Welfare Aspects of the Commercial Slaughter of Whales', IWC/47/WK7, paper presented to the IWC Workshop on Whale Killing Methods, Dublin, Ireland, 23-25 June 1995, published in *Animal Welfare 1995*, 4: 11-27

### Secondary killing methods

If the animal does not die relatively swiftly then, rather than waiting to reload and fire a second explosive harpoon, a secondary killing technique is employed. In the case of the Norwegian minke whale hunt, this is by heavy calibre (minimum 9mm) rifle (first introduced in 1979) using full-metal jacket ammunition; for the Japanese minke whale hunt either a cold harpoon or an electric lance is used. (The electric lance has been used by the Japanese as a secondary killing method since 1971 when they first began hunting minke whales in the Antarctic.) In some situations, the electric lance is used in addition to a cold harpoon if the first (explosive) and second (cold) harpoons have failed to kill the whale.

In another paper presented to the 1995 Workshop on Whale Killing Methods, McLachlan<sup>34</sup> describes the use of the electric lance:

Each lance is a 90cm, steel rod with a sharpened, flat head. The upper portion of the rod does not enter the whale and is insulated with tape. This is attached to a long pole which is used to implant the lance into the whale. Once the whale has been winched alongside the catcher vessel, normal use of the electric lance involves one being placed in the vicinity of the heart, and the other planted on the dorsum slightly above the lateral line (Government of Japan 1993). The lance normally delivers 5 amperes at 100-110 volts and 50 or 60 hertz into the body of the animal (Hasui 1980; Hayashi 1980).

In 1994-95 the voltage used was either 110 volts or 220 volts. In 1995-96 experiments were also carried out using 440 volts. The current used in 1995-96 was pulsating current (previously both alternating and pulsating current were used)<sup>35</sup>. In order to ascertain whether death has occurred the current is switched off periodically to observe the whale for signs of death. The level of current used, however, is low so as not to compromise the safety of the operator.

Discussion in the 1995 Workshop on Whale Killing Methods centred around two specific issues: a comparison of whale killing with the killing of domestic stock and the hunting of terrestrial animals; and an evaluation of the efficiency of the electric lance as a secondary killing method. On the first issue of comparative analyses it can be demonstrated that whaling does not meet the standards that commonly apply in domestic slaughter situations which require that the animal be rendered instantaneously insensitive to pain prior to death which should take no more than a few seconds. A counter argument is, however, put by pro-whalers that the whaling situation is not much worse than other hunting situations such as fox hunting, big game hunting and kangaroo culling<sup>36</sup>.

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<sup>34</sup> McLachlan, H. 1995, 'The Use of Electricity to Kill Minke Whales: Humane Considerations', IWC/47/WK5, paper presented to the 1995 IWC Workshop on Whale Killing Methods, Dublin, Ireland, 23-25 June 1995, published in *Animal Welfare* 1995, 4: pp. 125-129

<sup>35</sup> Government of Japan 1996, 'Report on Killing Method for the 1995-96 Antarctic Minke Whale Research', IWC/48/WK5, paper presented to IWC Technical Committee, Aberdeen, Scotland, 22 June 1996

<sup>36</sup> see, for example, Øen, E. O. 1995, *Killing Methods for Minke and Bowhead Whales*, Dissertation presented for the degree of Doktor Medicinæ Veterinariæ, Norwegian College of Veterinary Medicine, Oslo, Norway, IWC/47/WK8, presented to 1995 IWC Workshop on Whale Killing Methods, Dublin, Ireland, 23-25 June 1995

With respect to the use of the electric lance, a paper presented by New Zealand<sup>37</sup> raised extreme doubt as to the ability of the electric lance to ensure a quick death and even suggested that this method increased the animal's suffering by adding the pain of electric shock to the pain already being suffered from the original harpoon wound. A consequent resolution adopted at that year's IWC meeting called on countries to refrain from using the electric lance and proposed to reconsider a proposal to ban its use at the 1996 meeting. In 1996 New Zealand and the United Kingdom proposed a Schedule amendment to ban, from 1 July 1999, the use of the electric lance as a method of killing whales. In the Technical Committee however, in addition to a further paper presented by New Zealand<sup>38</sup>, a paper was presented by one of Norway's scientists<sup>39</sup> which analysed the data from Japan's 1994-95 and 1995-96 scientific whaling operations and suggested that the electric lance resulted in a shorter time to death than the cold harpoon. In the vote that ensued in Plenary, the proposal to ban the use of the electric lance was supported by a majority of Commission members but failed to gain the three quarters majority required for a Schedule amendment (sixteen for, eight against, five abstentions). Australia supported the Schedule amendment.

#### **Aboriginal subsistence whaling**

*Greenland hunt* Two species of whales are taken—fin and minke whales. With respect to minke whales, two different hunts occur: a harpoon cannon hunt; and a rifle hunt. In the harpoon cannon hunt the explosive penthrite grenade is used. A secondary killing method, using a minimum 7.62mm rifle, is employed if the animal is not killed instantly by the penthrite harpoon. A similar method is also used in the fin whale hunt, except that the use of the rifle is not permitted.

In the late 1960s and early 1970s a rifle hunt for minke whales was introduced in Greenland to replace cutter-hunting in places where cutters with cannon guns are not available. Here, a minimum 7.62mm calibre rifle is used and a hand harpoon is used to secure the whale<sup>40</sup>.

*Bowhead hunt* The traditional method of hunting in the Alaskan Eskimo bowhead whale hunt was a darting gun, consisting of a modified barrel fastened to a wooden stock and equipped with a harpoon, float and line. Additionally, a grenade launcher or shoulder gun, and a lance or spear were sometimes used in the final phase of catching. Over recent years, a considerable amount of work has been done in adapting the penthrite grenade for

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<sup>37</sup> Barnes, G. R. G., Madie, P. & Blackmore, D. K. 1995, *Further Investigations Relevant to the Use of the Electric Lance in Whaling*, IWC/47/WK2, paper presented to 1995 IWC Workshop on Whale Killing Methods, Dublin, Ireland, 23-25 June 1995

<sup>38</sup> Blackmore, D. K., Madie, P. & Barnes, G. R. G. 1996, *Observations on the Electric Lance and the Welfare of Whales: A Critical Appraisal*, IWC/48/WK1, paper presented to IWC Technical Committee, Aberdeen, Scotland, 22 June 1996

<sup>39</sup> Walløe, L. 1996, *An Analysis of Recent Japanese Whale Killing Data with Special Emphasis on the Use of the Electric Lance as a Secondary Killing Method*, IWC/48/WK2, paper presented to IWC Technical Committee, Aberdeen, Scotland, 22 June 1996

<sup>40</sup> IWC 1992, *Report of the Workshop on Whale Killing Methods*, Glasgow, Scotland, 20-22 June 1992, IWC/44/REPHK, p. 12

use in the bowhead hunt<sup>41</sup>. This appears successful in the case of the penthrite darting gun grenade but further work is still needed to develop a penthrite grenade for the shoulder gun<sup>42</sup>.

*St Vincent and the Grenadines humpback whale hunt* The method used by the Bequians is hand harpoon and lance<sup>43</sup>.

### **Faroe Islands Pilot Whale Drive Hunt**

This hunt has been the subject of a number of discussions within the IWC. Whilst it should be noted that a number of countries do not recognise the competence of the IWC with respect to small cetaceans, the Government of Denmark has nevertheless cooperated in providing information to relevant workshops of technical experts on the Faroese pilot whale drive hunt. This hunt has a long history: it targets migrating herds of pilot whales which are encircled by the local people and driven en masse towards the shore. There, individuals are secured by a gaff, brought to shore and then killed by exsanguination with knives being used to sever the carotid arteries. Graphic images and descriptions of this hunt have resulted in outcry by many people and demands that it be banned.

### ***Process for considering humane killing within the IWC***

Article V(1) of the 1946 International Convention for the Regulation of Whaling (ICRW) states:

The Commission may amend from time to time the provisions of the Schedule by adopting regulations with respect to the conservation and utilization of whale resources, fixing (a) protected and unprotected species; (b) open and closed seasons; (c) open and closed waters, including the designation of sanctuary area; (d) size limits for each species; (e) time, methods, and intensity of whaling (including the maximum catch of whales to be taken in any one season); (f) types and specifications of gear and apparatus and appliances which may be used; (g) methods of measurement; and (h) catch returns and other statistical and biological records (underlining added).

The issue of the humaneness of the methods used to hunt whales has been on the agenda of the International Whaling Commission since at least 1959 when a Working Party on Humane and Expeditious Methods of Killing Whales was established. This group was asked to examine the killing methods used in whaling and initiate any necessary research programs to improve existing methods. Its discussions, however, were limited to improvements to electrical harpoons and harpoons with carbon dioxide used for large whales. As none of these was found to be a feasible alternative to the grenade harpoon this was the end of their work<sup>44</sup>.

In 1975, acting on a recommendation from the Scientific Committee to

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<sup>41</sup> *Ibid.*, pp. 10-11

<sup>42</sup> IWC 1995, *Report of the Workshop on Whale Killing Methods*, Dublin, Ireland, 23-25 June 1995, IWC/47/18, p. 24

<sup>43</sup> IWC 1992, *Report of the Workshop on Whale Killing Methods*, Glasgow, Scotland, 20-22 June 1992, IWC/44/REPHK, p. 14

<sup>44</sup> Øen, E. O. 1995, *op. cit.*, 'Introduction', p. 5

...make inquiries about possible new developments in chemicals and explosives suitable for killing whales, and examine ways of improving the efficiency of existing methods, including the killing of small whales where explosives cannot be used, and training of gunners ...<sup>45</sup>

the IWC looked at the use of drugs, carbon dioxide harpoons, and high velocity projectiles as potential killing methods. No real conclusions were reached.

Killing methods were then discussed in each subsequent year and, in November 1980, a Workshop on Humane Killing Techniques for Whales was held. During this workshop, both current and alternative killing methods were discussed, but again no conclusions were reached. It was, however, recommended that further work be done on grenades and explosives and that trials be started on using high-velocity projectiles.<sup>46</sup>

During this period, and following a request from the Scientific Committee for a body of experts to review the humane aspects of the cold harpoon, a Technical Committee Working Group on Humane Killing was established. Later, aboriginal subsistence whaling was added to its considerations. In 1990 Australia proposed that the terms of reference of the Working Group:

to review available papers and evaluate the results of experimental programmes on alternatives to the cold grenade harpoon for killing minke whales, and humane killing in aboriginal subsistence whaling

be amended by the addition of 'and other whaling activities'<sup>47</sup>. A number of Governments supported this proposal but it was opposed by other Governments and remained unresolved until 1993 when the majority view was to accept new terms of reference for the group:

to review information and documentation available with a view to advising the Commission on promoting the development of humane methods of killing whales.<sup>48</sup>

At the 1991 meeting of the IWC it was agreed that a Workshop on Whale Killing Methods would be held in 1992 to review developments in killing methods since the 1980 Workshop on Humane Killing Techniques for Whales. The purpose of the workshop was to:

- consider all methods currently in use in whaling or known to be in development;
- assess the methods, their efficacy and physiological effects;
- evaluate the times to death achieved by various methods; and
- evaluate progress since 1980; complete a comparative analysis of the methods<sup>49</sup>.

The Workshop, held from 20-22 June 1992, specifically did not make judgements on whether the different methods reviewed were 'humane'. Not surprisingly perhaps, in a

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<sup>45</sup> IWC 1977, *Rep. Int. Whal. Commn.* 27, 1977 pp. 61-2

<sup>46</sup> Øen, E. O. 1995, *op cit*, 'Introduction', p. 5

<sup>47</sup> IWC 1990, *Report of the Technical Committee*, IWC/42/5, July, 1990

<sup>48</sup> IWC 1994, *Rep. Int. Whal. Commn.* 44, 1993

<sup>49</sup> IWC 1992, *Report of the Workshop on Whale Killing Methods*, IWC/44/REPHK, Glasgow, Scotland, 20-22 June 1992

brief evaluation of progress since 1980, workshop participants expressed a range of views. As a result of the Workshop an eleven point Action Plan was adopted by the Commission<sup>50</sup> as providing advice and recommendations from the Commission to appropriate Governments and national agencies. This action plan included issues relating to:

- equipment and methods;
- indication of insensibility and death;
- assessment of cause of death in relation to observed time to death;
- collection and provision of information on time to death;
- assessment of physiological status of hunted animals; and
- 'next steps'.

More recently, a further Workshop on Whale Killing Methods was held from 23–25 June 1995. Its terms of reference were to:

- consider all methods of killing currently in use in whaling or known to be in development;
- assess the methods, their efficacy and physiological effects;
- evaluate the time to death achieved by the various methods;
- review and evaluate all data, relevant to the workshop, available through the IWC or held by national Governments or organisations; and
- complete a comparative analysis of the methods and consider revision of the Action Plan as appropriate, with a view to improving the humaneness of whale killing techniques while paying proper regard to the safety of the crew<sup>51</sup>.

The Technical Committee Working Group on Humane Killing was not convened in either 1995 or 1996. Humane killing matters, including the outcomes from the 1995 Workshop, were dealt with directly in the Technical Committee. Another Workshop is scheduled to be held prior to the 1997 IWC meeting and a number of countries have also requested that the Humane Killing Working Group be reconvened.

In 1995, the United Kingdom submitted a paper<sup>52</sup> to the Workshop on Whale Killing Methods. This followed a draft protocol outlining the key humane killing data which it considered should be collected from the whaling operations that it had submitted to the inter-sessional Working Group on Supervision and Control. In this paper the UK argued:

As part of its consideration of a Revised Management Scheme (RMS), the IWC is currently looking at ways to ensure that any possible future whaling operations are

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<sup>50</sup> IWC 1994, *Rep. Int. Whal. Commn. 44*, 1993, Resolution on Humane Killing

<sup>51</sup> IWC 1995, *Report of the Workshop on Whale Killing Methods*, Dublin, Ireland, 23-25 June 1995, IWC/47/18, p. 1

<sup>52</sup> United Kingdom 1995, *Protocol for Collecting Data on Humane Killing of Whales*, IWC/47/WK6, paper presented to the IWC Workshop on Whale Killing Methods, Dublin, Ireland, 23-25 June 1995, p.1

subject to proper observation and inspection procedures. These procedures will cover details of the data that should be recorded each time a whale is taken. It is the UK view that data on humane killing forms an essential element of any inspection and observation scheme so that data is recorded in a properly detailed and consistent format.

This was followed in 1996 by a further paper from the UK<sup>53</sup> submitted to the Working Group on Supervision and Control. Diverse views were expressed in the Working Group on this proposal.

### ***Definitions of humane killing***

The 1980 Workshop accepted<sup>54</sup> as a working definition that humane killing of an animal means:

...causing its death without pain, stress or distress perceptible to the animal. That is the ideal. Any humane killing technique aims first to render an animal insensitive to pain as swiftly as is technically possible, which in practice cannot be instantaneous in the scientific sense.

In the Working Group on Humane Killing following the 1992 Workshop on Whale Killing Methods, Japan<sup>55</sup> proposed a new working definition of humane killing of whales:

A working definition of humane killing of a whale means causing death as swiftly as is technically possible, while ensuring the safety of the personnel engaged in the operation and within the extent of making possible maximum utilization of the whale.

Japan suggested that this definition was an attempt to overcome difficulties arising when only part of the 1980 working definition was quoted leading to attempts to characterise a method as inhumane made on the basis of the partial definition. However, the Chair of the Working Group did note that this proposed definition was not completely the same as the 1980 definition.

New Zealand<sup>56</sup> also put forward a proposal for a new working definition which it suggested was appropriate in light of developments since the 1980 Workshop:

'Humane killing' of an animal means causing its death without pain, stress or distress perceptible to the animal. This consists of a process which causes instant insensibility, the duration of which persists until death intervenes.

In relation to whaling, killing techniques must cause death as swiftly as possible, involving technology that induces instant and permanent insensibility with a high degree of confidence.

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<sup>53</sup> *Suggested Guidelines for Collecting Data on Humane Killing of Whales*, IWC/48/IO1

<sup>54</sup> IWC 1980, *Report of the Workshop on Humane Killing Techniques for Whales*, IWC/33/15, Cambridge, UK, 10-14 November 1980

<sup>55</sup> Government of Japan 1992, 'Proposal for Working Definition of Humane Killing of Whales', IWC/44/HK3, in *Report of the Humane Killing Working Group*, IWC/44/18, Glasgow, Scotland, 26 June 1992, p.4

<sup>56</sup> New Zealand 1992, 'Proposal #2 for Working Definition of Humane Killing of Whales', IWC/44/HK4, in *Report of the Humane Killing Working Group*, IWC/44/18, Glasgow, Scotland, 26 June 1992, p. 4

Neither country pushed the issue, however, although New Zealand suggested that this was a matter that should be kept under review. The matter of a new working definition was not pursued further.

### ***Time to death***

In 1996 Øen and Walløe<sup>57</sup> provided an analysis of time to death for the 218 whales taken in the 1995 Norwegian commercial minke whale hunt. They report:

...all signs of life ceased instantaneously (10 seconds) in 62 per cent of the whales. The upper quartile (75 per cent) of the survival times was at 240 seconds. The mean time from the shot until all signs of life ceased was 204 seconds. Signs of life were seen for more than 10 minutes in 11 per cent and more than 15 minutes in 4 per cent of the animals. The longest time to death was 43 minutes 20 seconds. All the animals that survived for more than 15 minutes broke free and had to be re-shot.

Øen and Walløe go on to compare these figures with some from previous years:

In 1984-1986, 45 per cent of the whales died instantaneously, and the corresponding figures for 1993, 1994 and 1995 were 54 per cent, 59 per cent and 62 per cent. In 1984-1986, 22 percent survived for more than 10 minutes and 15 per cent for more than 15 minutes. In 1993, the corresponding figures were 10 per cent and 8 per cent, and in 1994 and 1995 they were 11 per cent and 4 per cent. The mean time to death decreased from 394 seconds in 1984-1986 to 227 seconds in 1993 and 185 seconds in 1994. However, in 1995, the mean time to death increased by 19 seconds to 204 seconds. This was mainly because more animals broke free and had to be re-shot in 1995 than in 1994.<sup>58</sup>

While it may be demonstrated that the general trend is to a reduction over time in the mean time to death, the question that still has to be asked is 'Does this represent humane killing'? What of the whale that in 1995 took over forty three minutes to die? Or of the one below that took 130 minutes to die?

A similar pattern exists in the Japanese hunts. Papers submitted by the Government of Japan to the IWC provide data on the situation with respect to these hunts:

A total of 440 animals were sampled in the 1995/96 season. There was one case in which pulling out of harpoon from one whale occurred twice, resulting in the time to death of 96 minutes. As this was a very rare case, it was excluded from the analysis.

Three hundred and thirty whales taken in the 1994/95 Antarctic season were also used for analysis. There was one case in which a whale was substantially injured by the first hit, but not penetrated. The time to death calculated from the time of the first hit of harpoon was 130 minutes. This was also excluded from the analysis because it presented a very rare case.<sup>59</sup>

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<sup>57</sup> Øen, E. O. and Walløe, L. 1996, *Norwegian Minke Whaling 1995*, IWC/48/WK3, paper presented to the Technical Committee, Aberdeen, 22 June 1996, p. 1

<sup>58</sup> *Ibid.*, p. 2

<sup>59</sup> Government of Japan 1996, *Report on Killing Method for the 1995/96 Antarctic Minke Whale Research*, IWC/48/WK5, paper presented to the Technical Committee, Aberdeen, Scotland, 22 June 1996, p. 3

The paper further states:

In the 1995/96 season, the instantaneous death rate stood at 29.4%, a considerable improvement from 23.4% in the 1994/95 season...The median time to death was 4 minutes 50 seconds for the 1995/96 season...<sup>60</sup>

In his analysis of this Japanese data Walløe presented the following results:

...891 whales which are included in the analysis...26% of the whales died instantaneously. The median survival time was 4.8 minutes, 9.5% of the whales lived for more than 10 minutes, and 3.1% for more than 15 minutes. Thirty five whales were lost and later recaptured using grenade or cold harpoons, 32 because the harpoon pulled out and 3 because the fore-runner broke. All whales with survival times longer than 20 minutes were from this group of 35 lost and recaptured whales.<sup>61</sup>

### ***Other considerations***

No matter how good the technology, however, whaling is not carried out in a laboratory with ideal conditions. As the placement of the harpoon is critical in determining how quickly the whale dies, the skill and training of the harpooner is a relevant consideration. Even with a skilled operator, other factors are more variable and less controllable. In practice, the harpoon is fired from the deck of a moving vessel—with the roll and pitch of the ship obviously influenced by the prevailing sea and weather conditions—at a moving, partly submerged target.

Clearly therefore, marksmanship, technical and functional reliability of equipment and hunting techniques are all crucial elements.

No mention has yet been made of another factor that must be taken into account in any assessment of humaneness and cruelty as it relates to whaling. This is the chase itself. Even if it were possible to kill the animal instantaneously with the first harpoon in every case, death would still not come before possible fear, panic, apprehension and confusion as a result of the whale first being hunted down by the catcher boat as it gets itself into position for the gunner to fire. Much literature indicates also that many species of whales have highly developed social systems and that they respond to the distress calls of others of their species. We can only hypothesise, but what is the effect on other animals nearby of an animal's fear and anticipation of death and its distress calls?

Discussion on humaneness within the IWC has tended to focus around the issue of 'time to death'. The assumption drawn is that a reduction in the median or mean time to death would be an indicator that whaling was somehow 'more humane'. Such analysis however ignores at least two other aspects that are equally relevant in any assessment of humaneness. The first is the actual level of pain and suffering of the animal. This argument is particularly relevant in the recent discussions concerning the electric lance as a secondary killing method. Is it sufficient just to say that the electric lance results in a

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<sup>60</sup> *Ibid.*, p. 4

<sup>61</sup> Walløe, L. 1996, *An Analysis of Recent Japanese Whale Killing Data with Special Emphasis on the Use of the Electric Lance as a Secondary Killing Method*, IWC/48/WK2, paper presented to the Technical Committee, Aberdeen, Scotland, 22 June 1996, pp. 2-3

shorter quicker median time to death than an alternative secondary technique and is, therefore, more humane, or should the level/degree of pain and suffering experienced by the animal—however that be measured—also be taken into consideration when reviewing whale killing methods? Grisly as they may be, eyewitness accounts of capital punishment by the electric chair and accounts by survivors of electrocution probably provide some insight into the sort of pain associated with electrocution as a killing method. Is it also valid to define/assess humaneness against best available technology. Are degrees of humaneness possible?

In recent years discussion on humane killing within the IWC has concentrated on secondary killing methods. We should not, however, be deflected from the fundamental question—is whaling humane? In other words, can the primary method of killing—the explosive harpoon—be considered humane? The very fact that a secondary method is employed indicates that death in a significant number of cases is not instantaneous. There can only be one conclusion—whaling is cruel, inflicting an unacceptable level of pain and suffering on the animal involved. Just as in 1978, the technique currently used for killing whales is not humane.

### **Conclusion**

Humaneness is not something that can be measured in degrees nor against best available technology. After:

- over a century of Antarctic whaling;
- an even longer period of coastal whaling;
- in spite of any technological improvements that have occurred over the years; and
- the numerous experiments, workshops and discussions,

the methods used to kill whales continue to be unacceptably cruel and inhumane.

There is little prospect of this situation changing in the foreseeable future. The Task Force is convinced that the issue of humaneness continues as one of the most potent arguments against whaling and a compelling reason for a worldwide ban on whaling.

### **Part 2. Conservation and Sustainable Development**

Reviewing the scientific information on whales and whaling reveals several significant issues:

- there is considerable uncertainty about the status and future well-being of most whale species;
- the IWC's new management proposals overcome to some extent the lack of detailed scientific data but the approach is as yet unproven in practice;
- there is a range of uncertainties, such as pollution, climate change and our poor record in managing other marine resources, that demands a precautionary approach to resuming commercial whaling;

- the economics of commercial whaling, and indeed of commercial exploitation of marine living resources generally, suggest that it is a poor use of the world's resources; and
- unknown numbers of whale deaths including entanglement in fishing gear, incidental take in other fishing, collisions with vessels, strandings etc.

### **Agenda 21 from Rio**

One of the outcomes from UNCED that has received almost universal adoption is the precautionary principle as applied to the management of our environment. Agenda 21 also set the scene for revised management practices for the world's fisheries. The *Code of Conduct for Responsible Fisheries* (FAO, Rome, 1995) prepared by the Food and Agriculture Organisation of the United Nations in response to a request from the International Conference on Responsible Fishing, held in 1992 in Cancun, formed a significant input to those discussions.

The Code and the *UN Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 1982 relating to the Convention and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* are seminal documents in world fisheries management. Both adopt the precautionary principle, although a number of countries have suggested that it should apply only to pollution and not to resource management. Even a cursory reading of the chapter of Agenda 21 on fisheries, however, indicates a clear intention to apply the precautionary principle as it is a prerequisite for sustainable use of living resources managed under high levels of uncertainty.

### **Status of world whale stocks**

Submissions to the Task Force by Australian scientists involved in whaling research have supported the view that some whale stocks have recovered to a point where whaling could be recommenced based on these population estimates and on estimates of past catches.

Population estimates of the various whale species vary from time to time depending upon both the state of knowledge about the stocks and on the perspective of the author. Figures presented to the Task Force in publications of Japanese origin show figures for minke whales of 140 000 and 941 240 which would suggest a much greater recovery than the figures in Table 5.1. Both sets of data may well represent the best knowledge available at a particular point in time, but the discrepancies underline the need for the utmost caution when developing arguments in support of one point of view or another. Current listings of the status of world whale stocks<sup>62</sup> indicate that most are in the IUCN 'Threatened' or 'Lower Risk—Near Threatened' categories<sup>63</sup>.

### **Table 5.1. Estimates of whale populations and their status**

(Source: Congressional Records Service 1997)

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<sup>62</sup> World Conservation Monitoring Centre 1997 Animal Redlist. <http://www.wcmc.org.uk/1994>

<sup>63</sup> IUCN Red List Categories International Union for Conservation of Nature and Natural Resources, Gland, p. 21

Species	Population Estimates		Year Protected
	Original level	Latest Level	
Blue	228 000	11 700	1967
Bowhead	30 000	7 800	1935
Bryde's	90 000	43 000	1986
Fin	548 000	110 000	1986
Gray	+20 000	18 000	1935
Humpback	115 000	10 000	1966
Minke	+490 000	880 000	1986
Right	+100 000	3 200	1935
Sei	256 000	54 000	1986
Sperm	2 400 000	1 950 000	1985

There remains considerable uncertainty about whale population recovery rates and the kill that they can sustain. These uncertainties are considered in more detail below. Given the ineffectiveness of other marine resources management, it requires a brave leap of faith to assume that sustainable commercial whaling can begin in the near future.

### ***Problems inherent in management of marine living resources***

#### **Accuracy of data**

Population estimates of marine animals are usually based on counting individuals sighted or caught by researchers or hunters, or by tagging studies on research-caught animals<sup>64</sup>. Such methods have received increasingly sophisticated treatment in recent years<sup>65</sup>. These estimates, however, are subject to a number of uncertainties, some of which can be addressed to some degree by statistical means. The latter allow researchers to give numbers in populations within defined limits either side of the central estimate. Sources of variation can be the result of behavioural differences from year to year, and season to season, which cannot be predicted. For example, it is impossible to estimate how many southern minke whales are feeding under the ice at the time when transect counts are being made.

Population estimates based on catch statistics are highly unreliable as a result of the strong expression of some normal human traits. There has been significant under-reporting of catches by a number of whaling nations in order to minimise adverse public opinion. Under-reporting in fishing generally is a well described phenomenon that is often based on a desire to avoid tax or other administrative constraints. There are also technical problems associated with catch and effort data being available from the fishery on a non-

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<sup>64</sup> Hammond, P. S, 'Estimating the abundance of marine mammals: a North Atlantic perspective' in Blix, A. S., Walløe, L. and Ulltang, O. (Eds) 1995, *Whales, Seals, Fish and Man*, Elsevier, Amsterdam, pp. 3-12

<sup>65</sup> for example, Schweder, T. and Hagen, G. 1995. 'Effective search width in shipboard surveys of minke whales in the northeastern Atlantic: concepts and methods' in Blix, A. S., Walløe, L. and Ulltang, O. (Eds) 1995. *Whales, Seals, Fish and Man*, Elsevier, Amsterdam, pp. 13-25

random basis and they are, therefore, subject to biases related to population size and distribution<sup>66</sup>. Underestimating the impacts of fishing pressure can also result from administrative decisions that exclude part of the population of either prey or hunters, as happened in the case of the inshore fishery for Atlantic cod. Excluding small scale or hard-to-administer areas of a fishery can produce severe errors in total population estimates based on catch records.

The IWC's New Management Procedure, the predecessor to the Revised Management Procedure (RMP), failed because there were insufficient data for its implementation. Cooke<sup>67</sup> notes that there were no reliable estimates of population size for most whale stocks and thus no knowledge about the relationship between the current stock size and the so called Maximum Sustainable Yield (MSY). He goes on to note that, since the moratorium was declared, some better estimates of stocks have been achieved and that there now exists an accepted methodology for estimating abundance which has allowed absolute abundances for the most important stocks to be estimated. Cooke<sup>67</sup> also notes that considerable uncertainty exists about population structure and stock identity which are two fundamental parameters or assumptions in population modelling.

### **Enforcement**

At the root of some of the management problems are the difficulties of achieving a suitable level of enforcement. This has been clearly illustrated by the post hoc returns provided by Russian authorities that demonstrate significant takes of 'protected' species. The trade in scientific research kills provides a convenient cover for such illegal activities and a resumption of even limited commercial whaling may provide a bigger screen for illegal product sales. If rules cannot be effectively enforced any management plan, even one that allows for large variations in setting parameters, will impose risks to the maintenance of sustainable stocks. The history of management of the world's whaling does not provide a great deal of comfort. Recent reports of extensive illegal fishing for Patagonian toothfish by vessels operating under flags of convenience in areas under the jurisdiction of CCAMLR suggest strongly that international controls on exploitation of marine living resources are still far from adequate.

### **Models and their limitations**

Cooke<sup>67</sup> has reviewed the Revised Management Procedure and its application to managing the world's whale stocks. He goes on to say:

Since there are many aspects of the dynamics of whale stocks that are poorly known, it is not valid to build a model of a whale stock and assume that it corresponds to reality.

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<sup>66</sup> Beddington, J. R. 1979, 'On some problems of estimating population abundance from catch data' *Report of the International Whaling Commission*, 29, pp. 149-154; and Cooke, J. G. 1985, 'On the relationship between catch per unit effort and whale abundance' *Report of the International Whaling Commission*, 34, pp. 655-664

<sup>67</sup> Cooke, J. G., 'The International Whaling Commission's Revised Management Procedure as an example of a new approach to fisheries management.' in Blix, AS, Walløe, L and Ulltang, O. (Eds) 1995. *Whales, Seals, Fish and Man*, Elsevier, Amsterdam, pp. 671-681 Bergen 27-29 March 1995, SC/47/Rep 2 p. 34

This caveat applies to all models but it does not render them useless in management terms. It merely means that the outcomes of such management modelling exercises need to be treated with a larger or smaller measure of caution, depending on the data and process assumptions built into the particular model.

The RMP is a major step forward in marine resource management<sup>67, 68</sup>. It is based on developing a simulation model that relates estimates of abundance made in the season of hunting to allowable catches. Accepting a catch level restricted by insufficient survey data is, as Cooke<sup>67</sup> notes, an application of the precautionary principle. However, it is still unclear whether the model is robust enough to allay the concerns noted above. In particular, the questions of stock identification and homogeneity are major concerns in applying the Revised Management Procedure<sup>68</sup>.

The new management model is being applied to Antarctic fisheries under the auspices of the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR)<sup>68</sup>.

The RMP is a considerable step forward in living marine resource management. However if commercial whaling were to recommence, it would still be necessary to experiment on the whales to see if it is really as robust as its developers believe. The international community might be justifiably sceptical that scientists and managers could get it right this time.

## **Pollution**

The *Report of the Workshop on Chemical Pollution and Cetaceans*, organised by the Scientific Committee of the International Whaling Commission in March 1995<sup>69</sup>, has reviewed the evidence for, and the current knowledge on the effects of, chemical pollutants. The Scientific Advisory Committee of the United Nations Environment Programme's Marine Mammal Action Plan has produced a similar document<sup>70</sup>. The IWC report<sup>71</sup> notes widespread evidence for pollution relevant to contamination of cetaceans, with indications that levels of organochlorines in the Northern Hemisphere coastal areas have stabilised around 1970s loads, while overall levels have increased in the Southern Hemisphere, although these are still lower than in the Northern Hemisphere. Polychlorinated biphenyls (PCBs) and DDT levels appear to have increased in the tropical belt. The Japanese evidence to the Task Force indicated that their research program on southern minke whales showed increasing body loads of contaminants.

Contaminants that affect reproductive capacity of mammals have been receiving increasing attention in recent years<sup>72</sup>. The main 1995 report notes that 'wherever endocrine

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<sup>68</sup> De la Mare, W. K. 1996, 'Some Recent Developments in the Management of Marine Living Resources' in *Ocean and Coastal Management*, 22 pp. 99-125

<sup>69</sup> Bergen 27-29 March 1995, SC/47/Rep. 2 p. 34

<sup>70</sup> UNEP 1991, *Contaminants and Marine Mammals*, Report of the meeting of the Scientific Advisory Committee on the Planning and Coordination Group of the Marine Mammal Action Plan, Palma 6-8 November 1991, p. 6

<sup>71</sup> Section 5.6 *Trends in Global Contamination*

<sup>72</sup> Bergen 1995; and Colborn, T. and Smolen, M. 'An epidemiological analysis of persistent organochlorine contaminants in large cetaceans', SC/M95/P4

disrupting chemicals have been sought in cetacean tissues they have been found'. It goes on to note that the large mysticetes, which undergo extended non-feeding migrations to tropical and sub-tropical breeding areas, may be receiving an increased flux and exposure to fat-stored persistent chemicals as a result of their fasting.

It is important to note that the workshop was focused on the question of increased and improved research programs that might be supported by the IWC. This suggests a high degree of concern on the part of the IWC and its Scientific Committee about this issue. Other pollution issues, such as noise pollution<sup>73</sup> in the world's oceans, should also be taken into consideration when reviewing the evidence on the state of whale stocks<sup>74</sup>.

### Climate change

The International Whaling Commission has also been concerned about the potential impacts of climate change on whales. *The Report of the IWC Workshop on Climate Change and Cetaceans*<sup>75</sup> notes that 'environmental threats relate to all species of cetaceans, not only those subject to direct capture.' and that 'the species most vulnerable to such threats might well be those species that are already reduced in numbers, for example those for which the Revised Management Procedure would set zero catch limits even if it were applied'. The report recognises that current Global Climate Models do not adequately incorporate the ocean and coupled physical-biological models for marine systems are in their infancy.

The workshop noted a range of potential impacts from increased runoff leading to increased coastal pollution to changes in the distribution of major prey species, resulting from ultra violet radiation and wind-current interaction. These changes might influence whale recruitment, survival and growth, and mortality rates. The report notes that many of the actions that need to be pursued by the IWC lie outside its competence and urges the Commission to intercede with governments to reinforce actions on substances that deplete the ozone layer and on actions that reduce greenhouse gas emissions.

### Status of world fisheries

World fisheries have been the subject of increasingly sophisticated management efforts since the 1930s. It is now the widely held view that most managed fish stocks are either overfished or are at maximum production levels<sup>76</sup>. The World Resources Institute's *World Resources 1996-97: A Guide to the Global Environment*<sup>77</sup> notes:

FAO numbers indicate that 25 percent of the stocks for which data are available are either already depleted from overfishing or in imminent danger of serious depletion because of current over harvesting. Another 44 percent of fish stocks are being fished at

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<sup>73</sup> see 'Noises Off' in *New Scientist*, 1 March 1997, pp. 30-33

<sup>74</sup> On the impact of industrial pollution on marine mammals generally see 'Deadlier than the Harpoon' in *New Scientist*, 1 July 1995, p. 12

<sup>75</sup> Kahuku 25-30 March 1996, SC/48/Rep 2 p. 26

<sup>76</sup> Holmes, R. 1994, 'Biologists sort the lessons of fisheries collapse' in *Science*, 264, 1252-1253; and Ludwig, D, Hilborn, R and Walters, C. 1993, 'Uncertainty, resource exploitation, and conservation: lessons from history' in *Science*, 260, pp. 17-18

<sup>77</sup> World Resources Institute 1996-97, Washington, [http://www.wri.org/wri/wr-96-97/wa\\_txt2.html](http://www.wri.org/wri/wr-96-97/wa_txt2.html).

their biological limit and, therefore, are also in danger of overexploitation if fishing pressures continue to mount.’

For example, North Atlantic cod are reported to be about ten percent of their long term average while all assessed fish stocks in the Northwest Pacific are judged to be exploited at or beyond sustainable limits. Studies report that a reduction in fishing effort of thirty to fifty percent will be required to return world fisheries to a sustainable level<sup>77</sup>. Currently, in terms of non-food catches, about thirty percent of the global catch is used in fish oil and meal production and, in the period 1988 to 1990, some twenty seven million tonnes of fish per year were discarded while the average harvest was seventy seven million tonnes<sup>77</sup>. Some of the meal production goes into aquaculture.

The World Resources Institute guide<sup>77</sup> reports that the FAO estimates that total expenses for the world fleet exceed total revenues by nearly fifty billion dollars per year. The deficit is made up by governments—that is taxpayers—through a series of subsidies. Our history of managing marine resources indicates an inability to achieve sustainable outcomes under a wide variety of environmental, cultural and political regimes.

### Precautionary principle

Principle 15 of the Adoption of Agreements on Environment and Development at Rio as expressed by Australia states:

where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Gray<sup>78</sup> traces the precautionary principle to the *Vorsorgeprinzip* enunciated by the Federal (Republic of Germany) Ministry for the Environment, Nature Conservation and Nuclear Safety entitled *Umweltpolitik: Guidelines on Anticipatory Environmental Protection*. It was originally applied to the problem of persistent toxic chemicals while the Rio declaration refers to ‘prevent environmental degradation’. Its application to the wider issues has been effected by both practice and political pronouncement. Garcia<sup>79</sup> has argued the case for its adoption in fisheries management and it has been adopted by the FAO in its 1995 *Code of Conduct for Responsible Fisheries*<sup>80</sup>.

The reservations, noted above, about whaling data, their interpretation through applying the modelling process in the Revised Management Procedure with its attendant uncertainties, the lack of knowledge about compounding effects such as pollution and climate change, would appear to suggest the application of the precautionary principle to whale management. Cooke<sup>67</sup> notes that the use of a rule in the 1975 New Management Plan to limit catches to five percent of the estimated stock size was an early example of the precautionary principle.

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<sup>78</sup> Gray, J. S. and Bewers, J. M. 1996, ‘Towards a Scientific Definition of the Precautionary Principle’ in *Marine Pollution Bulletin*, 32 (11), pp. 766-771

<sup>79</sup> Garcia, S. M. 1994, ‘The Precautionary Principle: its Implications in Capture Fisheries Management’ in *Ocean & Coastal Management* 22, pp. 99-125

<sup>80</sup> FAO 1995, *Code of Conduct for Responsible Fisheries*. FAO, Rome, 41

Given these uncertainties there would seem to be a need for a very strong economic or subsistence imperative to kill whales; there does not seem to be either. The reported current status of world whale populations suggest a very limited opportunity to use whale meat as an important alternative food source in a starving world. If we apply even the most optimistic estimates to population sizes, flesh recovery rates and natural mortality rates the potential production for human consumption is a very low proportion of world fish landings in 1989. A simple comparison with the amount of discarded non-target species, or the quantity of fish produced by aquaculture, suggests that whaling is a futile way to help feed the world. Furthermore, it is a singularly inefficient application of financial resources. Such expenditures would be much more productive if applied to aquaculture development.

It is some years since Clark,<sup>81</sup> in 1973, pointed out that the rate of accumulation of whale biomass was exceeded by the discount rate and that, under these circumstances, the best strategy would be to 'mine' the world's whale populations and put the resulting profits in a bank. While this is what the whaling nations, including Australia at the time, nearly succeeded in doing, the recognition by the world community that this was no longer an appropriate way to manage a significant component of the global living marine resources, laid the groundwork for the increased management of, and, eventually, the moratorium on, whaling.

### **Part 3. Moral/Ethical Arguments**

In part 2 of this chapter, the Task Force has looked at issues of conservation and sustainable development and issues of science and management of resources. Whaling, however, is not just a debate that happens in the corridors and realms of science. Getting the science right to ensure that no species or resource is sent to extinction by our use of it is, of course, essential. As we have pointed out above, scientific data are still insufficient to resolve many of the critical questions on whaling. Therefore, the precautionary principle dictates that whales must be protected. But even if we were sure about the science, the argument would still remain that the science being right is a necessary but not sufficient reason to consume a resource.

Traditionally, nature and living resources have been viewed in a utilitarian way. Their value has been measured in terms of their benefit to humans and people have asserted the right to exploit species for their benefit. The latter half of this century has, however, seen the emergence of a new ethic in the way we regard and treat nature. This ethic is articulated in the World Charter for Nature, adopted by the United Nations General Assembly in 1982. In its Preamble the Charter recognises:

Every form of life is unique, warranting respect regardless of its worth to man and, to accord other organisms such recognition, man must be guided by a moral code of action.<sup>82</sup>

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<sup>81</sup> Clark, C. W. 1973, 'The economics of over exploitation' in *Science*, 181, pp. 630-633

<sup>82</sup> *World Charter for Nature 1982*, United Nations General Assembly Resolution 37/7

The Charter is important in that it specifically recognises the intrinsic right of species to exist, regardless of any value or benefit to humankind, and establishes the principle that we must treat them in a moral way. Once species have been accorded rights and an intrinsic value then the manner in which we deal with them must change to reflect both their rights and our responsibilities to them. This will involve moral and ethical judgements.

Much has been said by the pro-whaling countries in recent years about sustainable use and sustainable development. They argue that the principles of sustainable use and sustainable development support their continued killing of whales for food and other economic benefits.

### ***Defining sustainable use and sustainable development***

'Sustainable development' is defined in *Our Common Future* (1987) as:

...development that meets the needs of the present without compromising the ability of future generations to meet their own needs.<sup>83</sup>

Sustainable development and sustainable use are both defined in *Caring for the Earth* (1991).

*Sustainable development.* Improving the quality of human life while living within the carrying capacity of supporting ecosystems.

*Sustainable use.* Use of an organism, ecosystem or other renewable resource at a rate within its capacity for renewal.<sup>84</sup>

These definitions tell us *how* we should use species—sustainably—they are silent, however, on how we make decisions as to *whether* to use species.

### ***Principles of sustainable use and sustainable development***

In 1980 the International Union for Conservation of Nature and Natural Resources (IUCN) prepared, in cooperation with the United Nations Environment Programme (UNEP) and the World Wildlife Fund (WWF), the *World Conservation Strategy*.<sup>85</sup> This was one of the first documents to consider environment and development as being mutually dependent: as the two sides of the one coin. The aim of the Strategy is:

...to help advance the achievement of sustainable development through the conservation of living resources.

It identifies three main objectives of living resource conservation:

- to maintain essential ecological processes and life-support systems;
- to preserve genetic diversity; and

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<sup>83</sup> World Commission on Environment and Development 1987, *Our Common Future*, Oxford University Press, Oxford, UK, New York, USA., p. 43

<sup>84</sup> IUCN-UNEP-WWF 1991, *Caring for the Earth: A Strategy for Sustainable Living*, Gland, Switzerland, p. 211

<sup>85</sup> IUCN-UNEP-WWF 1980, *World Conservation Strategy: Living Resource Conservation for Sustainable Development*, Gland, Switzerland

- to ensure the sustainable utilisation of species and ecosystems, and provides definitions of both conservation and development.

This was followed some eleven years later by what is often referred to as the second World Conservation Strategy, *Caring for the Earth*,<sup>86</sup> in which the same three partners attempt to restate current thinking about conservation and development. *Caring for the Earth* identifies nine principles for a sustainable society: the first of these is respect and care for the community of life. It advocates the need for the development of a world ethic for living sustainably and identifies a number of possible elements for such a world ethic. The elements include:

...Every life form warrants respect independently of its worth to people. Human development should not threaten the integrity of nature or the survival of other species. People should treat all creatures decently, and protect them from cruelty, avoidable suffering, and unnecessary killing...

...The protection of human rights and those of the rest of nature is a worldwide responsibility that transcends all cultural, ideological and geographical boundaries. The responsibility is both individual and collective.<sup>87</sup>

In 1990, the International Union for Conservation of Nature and Natural Resources adopted Recommendation 18.24 *Conservation of Wildlife through Wise Use as a Renewable Natural Resource* at its General Assembly held in Perth Australia. IUCN brings together governments, government agencies and non-government organisations in a world partnership that seeks collectively to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and ensure that any use of natural resources is equitable and ecologically sustainable. This resolution continues to define IUCN policy with respect to sustainable use. Operative paragraph 1 of this resolution:

AFFIRMS that ethical, wise and sustainable use of some wildlife can provide an alternative or supplementary means of productive land-use, and can be consistent with and encourage conservation, where such use is in accordance with adequate safeguards, namely:

- a. sound, scientifically-based monitoring mechanisms to ensure that such use is maintained at levels which can be sustained by the wild populations without adversely affecting the species' role in the ecosystem or the ecosystem itself;
- b. compliance with national and international legal obligations and policies;
- c. provision for the protection of wild animals from avoidable cruelty and suffering;
- d. conformity with the IUCN guidelines to be developed in accordance with subparagraph 5(a) below.<sup>88 89</sup>

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<sup>86</sup> IUCN-UNEP-WWF 1991, *Op. cit*

<sup>87</sup> *Ibid.*, p. 14, Box 2

<sup>88</sup> IUCN 1990, *Resolutions and Recommendations*, 18<sup>th</sup> Session of the General Assembly of IUCN—The World Conservation Union, Perth, 28 November-5 December 1990

It is interesting in this resolution to note the equal emphasis given to ‘ethical’, ‘wise’ and ‘sustainable’ in relation to ‘use’; and that the word used is ‘can’, rather than, for example, ‘will’.

### ***United Nations Convention on the Law of the Sea and Agenda 21***

In 1992 leaders of the world came together at the United Nations Conference on Environment and Development in Rio de Janeiro. Resulting from that conference was the *Rio Declaration on Environment and Development and Agenda 21*. Pro-whaling advocates often quote both Agenda 21 and the 1982 United Nations Convention on the Law of the Sea (UNCLOS) as justifying—indeed requiring—that the consumptive exploitation of whales continues. In its submission to the Task Force, for example, the Ministry for Foreign Affairs in Iceland quotes paragraph 17.73 of Agenda 21:

Coastal States, particularly developing countries and States whose economies are overwhelmingly dependent on the exploitation of the marine living resources of their exclusive economic zones, should obtain the full social and economic benefits from sustainable utilisation of marine living resources within their exclusive economic zones and other areas under national jurisdiction.

and goes on to suggest that:

...a blanket moratorium on healthy stocks of whales as well as full protection of over-populated stocks of land mammals goes against the sentiments of sustainable development as defined at the 1992 Rio de Janeiro Conference and which both Iceland and Australia have lent their full support to.

Similar sentiments are expressed in submissions from the Government of St. Lucia; the Fisheries Agency of Japan also notes that Agenda 21 provides for the principle of sustainable utilisation of marine living resources, including whales.

Putting aside for the moment the point that ‘use’ does not have to mean ‘consumption’ and that any ‘requirements’ to use whales can be answered by non-consumptive uses such as whale watching, and looking again at these two documents, we find that there are Articles in both that specifically refer to marine mammals and/or whales.

Whilst UNCLOS certainly maintains the general principle of optimal utilisation of resources, Article 65 specifically establishes:

Nothing in this part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit, or regulate the exploitation of marine mammals more strictly than provided for in this part. States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management, and study.<sup>90</sup>

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<sup>89</sup> IUCN has not yet adopted any such guidelines and, at its last General Assembly (now called World Conservation Congress) held in Montreal in October 1996 actually put aside for the moment the development of such guidelines

<sup>90</sup> UNCLOS 1982, *United Nations Convention on the Law of the Sea*, Art. 65

Article 65 applies to States operating in their EEZs and territorial seas. Article 120 then extends its provisions to the high seas:

Article 65 also applies to the conservation and management of marine mammals on the high seas.<sup>91</sup>

Taken together Articles 65 and 120 are interesting from two points of view. Firstly, they give specific recognition to cetacea, setting them apart in some ways from other marine mammals in particular, but other resources in general. Secondly, it goes beyond a requirement to optimise whale use and each specifically recognises the right to prohibit the exploitation of marine mammals, requiring States to cooperate in the conservation, management and study of whales. This goes far beyond any general exhortation to optimise use of (kill) whales.

A similar paragraph in Chapter 17 of Agenda 21 specifically affirms that nothing in these sections

...restricts the right of a State or the competence of an international organisation, as appropriate, to prohibit, limit or regulate more strictly the exploitation of marine mammals.<sup>92</sup>

Thus, with respect to whales, both UNCLOS and Agenda 21 make it quite clear that there is no imperative to kill whales. This point was made in several submissions to the Task Force. The Animal Welfare Institute noted: 'Agenda 21 specifies that a strong commitment to conservation/sustainable use of living marine resources does not mean that whales need to be harvested' and Sidney Holt pointed out in the Annex to his submission to the Task Force:

Under UNCLOS and Agenda 21 all whales, and most other cetaceans, are defined as 'highly migratory marine mammals' the conservation of which is mandated under specific articles pertaining to international management regimes, and a provision that they may be given greater protection both on the high seas and in Exclusive Economic Zones than is to be afforded to any other types of marine living resources.

The issue was also picked up by Australia's Commissioner to the IWC, amongst others, at the first meeting of the Commission following UNCED where, in Australia's Opening Statement to the 44<sup>th</sup> Annual Meeting of the IWC it is stated: 'UNCED certainly did not decide that where there is a resource it must be used for consumption'.<sup>93</sup>

### ***The ethical dimension***

Ethics are about decision making. Taken collectively, the material presented above argues that, if resources are to be used then they are to be used sustainably. This is clearly where science and management come to the fore. But a decision has first to be made whether to use a resource and this must be made in the context of living organisms having intrinsic

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<sup>91</sup> *Ibid.*, Art. 120

<sup>92</sup> UNCED 1992, *Agenda 21*, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, Brazil

<sup>93</sup> Government of Australia, *Opening Statement to the 44<sup>th</sup> Annual Meeting of the International Whaling Commission*, IWC/44/OS Australia, Glasgow, Scotland, June 1992

value and rights. It is legitimate to decide, for whatever reasons, not to consume a particular species or resource but instead to protect it from exploitation. This decision requires value judgements arrived at through ethical and moral considerations.

Many people believe that whales belong to a special class of animals that should be exempted from any form of consumptive use.

Chapter 2 of this report also deals with ethical considerations, so it is not necessary to embark here on a lengthy discussion of the moral and ethical arguments against whaling and the factors that place whales into this special class.

It would not, however, be correct to pretend that these beliefs are held universally. There are still many people, particularly in countries where whaling continues, who believe that whales are a resource to be exploited and used for food, no different from the many other resources exploited and used for food. But, as Dr Sidney Holt puts it:

A growing number of people in many countries are coming to believe that the killing of whales for commerce is unethical and that therefore the present indefinite moratorium on that activity should be made permanent. Their reasons for holding this belief are varied but are mostly based on two general perceptions: first that whaling is intrinsically inhumane or cruel; and second that whales are 'special' animals, having evolved, over tens of millions of years in the ocean, modes of life, forms of society and high intelligence which are vastly different from those of, for example, the apes (including us) and elephants on land. Their great size, their beauty at rest and in motion, their play and prolonged care of their young, their apparently benign attitude towards humans who contact them, and their extraordinary means of communication among themselves, of navigating vast distances, and of sensing their environment acoustically and perhaps magnetically, are all also cited as evidence of 'specialness'.<sup>94</sup>

The issue of cruelty and the inhumaneness of methods used to kill whales is dealt with in part 1 of this chapter. There is a moral imperative that if an animal is to be killed then it should be done in a humane manner, without cruelty. Whaling clearly fails this basic test.

In his 1978 report *Whales and Whaling*, Sir Sydney Frost wrote extensively about the cases both for and against whaling. He noted that the main arguments of those in favour of the conservation of whales were:

- the special features of whales and their potential for intelligence;
- current community values that have led many people to oppose whaling;
- the risks shown to exist in the management procedures of the International Whaling Commission;
- the existence of substitutes for whale products generally and of the necessary technology to replace sperm oil in the few remaining applications where it is still used; and

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<sup>94</sup> Holt, S., 'The Un-Ethics of Whaling' in *Why Whales*, Davies, N., Smith, A. M., Whyte, S. R. & Williams, V. eds, Whale and Dolphin Conservation Society, Bath, UK

- the inhumane methods used to kill whales<sup>95</sup>. (It should be remembered that at the time Sir Sydney was writing Australia was still a whaling nation: taking a quota of sperm whales off the coast of Albany in Western Australia.)

He considered the main issue as:

whether whales should be regarded as a renewable resource available for exploitation by man, subject of course to proper control<sup>96</sup>.

He went on further to say:

In approaching this issue consideration must be given to the kind of animal the whale is. In practice, man does draw a distinction between animals...It is not necessary for our task to indicate where the line is to be drawn. The choice in relation to any animal can be left for man to make when the situation arises. But when we turn to the whale—and we include dolphins and porpoises—there can be no doubt that it is one of those animals which for man have a special significance. We have noted that the whale has been evolving for at least 25 million years—a considerably longer period of time than man. Separated in its marine environment, quite remarkably, it has developed a brain with structures so similar to that of man that a real possibility must be taken to exist that the whale has the potential of high intelligence. The whale's behaviour is also consistent with a highly developed brain, but again we must await further evidence, especially on the meaning of the sounds by which whales communicate. In the meantime the only reasonable course is to make allowance for the fact that we are indeed dealing with special creatures. From a biological point of view, the whale is one of the 'two mountain peaks of evolution on planet earth—on land,...human beings and in the sea, cetacea'.<sup>97</sup>

His conclusion therefore was:

We are unable to agree with the view that the propriety of killing whales is a matter merely of individual and subjective judgement which has no place in the formulation of policy. There is a wide category of animals which the community considers it is wrong to kill...Professor Singer expressed the view that animals should not be killed or made to suffer significant pain except when there is no other way of satisfying important human needs. His view does not, in our opinion, go beyond the values commonly accepted by the Australian people in relation to animals such as whales...Upon all the evidence, then, it cannot now be said that whaling is justified as the only means of satisfying important human needs. Australia's present community attitudes therefore dictate that the whale should not now be regarded as a natural resource available for exploitation. We are confident that, in the light of all the facts put to the Inquiry, reasonable Australian citizens would conclude that, now there is no necessity, it is wrong to kill an animal of such special significance as the whale.<sup>98</sup>

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<sup>95</sup> 1978, *Whales and Whaling* (Frost Report), Volume 1, Report of the Independent Inquiry conducted by The Hon. Sir Sydney Frost, AGPS, Canberra, p. 195

<sup>96</sup> *Ibid.*, p.201

<sup>97</sup> *Ibid.*, p. 202

<sup>98</sup> *Ibid.*, pp. 203-204

More than any specific moral or ethical argument against whaling Sir Sydney Frost based his conclusion on what he referred to as 'community attitude' and a widely held belief that whaling was wrong and should no longer be continued.

### ***Conclusion***

At the end of the day, it is less important to define what it is about whales that makes them special as it is to recognise that there exists a widely held belief that whales *are* special. For people holding this belief, whales are a source of aesthetic, spiritual and inspirational values that far transcend any economic value. Whilst any use of resources must be sustainable, it is valid and legitimate for people to decide not to consumptively exploit a resource. A permanent international ban on commercial whaling is both consistent with principles of sustainable use and development and in accord with a widely held community attitude towards whales.

## Chapter 6. Australia's position on whaling.

Whaling became a major activity around Australia almost immediately following European settlement. The first Australian built deep sea whaler was launched in 1805 and by 1819 Sydney owners held considerable whaling interests. Sperm whalers operated from Sydney Harbour and Twofold Bay in New South Wales and many bay whaling stations were established around Australia during the early nineteenth century. These shore stations concentrated on the southern right whale which came into bays and estuaries to give birth.

By the 1830s the colonies supplied most of the equipment used by whalers and by 1840 the total annual value of whale exports from New South Wales reached over £335 000. The combined effects of the decline in southern right whale stocks and the effect of the gold rush saw the value of whale exports decline to £16 000 by 1853 and whaling from Australia continued to decline and remained at a low level until the twentieth century<sup>99</sup>.

Twentieth century whaling by Australia has concentrated essentially on two species, the humpback and the sperm whale. Humpbacks were hunted intermittently before the second world war, with Norwegian and Australian companies operating from shore stations in NSW and WA. Shore based humpback whaling was re-established in 1949 and, at about this time, the Commonwealth Government was seriously considering the operation of a factory ship and attendant catcher boats in the Antarctic. In 1949 it established the Australian Whaling Commission. Interest was, however, transferred to establishing shore stations and until 1956 a shore station at Carnarvon, Western Australia was operated by the Commission. It was then shut down and its assets were sold to the Nor'west Whaling Company.

In 1956 there were six land-based stations operating in Australia. However, by 1962 the humpback stocks had collapsed and all whaling on humpbacks had ended by 1963, when international protection was given to this species. The Cheynes Beach operation, which had begun humpback whaling at Albany in 1952, also hunted sperm whale from 1955 with the latter becoming progressively more important due to reduced humpback numbers and increased value of sperm whale products. From 1964 the operation was based solely on sperm whales and it remained the only active whaling operation in Australia until its closure in 1978.

Australia was one of only a dozen countries still whaling in the late 1970s and was the last English-speaking nation to whale commercially. The last of the UK's fleets was sold in 1963 and New Zealand shut down its whaling operations at about the same time. The US ceased commercial whaling in 1972, Canada in 1973 and South Africa in 1976. Until 1978, Australia's actions within the International Whaling Commission reflected its interests as an active whaling nation.

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<sup>99</sup> Colwell, M. 1969, *Whaling Around Australia*, Rigby Ltd, Kent Town, South Australia

### ***Frost Inquiry***

A major shift in Australia's position on whaling occurred as a result of an independent Inquiry into Whales and Whaling established by the Commonwealth Government in March 1978. The Inquiry was established to examine and report upon Australia's policies on whales and whaling, including the position Australia should adopt internationally, and to make recommendations accordingly. The Inquiry, conducted by the Hon. Sir Sydney Frost, was asked to examine in particular:

- (a) whether Australian whaling should continue or cease;
- (b) the consequences for international whaling of Australia's decision;
- (c) international regulatory mechanisms in so far as these bear on Australia's concern for preservation and conservation of whales.

During the course of the Inquiry, the whaling operations at Cheynes Beach, the last remaining whaling operation in Australia, closed for economic reasons.

On 1 December 1978 Sir Sydney Frost presented his report to the Government. Without qualification it stated: 'The Inquiry's central conclusion is that Australian whaling should end, and that, internationally, Australia should pursue a policy of opposition to whaling'.

It noted further: 'Internationally, Australia should join with the many nations opposed to whaling and use its influence to encourage other countries to stop whaling'.

The full terms of reference for the Inquiry, its recommendations to Government and action taken to implement them are at the end of this chapter (Attachments 6.1 and 6.2).

On 4 April 1979, the Prime Minister announced the Government's formal response to the Inquiry's recommendations. He stated:

The Government has now completed consideration of the report and has accepted all the Inquiry's recommendations. The Government is to prohibit all whaling within the impending 200-mile Australian fishing zone....

The Government upholds the central conclusion of the Inquiry into Whales and Whaling namely, that Australia should pursue a policy of opposition to whaling and that this policy should be pursued both domestically and internationally through the International Whaling Commission and other organisations...

Arrangements will be initiated soon to implement the Government's decision on the report. The *Whaling Act 1960*, which is basically concerned with the regulation of whaling, is to be repealed and appropriate protective legislation to succeed the Whaling Act is to be developed for discussion with the States....administration of this protective legislation is to become the responsibility of the Minister for Science and the Environment.

The Government's decision represents a change in policy from one of conservative utilisation of whale stocks controlled by international agreement to one committed to a vigorous and active policy of protection of whales...

The position adopted in 1979 following consideration of the recommendations of the Frost Inquiry has been maintained by all successive governments. Statements by governments have regularly referred to Australia's commitment on this issue, for example,

The Government has actively pursued, through the International Whaling Commission and diplomatic channels, a policy of complete protection for all whales, dolphins and porpoises. Australia has consistently questioned the basis of the Japanese scientific whaling program and urged the Japanese to withhold permits...

(Prime Minister's Statement on the Environment, July 1989)

Australia remains implacably opposed to the resumption of whaling. Our strong conservation position will be maintained in our support for international efforts to establish a Southern Ocean Whale Sanctuary....

(Prime Minister's Statement on the Environment, December 1992)

The Government moved rapidly to implement its new policy. The Director of National Parks and Wildlife was appointed as Australia's Commissioner to the IWC, replacing the previous appointee from the Department of Primary Industries and, at the 1979 meeting of the IWC, Australia proposed that the implications of a worldwide ban on whaling be examined. This led to the establishment of a Technical Committee Working Group to consider the questions raised by the proposal. At this meeting Australia was also instrumental in establishing the Indian Ocean Sanctuary for ten years. This Sanctuary is due for review in 2002 and the Southern Ocean Sanctuary is due for review in 2004.

In 1980 the *Whale Protection Act* was passed by the Commonwealth Parliament, receiving Royal Assent on 6 June. In his second reading speech on 23 April the Minister stated:

This Bill provides legislative backing for Australia's policy of whale protection and it is further evidence of the Government's responsible attitude to conservation issues. Our attitude has been vigorously argued by the Australian Commissioner in the International Whaling Commission where we have taken a leading conservation role. It represents an important step towards our goal of an eventual worldwide ban on whaling.

The Act prohibits killing, capturing, injuring or interference with cetaceans by any person within the 200 mile Australian Fishing Zone (AFZ)—now extended to the Exclusive Economic Zone—and by its citizens elsewhere. At the IWC meeting that year Australia continued to pursue its proposal for a worldwide ban and supported unsuccessful proposals for an indefinite moratorium on commercial whaling.

At the 1981 meeting of the IWC Australia proposed an amendment to the Schedule to the ICRW to implement a worldwide ban on whaling through a phased reduction in catch limits, to zero over five years. Whilst the proposal gained support from a majority (fifteen in favour, eight against and four abstentions) it failed to attract the three quarters majority required for adoption. Three proposals by others for moratoria, which Australia supported, also failed to attract majority support.

In 1982 the IWC had five proposals seeking an end to commercial whaling, from Australia, France, the Seychelles, UK and USA. The proposals were discussed extensively in the

Technical Committee and a proposal for a two year phasing-out period was approved by a majority vote. In the Commission the Technical Committee recommendation was amended, with Australian support, to provide a three year period before implementation and a comprehensive assessment of effects of the decision on whale stocks within five years, that is, by 1990—this assessment has not been completed and the moratorium is still in place (May 1997). The amendment to the Schedule was then adopted (twenty five in favour, seven against and five abstentions).

Since the introduction of the moratorium Australia has maintained its strong policy position in support of a worldwide ban on whaling both within the IWC and in other international fora. Australia's opening statements at IWC meetings over the past fifteen years have emphasised repeatedly its opposition to whaling, its commitment to seeking worldwide protection for cetaceans and its support for the IWC as the appropriate body through which global cetacean issues should be addressed. Australia has consistently argued that:

- commercial whaling activities are no longer required to meet essential human needs;
- whaling methods continue to involve an unacceptable level of cruelty; and
- communities world-wide are increasingly recognising and benefiting from non-consumptive values of whales.

Within the IWC Australia has been supported strongly the establishment and maintenance of the Indian Ocean and Southern Ocean Whale Sanctuaries. It has encouraged the IWC to become involved actively in issues relating to small cetaceans and the broader impacts of pollution and environmental change on cetacean populations. It has also been outspoken in criticising whaling activities under special permits and has strongly opposed moves to introduce new categories of whaling (such as the proposal for small-type coastal whaling) into the Convention.

As mentioned previously, in Chapter 4, despite Australia's overall policy opposing whaling, it does allow for the special requirements of some aboriginal communities.

Australia has worked consistently in other international fora to ensure continued recognition for the IWC as the international body responsible for the conservation and management of whale stocks world-wide; to achieve conservation measures to complement IWC decisions; and to promote its policy of protection of whales. It pressed strongly, and with some success, for international controls on driftnetting, due to concerns over the high incidental mortality of cetaceans and other marine wildlife.

Domestically, Australia has implemented monitoring programs to provide long term assessments of the recovery of populations and has taken an active interest in developing best practice for whale watching operations.

### ***Conclusion***

The policy position of the Australian Government has remained essentially unchanged since it accepted the recommendations of the Frost Inquiry in April 1979. Government statements throughout the intervening period have reinforced the policy statement made

in 1979 that Australia would, in future, be 'committed to a vigorous and active policy of protection of whales'.

However, while successive Australian Governments have continued to express their opposition to commercial whaling and their desire to see it banned permanently, there are significant concerns, particularly amongst the NGO community, that there has been insufficient progress towards achieving this goal. These concerns are raised and discussed in Chapter 7 of this report.

***Attachment 6.1—Terms of Reference for the Inquiry into Whales and Whaling 1978.***

1. The Inquiry shall examine and report upon Australia's policies on whales and whaling. It shall make recommendations on the best way in which Australia might pursue its policy of preservation and conservation of the many species of whales (also known as cetacea).
2. The inquiry shall in particular examine :
  - (a) whether Australian whaling should continue or cease;
  - (b) the consequences for international whaling of Australia's decision;
  - (c) international regulatory mechanisms in so far as these bear on Australia's concerns for preservation and conservation of whales.
3. Without limiting its scope in any way, in considering Australia's possible actions the Inquiry shall examine :
  - (a) the role of whales in marine ecosystems and the impact of past and current whale harvesting strategies on the marine environment;
  - (b) any special features of whales which may make their conservation important;
  - (c) significant consequences, if any, of other areas of conservation policy;
  - (d) methods used in taking whales and whether better methods are possible;
  - (e) factors influencing the scale of Australian and world whaling activity, including demand for products derived from whales and the possibilities of substitution;
  - (f) any consequences for Australian employment and industrial development, particularly in Albany;
  - (g) the implications for Australia's policies on 200 nautical mile fishing and economic zones in Australian waters, including those adjacent to the Australian Antarctic Territory;
  - (h) foreign relations aspects;
  - (i) any other considerations relevant to whales and whaling.

## Attachment 6.2—Implementation of Frost Report Recommendations

Recommendation	Outcome
<p>1. Australia should oppose the continuation of whaling. While the <i>Whaling Act 1960</i> remains in its present form, any application for a whaling licence should be refused, with the exception of a licence to take, in appropriate circumstances, a limited number of dolphins live for display purposes, and only in special circumstances should a permit be issued to take any cetaceans for scientific purposes.</p>	<p>Australia has prohibited whaling in waters under its jurisdiction and by its citizens elsewhere and has opposed the continuation of whaling internationally. Subsequent action has included a decision to permit no further live captures of dolphins for display in waters under Commonwealth control.</p>
<p>2. Whaling by other nations should be prohibited within the Australian 200 Mile Fishing Zone. If Australia decides to include waters off the Australian Antarctic Territory in this zone, a policy of prohibition of whaling should also be pursued in these waters.</p>	<p>Under the Whale Protection Act 1980 whaling activity by other nations was prohibited within the 200 mile Australian Fishing Zone; The Act now applies within the Australian EEZ.</p>
<p>3. At the International Whaling Commission meeting to be held in December 1978, Australia should seek to classify both male and female sperm whales in Division 5 as protection stocks and to amend the catch limits presently set for this Division to zero. Furthermore, Australia should press for caution in the setting of other catch limits at that meeting</p>	<p>Action was taken; subsequent IWC decisions classified the stock as a Protected Stock with zero catch limits, followed by a moratorium on commercial whaling. Australia proposed moratorium on commercial whaling adopted in 1982 and has been active in sanctuary issues and in development of conservative management procedures for use by the IWC.</p>
<p>4. Consideration should be given to the repeal of the <i>Whaling Act 1960</i> and its replacement by new legislation directed to the protection of cetacea, and if though desirable other marine mammals, along the lines of the marine mammal protection legislation of the United States and New Zealand.</p>	<p>The Whaling Act was repealed by <i>Whale Protection Act 1980</i>. The Act has provided a model for legislation in States and Territories; provisions have been amplified by the <i>Endangered Species Protection Act 1992</i>.</p>
<p>5. The import of whale products or goods containing whale products should be banned in Australia from 1 January 1981.</p>	<p>Import and export of all cetacean parts and products prohibited under the <i>Wildlife Protection (Regulation of Exports and Imports) Act 1982</i>.</p>
<p>6. Australia should continue to be a member of and support the International Whaling Commission as the most appropriate body to be responsible for the conservation of whales internationally. Australia should support current efforts to revise the International Convention for the Regulation of Whaling 1946. In particular, Australia should seek to extend the Commission's charter to the conservation of all cetacea. It should also support increased liaison and cooperation between the Commission and other international bodies with responsibilities affecting cetacea.</p>	<p>Australian has continued to be an active member of the IWC and has supported its competence to deal with small cetaceans. This concept has been developed to include extension of the IWC's ambit to include wider cetacean conservation issues in pollution, whale watching, habitat loss and similar anthropogenic change; Australia has been an active advocate for liaison with CCAMLR, CITES and CMS, on issues concerning cetaceans.</p>
<p>7. Australia should seek to achieve a worldwide ban on whaling. In working toward this Australia should propose a more cautious approach in setting catch limits and a greater emphasis on the conservation of whales by the International Whaling Commission. Although</p>	<p>Australia has consistently worked within the IWC toward this long-term objective; Australia has argued that commercial whaling is no longer required to meet important human needs; that there are acceptable alternatives for almost all whale products and</p>

<p>seeking to bring an end to whaling, Australia should take into account any adjustment required by the special needs of particular countries, such as the requirements of some nations of whale meat for protein, and subsistence catches by some local communities</p>	<p>that even the improved modern methods of whaling result in unacceptable levels of cruelty; whilst recognising the needs of some communities for continued access to whaling and whale products to meet important traditional cultural and dietary needs, in accordance with management procedures established by the IWC</p>
<p>8. Both in its own planning and in international discussions on the management of marine resources Australia should ensure that any implications for whales are given consideration. In particular, any proposal to exploit krill or other Antarctic Marine resources should be developed with consideration of the whole ecosystem and examined to see that the potential recovery of depleted baleen whale stocks is not prejudiced.</p>	<p>Australia has implemented specific consideration of cetacean issues in fisheries management in amending legislation in 1982, with similar provisions carried through in new Fisheries Management legislation. Australia has also argued that the development of the Southern Ocean Sanctuary will require broader assessments than those relating to large cetaceans, with a long-term need to ensure that research and monitoring established is capable of providing broader information on other components of the marine systems of the area.</p>
<p>9. The Commonwealth should promote research on whales by Australian scientists and research institutions. It should provide funds at no less than present levels for this work. Priority should be given to: a) the monitoring of the sperm, humpback and right whale stocks off Australia, including their abundances and matters affecting their recovery in numbers and their success in breeding; b) the refinement of techniques for whale stock assessment and ecosystem modelling, especially while any whaling continues; c) the monitoring of Australian strandings of cetacea and the preservation and study of the specimens thus provided</p>	<p>Research funded or supported by the Australian Government has included implementation of long-term monitoring of both southern right whales and humpback whales; funds have been insufficient to include sperm whales; Australia has been particularly active in the refinement of techniques for whale stock assessment and management modelling, with increasing commitment to development of tools for multi-species and ecosystem approaches to management. A National Cetacean Stranding Contingency Plan has been implemented and has led to the development of a number of State and regional plans.</p>
<p>10. The continued Australian involvement in the International Whaling Commission should emphasise particularly participation in the Scientific Committee so that results of Australian research are promptly incorporated in that Committee's deliberations, and to ensure that due scientific attention is given to the various criticisms of current assessment procedures.</p>	<p>Australia has been an active and key member of the IWC and has been involved directly in the development of all the major conservation measures considered by the Commission since the change in Government policy in 1979. Active support and involvement in the IWC Scientific Committee has continued, with a particularly strong commitment in review of management procedures and development of alternatives.</p>

## Chapter 7 Community Action and Support

### Part 1. The Role of NGOs

The images that Greenpeace brought to the world, of people in small rubberised zodiac boats placing themselves between the whale catcher—and its harpoon gun—and the whale itself, and of whales dead and dying in a sea red with blood, brought vividly into people's living rooms the issue of whaling. In Australia in the mid-1970s, a series of hard-hitting articles published in major daily newspapers helped to bring the issue of whaling, and Australia's involvement in it, to the attention of the Australian public. Within schools and elsewhere, organisations such as Project Jonah mounted intensive educational campaigns to pressure the Government to cease whaling. Galvanising such public support was crucial to the then Prime Minister's decision to set up the 1978 Inquiry into Whales and Whaling.

#### *Introduction*

The 1960s and 1970s marked a turning point in our understanding and perceptions of the environment. Concern for the environment and environmental issues went from being a fringe interest to belonging firmly in mainstream society. Around the world, there was an awakening of social conscience and a number of books such as Rachel Carson's *Silent Spring* (1962), the Club of Rome's *Limits to Growth* (1972) and Paul Ehrlich's *Populate or Perish* were published, advancing particular views about the future of the natural environment. More recently, publications such as *Our Common Future*<sup>100</sup> and *Earth in the Balance. Forging a New Common Purpose*<sup>101</sup> continued to focus international public attention on such questions. A whole new suite of environmental organisations emerged and they began to exercise new-found political muscle. The situation was no different in Australia. This is not to say that there were not environment/conservation organisations before that: the oldest conservation organisations in Australia can trace their history back to the 1920s. Also, the first Green political party in the world was formed in Tasmania. And there were individuals of vision who drew inspiration from nature around them and who lobbied for areas of special beauty or significance to be preserved for the benefit of all.

Three conservation issues of that time galvanised the community to action and to speak up in an unprecedented way. The battle to save Lake Pedder from flooding became not just a local issue but one of national importance and concern. Proposals to drill for oil on the Great Barrier Reef resulted in ordinary citizens, who would never have called themselves 'conservationists' (and rejected the tag), feeling compelled to raise their voices in protest. 'Save the Whale' became the catchcry of a generation. Everywhere, 'Oil and Water Don't Mix' and 'Save the Whale' car bumper stickers proliferated.

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<sup>100</sup> World Commission on Environment and Development 1987, *Our Common Future*, Oxford University Press, Oxford, UK, New York, USA

<sup>101</sup> Gore, A. L. 1992, *Earth in the Balance. Forging a New Common Purpose*, London, Earthscan

The whale became an icon and the save the whale campaign became one of the benchmark issues for this new era of environmental awareness. One of the first tests of the effectiveness of this burgeoning movement was in 1972 in Stockholm at the UN Conference on the Human Environment. In 1971 the Animal Welfare Institute, the International Society for the Protection of Animals and the Society for Animal Protective Legislation called for a moratorium of at least ten years on the killing of whales<sup>102</sup>. At the Stockholm Conference a resolution proposed by the United States calling for a ten year moratorium on commercial whaling was passed by fifty three votes to nil (Japan, Brazil and South Africa abstained). NGOs have continued, to the present day, to be closely involved with all of the major achievements in whale conservation.

The preceding is important, not just as a lesson in history, but to emphasise the valuable role that NGOs can and will play in achieving a permanent international ban on commercial whaling.

In their submission to the Task Force, Project Jonah characterised the role of NGOs thus:

NGOs have a catalytic role, acting both as influencers of public opinion, particularly in bringing an issue and ideas to the public's notice, and in lobbying directly to shape and change government policy.

### ***NGOs and a ban on whaling***

In 1996 *The Action Plan for Australian Cetaceans*<sup>103</sup> was published. Section 2.4 of the plan details community involvement in cetacean matters. It identifies, under four headings, areas in which the community are involved with cetaceans:

During the past 20 years or so, society in general has become more aware of cetaceans and of issues affecting their welfare. Concerns and interests of one kind or another have led many individuals, groups and organisations, including private enterprise, to become actively involved in many aspects of the study, care, protection and use of cetaceans

and goes on to observe:

...it is important to underscore the interactive nature of the participants in all of these areas—individuals, communities and community groups, tertiary institutions, private enterprise and government, and to stress that the role of the public cannot be considered in isolation from that of government.<sup>104</sup>

The report goes on to identify key areas of concern in cetacean conservation, where the public plays an important role, and to identify public roles in political, legal, administrative and management issues.

Any strategy to achieve a permanent international ban on commercial whaling will need to seek both to build alliances with like minded countries and to influence and ultimately

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<sup>102</sup>AWI 1981, *Whales vs Whalers: A Continuing Commentary published by the Animal Welfare Institute*, Animal Welfare Institute, Washington, USA

<sup>103</sup>Bannister, J. L., Kemper, C. M. & Warneke, R. M. 1996, *The Action Plan for Australian Cetaceans*, Australian Nature Conservation Agency, Canberra, September 1996.

<sup>104</sup>Bannister, *et al.* 1996, *Op. cit.*, pp. 32-33

change the views of whaling protagonists. In both endeavours, NGOs within the relevant countries will have a key role in lobbying their governments. Eliciting their support and active involvement in this process will be vital.

As the UK High Commission observed in its submission to the Task Force:

...it is not possible under international law to oblige a country to cease whaling. This will only happen if the governments and peoples of the whaling nations are convinced of the arguments against whaling. While the governments of those countries opposed to whaling certainly have a role to play in this process, the efforts of non-government organisations will also be crucial.

### ***Working with NGOs***

The term NGO is a generic one that refers not just to conservation NGOs but to any non-government organisation. Within the context of the whaling issue and the IWC, there are strong NGOs representing both anti- and pro-whaling viewpoints.

Generally speaking, both within Australia and internationally, the NGOs most active on a day-to-day basis on whale conservation issues—those who might be regarded as the whale-specialist groups—are not those who are usually considered the major national conservation groups and, in the general environmental debate, they would not necessarily be particularly influential. This is not to suggest, however, that they are without influence. On the contrary, within their particular area of expertise their views are usually taken quite seriously by government and their advice is given due consideration.

What this indicates in terms of Australia's strategy is that, in addition to liaising directly with the recognised whale conservation NGOs, it will be important to make contact with the large national NGOs in the countries concerned. For the US, for example, in addition to the traditional whale conservation groups like the Cetacean Society International and Humane Society US, it may be important to bring into any strategy other major NGOs such as, for instance, the Sierra Club, National Wildlife Federation and the Center for Marine Conservation.

On whale conservation issues the 'big three' international NGOs are Greenpeace International, World Wide Fund for Nature (WWF) and International Fund for Animal Welfare (IFAW). There is no doubt that, collectively, these three exert considerable influence and their views and advice are both sought and carefully considered by countries in taking positions. There is already a great deal of collaboration between the major NGOs and the anti-whaling countries, particularly in the core like-minded group, in pursuing policy initiatives. For example, the achievement of the declaration of a Southern Ocean Sanctuary was a result of a partnership between governments and NGOs. Each of the three groups mentioned above, in addition to an international headquarters, have national offices in a number of countries around the world. Some idea of the geographical coverage involved is given in Attachment 10.1. Such offices can form an important link in pursuing policy objectives at a national level.

Greenpeace, WWF and IFAW are not alone, however, nor are they the only influential groups. Other major international whale conservation groups would include:

- Environmental Investigation Agency (EIA);
- Whale and Dolphin Conservation Society;
- RSPCA;
- International Wildlife Coalition; and
- Humane Society (US and International).

It would be a mistake, however, to assume that conservation NGOs are an homogenous group. Particular NGOs may have specific strengths or areas of expertise and it will be necessary to target specific NGOs for particular purposes. There is no global coalition of anti-whaling NGOs with which to deal; nor will consulting with one or two individual NGOs be sufficient. Whilst, generally, whale conservation NGOs are philosophically opposed to whaling, their assessments of any current situation may differ. Sometimes, there are also differences in views between NGOs on what (tactically or pragmatically) is the most effective course of action that should be followed within the IWC or elsewhere. These differences may, at times, be put quite forcefully. This will make the task of working with NGOs more challenging.

In developing any strategy to achieve a permanent international ban on commercial whaling Australia should not neglect the anti-whaling NGOs in pro-whaling countries such as Japan and Norway. The role of such NGOs is vital and they should be encouraged as much as possible. There is usually a resistance and resentment within a country to outsiders telling it what it should do. Whilst still relatively small and low profile, there are local groups in Japan opposed to whaling. Similarly, in Norway there are opponents of whaling and of the Norwegian Government policy. The mobilisation of local support for a position within a country is a powerful tool in achieving a change of official policy and it will be important to foster an approach to change from within.

### ***Pro-whaling NGOs***

Whilst the High North Alliance (see Attachment 7.1) is probably the most prominent of the pro-whaling NGOs, it is not alone in being an advocate for whaling. A number of other groups, nationally based and international, whose basic philosophy could be characterised by the utilisation of wildlife, would argue that whaling should be permitted (usually under 'appropriate' controls). In the last couple of years a relatively new group, the International Wildlife Management Consortium, has taken an active role during IWC meetings in promoting a whaling culture. As would also be expected, various industry, professional associations and trade union type groups, particularly within the whaling countries, also promote the continuation of whaling. Any push for a permanent ban on commercial whaling is, therefore, likely to meet increased resistance from such groups and it should be assumed that the pro-whaling NGOs will lobby vigorously to maintain a whaling industry.

The Task Force also notes the establishment earlier this year of the World Council of Whalers. This followed a meeting in June last year of participants from ten countries at which it was decided to form:

an international organisation to promote the sustainable and equitable use of marine living resources, to protect the cultural, social, economic and dietary rights of whaling peoples, and to address their concerns<sup>105</sup>.

The Task Force has not seen a list of members of the Council but it is believed that its primary focus is aboriginal/indigenous groups. Aboriginal subsistence whaling has been referred to earlier in this report and is recognised under the Schedule to the International Convention for the Regulation of Whaling as a separate category of whaling, distinct from commercial whaling. The Task Force has already expressed its view that this category needs to be tightly regulated so as not to provide a loophole by which whaling could increase.

### ***The IWC and NGOs***

A number of government delegations to the IWC include NGOs as advisers. Again, this is true of both pro- and anti-whaling nations. Apart from the advocacy NGOs, Norway and Japan, for example, include representatives of local whaling communities and the whaling industry, and related associations, on their delegations.

Australia has had non-government conservation organisation representatives as advisers on its delegation to the IWC since the latter part of the 1970s when a representative of Project Jonah was included. In 1996, its delegation of seven included two NGOs.

In addition, the Rules of Procedure for the International Whaling Commission provide that:

1(b) Any international organisation with offices in more than three countries may be represented at meetings of the Commission by an observer...<sup>106</sup>

Organisations wishing to attend as observers are required to apply for status as such and to advise before each subsequent meeting of their intention to attend. Observers must pay a registration fee and are subject to rules of conduct and other conditions that the members of the Commission may wish to impose. Each organisation is entitled to have only one observer present in the meeting at any one time. Observers attend sessions of the Commission, receive papers for the meeting and generally have access to members of delegations. They do not have any speaking rights, however. They can attend working groups of the Commission but this is subject to consensus agreement of the members of the working group.

In addition to international organisations, non-member governments and intergovernmental organisations may also be represented at meetings of the Commission by an observer or observers.

A quick glance at any report of recent International Whaling Commission meetings will reveal a plethora of NGOs listed as attending as Non-Government Organisation Observers. At the 1996 Annual Meeting for example, some ninety plus NGOs are listed.

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<sup>105</sup>WCW 1997, *World Council of Whalers Opens Secretariat in Port Alberni, British Columbia, Canada*, announcement by World Council of Whalers, 26 February 1997

<sup>106</sup>IWC, *Rules of Procedure and Financial Regulations*

During IWC meetings, conservation NGOs and, more recently, pro-whaling NGOs publish their respective newsletters, such as *ECO*, and distribute them daily to delegates. Delegates can often be seen, during sessions, reading their copies of these newsletters.

*ECO* appears at many of the international environment convention meetings and has done for more than twenty years. Its daily appearance is a regular part of International Whaling Commission meetings. It is not owned by any one group, being sponsored and compiled by NGOs at the particular meeting. It provides a commentary, sometimes satirical, on the day-to-day events and activities of the meeting being covered. At the 48<sup>th</sup> Annual Meeting of the IWC (1996) *ECO* was published by: Animal Welfare Institute; Cetacean Society International; Dolphin Connection; Earth Island Institute; Earthtrust; Environmental Investigation Agency; Friends of Animals; Greenpeace International; Humane Society International; Humane Society of the US; International Fund for Animal Welfare; International Wildlife Coalition; Robin des Bois; Royal Society for the Prevention of Cruelty to Animals; Whale and Dolphin Conservation Society; Whales Alive; and World Wide Fund for Nature.

*The International Harpoon* is published by the High North Alliance. Whilst it is High North Alliance's regular newsletter, it, too, is published daily during IWC meetings and provides commentary on events at that meeting.

## **Part 2. Consistency of Promoting Australia's Position - An NGO Perspective**

### ***Concerns raised by NGOs***

As has been outlined previously, Australia's present position on whaling was defined in 1979<sup>107</sup> when the then Government accepted the recommendations of the Frost Inquiry<sup>108</sup>, committing Australia to pursue both domestically and internationally a policy of opposition to whaling. Successive governments have reiterated this position. Most recently, the current government has stated its position in a media release issued by the Minister for the Environment Senator Hill just prior to the 1996 IWC meeting when he said:

But our position is clear. There should be no commercial whaling at all. We believe the practice of killing whales is unjustifiable<sup>109</sup>

and again when announcing the establishment of this Task Force.

In establishing the Task Force the Government made clear its intention to not just oppose commercial whaling but to actively seek a permanent international ban on commercial whaling, thereby fulfilling recommendation 7 of the Frost Inquiry<sup>110</sup>.

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<sup>107</sup>Statement by the Prime Minister, the Rt. Hon. Malcolm Fraser, 4 April 1979

<sup>108</sup>1978, *Whales and Whaling* (Frost Report), Volume 1, Report of the Independent Inquiry conducted by The Hon. Sir Sydney Frost, AGPS, Canberra

<sup>109</sup>Hill, R. 1996, *Australia Takes Strong Line on Whaling Ban*, Media Release by Senator the Hon. Robert Hill, Leader of the Government in the Senate and Minister for the Environment, 17 June 1996

<sup>110</sup>*Whales and Whaling. Op. cit.*, p. 210

Nevertheless, up until the creation of the Task Force, it would seem that most of Australia's efforts have been directed more towards preventing any lifting of the current moratorium on commercial whaling than on actively pursuing a ban.

While acknowledging that the position of the Australian Government over the years has been clear and unequivocal, a number of NGOs in their submissions to the Task Force indicated that there has been increasing concern in recent times, particularly amongst the NGO community (both domestically and internationally), that Australia's actions have not been clearly focused towards achieving a ban on whaling.

The concerns expressed to the Task Force were threefold:

Australia's actions have, at times, been seen to be inconsistent with a policy position of opposition to whaling;

Australia's objectives have not been pursued with the level of vigour necessary to achieve a worldwide ban on whaling;

the nature and level of Australia's representation at meetings has not always reflected either the stated priorities of Australia or the importance that Australian policy attaches to particular issues.

A fourth concern that was also mentioned to the Task Force was the view that insufficient resources have been allocated to ensure achievement of Australia's objectives. These concerns are not, however, mutually exclusive.

### ***Strategy Implications***

Whilst the concerns expressed to the Task Force and noted above were specifically by NGOs, the Task Force is aware that similar concerns have been expressed outside of the NGO community. It is not the role of this Task Force to comment or make judgement on past performance, but it must recognise that these concerns exist and that they appear to be widespread. The Government should be aware that Australia's initial approaches in its efforts to secure a permanent international ban on commercial whaling may be met with some caution as a result of these perceptions of past inconsistency.

If Australia is to take a lead role in promoting and advancing a permanent international ban on commercial whaling its intentions and goals should be completely unambiguous, being reflected in all its actions. As Project Jonah stated in its submission to the Task Force:

All Australia's efforts at the IWC should be determined by its overall policy and objectives and no single action or event should be allowed to undermine achievement of these objectives.

The Task Force believes that this consistency of approach to whales and whaling will be required not just within the IWC, but in any negotiations to which Australia is party that are relevant to or impact on its goal.

As part of Australia's future efforts to achieve a permanent international ban on commercial whaling therefore, good and open communication between NGOs and the Government and its bureaucracy will be vital. Within Australia, whale conservation

NGOs and, indeed, the whole environment movement are already committed to achieving an international ban on commercial whaling. In submissions to the Task Force a number of NGOs pledged their support and indicated their desire to work with and support the Australian Government in achieving this objective. The basis for a productive working relationship is, thus, already established.

### ***Conclusion***

If Australia is to succeed in achieving a permanent international ban on commercial whaling then it will need to convince both pro- and anti-whaling interests of its commitment to achieving this objective. It will need to accord the pursuit of a ban on commercial whaling priority policy status and ensure that the position is reflected across the whole of government. This message must be carried over, as well, into the position that Australia takes at all of the meetings, fora and negotiations with which it is involved. Australia's policy should be clear and unambiguous, and the positions it takes should be consistent with its objective of banning commercial whaling. It should be proactive and vigorous in pursuit of its objectives and the stature and range of expertise of its representatives at IWC and subsidiary meetings should reflect its particular interests. It will need to ensure that appropriate and adequate resources are devoted to achieving this objective.

### ***Attachment 7.1 A select list of whale NGOs***

(Material in this attachment has been extracted from publications and internet sites of the organisations involved. The words and figures are their own and are reproduced without comment. Organisations are listed alphabetically and not in any order of importance.)

#### **Anti whaling NGOs**

##### ***Cetacean Society International (CSI)***

The Cetacean Society International is an all volunteer, non-profit, tax-exempt conservation, education and research organisation based in the USA, with volunteer representatives in twenty six countries around the world. It is dedicated to the preservation and protection of all cetaceans and the marine environment on a global basis.

##### ***Cousteau Society***

The Cousteau Society is a non-profit, membership supported organisation founded by Captain Cousteau in 1973. The Society is dedicated to the protection and improvement of the quality of life for present and future generations. It has some 200 000 members worldwide. Offices in France and United States.

##### ***Environmental Investigation Agency (EIA)***

The Environmental Investigation Agency was set up in 1984. It works closely with governments, enforcement agencies and other organisations to develop effective long-term solutions to environmental problems. It has offices in both the UK and US.

##### ***Greenpeace International***

Greenpeace is an independent, campaigning organisation which uses non-violent, creative confrontation to expose global environmental problems, and to force the solutions which are essential to a green and peaceful future.

Greenpeace's goal is to ensure the ability of the earth to nurture life in all its diversity. Therefore, Greenpeace seeks to:

protect biodiversity in all its forms;

prevent pollution and abuse of the earth's ocean, land, air and fresh water;

end all nuclear threats; and

promote peace, global disarmament and non-violence.

Greenpeace is a closely-knit network of national and regional offices, coordinated from the headquarters in Amsterdam. More than 1 330 people currently staff forty three offices in thirty countries.<sup>111</sup>

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<sup>111</sup>Figures from *Greenpeace Annual Report 1992-1993*

As at July 1996 Greenpeace had National Offices in the following IWC member countries: Argentina; Australia; Austria; Brazil; Chile; Denmark; Finland; France; Germany; Ireland; Japan; Mexico; Netherlands; New Zealand; Norway; Russia; Spain; Sweden; Switzerland; United Kingdom; and United States of America.

#### *Humane Society US (HSUS)*

The Humane Society of the United States is the nation's largest animal protection organisation, with more than 4.1 million members and constituents. The HSUS was founded in 1954 to promote the humane treatment of animals and to foster respect, understanding and compassion for all creatures. Today its message of care and protection embraces not only the animal kingdom but also the Earth and its environment. To achieve its goals, the HSUS works through legal, educational, legislative and investigative means. The HSUS's worldwide outreach is supported by a global family of affiliated organisations. Its affiliated organisations include: Center for Respect of Life and Environment; EarthKind; Humane Society International; The HSUS Wildlife Land Trust; International Center for Earth Concerns; National Association for Humane and Environmental Education.

#### *International Fund for Animal Welfare (IFAW)*

IFAW is the world's largest animal welfare organisation with over 1.4 million supporters around the globe. Founded in 1969, IFAW is now regarded as "*one of the most effective organisations for animal welfare in the world*". IFAW has offices in the following IWC member countries: United States; Great Britain; Holland; Germany; France; Australia; Switzerland and Sweden. Its mission is to promote and ensure the just and kind treatment of animals as sentient beings. It includes improving the quality of life of the animals and their environment, preserving animals from extinction, preventing and abolishing animal cruelty and ensuring that the offshore Canadian and Norwegian hunt for harp and hooded seals in the Northwest Atlantic is brought to an end.

#### *International Wildlife Coalition*

The International Wildlife Coalition is a wildlife protection organisation fighting to save endangered species, protect wild animals and preserve habitat and the environment through:

wildlife rehabilitation;

working for better environmental laws;

wildlife education; and

directly confronting the abusers of wild animals and the environment in the courts, in the marketplace, in the corridors of power and on the ground.

The International Wildlife Coalition has offices in the following International Wildlife Coalition member countries: United States, United Kingdom, and Brazil.

*Royal Society for the Prevention of Cruelty to Animals (RSPCA)*

The Royal Society for the Prevention of Cruelty to Animals (RSPCA) is one of the world's largest and oldest animal welfare organisations. Established in 1824, the charity's prime objectives are to promote kindness and prevent or suppress cruelty to animals. With respect to wild animals the RSPCA is opposed in principle to the killing or taking of wild animals or the infliction of any suffering upon them. Before exceptions to this principle can be considered there must be strong scientific evidence that there is a legitimate case for the taking and killing of wild animals and that in all cases methods of taking shall be humane.

*Whale and Dolphin Conservation Society (WDCS)*

The Whale and Dolphin Conservation Society is a UK registered charity with some 75,000 supporters in the UK alone. WDCS supports some sixty conservation field projects worldwide, as well as being active advocates for cetacean protection in the field of directed takes (including commercial whaling), indirect takes in fisheries interactions and the continued capture of cetaceans for the entertainment industry. WDCS sits on a number of national and international bodies with respect to cetacean conservation and protection, including having been part of the UK delegation to the IWC for the last three years.

*World Wide Fund for Nature (WWF):*

WWF's mission is to conserve nature and ecological processes by:

preserving genetic, species, and ecosystem diversity;

ensuring that the use of renewable natural resources is sustainable now and in the longer term, for the benefit of all life on Earth; and

promoting actions to reduce to a minimum pollution and the wasteful exploitation and consumption of resources and energy.

WWF's ultimate goal is to stop, and eventually reverse, the accelerating degradation of our planet's natural environment, and to help build a future in which humans live in harmony with nature. It is the world's largest and most experienced independent conservation organisation, with over 4.7 million supporters and a global network of twenty four National Organisations, five Associates, and twenty six Programme Offices. WWF International, the network's Secretariat, leads the network, develops joint policies and standards, coordinates activities, fosters global partnerships, and provides services to the National Organisations.

WWF has national offices in the following IWC member countries: Australia; Austria; Brazil; Denmark; Finland; France; Germany; India; Japan; Netherlands, New Zealand; Norway; South Africa; Spain; Sweden; United Kingdom; and United States. In addition, it has an Associate (independent NGOs who work closely with WWF and promote shared conservation objectives, but who do not contribute to WWF's international conservation program) in IWC member country Argentina.

## **Pro-whaling NGOs**

### ***High North Alliance***

Founded in 1991, the High North Alliance's objective is to protect the rights of whalers, sealers and fishermen to harvest renewable resources in accordance with the principle of sustainable management. It also works towards consolidating the knowledge and skills necessary for the ecologically sound management of marine mammal resources. The High North Alliance is an umbrella organisation rallying the interest groups that represent whalers, sealers and fishermen from Canada, the Faroes, Greenland, Iceland and Norway, together with a number of local coastal communities. It was established in response to the campaigns calling for a total ban on all commercial whaling and sealing; and the even more radical ones calling for a total ban on the killing of marine mammals for any reason whatsoever. Its task is to provide alternative information on these campaigns. The organisation's office is in Reine, in the Lofoten Islands of Norway and it has a full-time staff of two. As at 1 January 1997 it had eleven member organisations (individuals can join as subsidiary members).

### ***World Council of Whalers***

Established in January 1997, this organisation aims to provide an informed international voice in support of communities engaged or interested in sustainable whaling, as well as working to protect whalers' livelihoods, health and cultural integrity. It is chaired by Chief Mexsis, head Whaling Chief of the Huu-ay-aht Nation of British Columbia and its Executive Board consists of one Director from each of the five regions: North America, North Atlantic, North Pacific, South Pacific-Indian Ocean, and Caribbean. Its secretariat is located in Port Alberni, British Columbia, Canada.

## Appendices

### **Appendix 1. Submissions to the Task Force**

Forty seven submissions were received by the task force as a result of public invitation.

They were received from the groups and individuals listed below.

World Society for the Protection of Animals  
John Joseph  
Regional Manager

The Sea Shepherd Conservation Society  
Captain Paul Watson  
Founder and International President

Embassy of the Republic of Chile  
H. E. Jorge Tarud  
Ambassador

Queensland Museum  
Dr Robert Paterson  
Honorary Research Fellow

Embassy of Mexico  
H. E. Raphael Steger  
Ambassador

University of Oslo  
Lars WallØe  
Professor of Physiology

Ministry for Foreign Affairs of Finland  
Risto Rautiaien  
Counsellor

Cetacean Society International  
Dr Robbins Barstow  
Director Emeritus

The Dolphin Action & Protection Group  
Nan Rice  
Secretary

Sidney Holt  
Citta della Pieve (PG) Italy

Dr Douglas H. Cato  
Lindfield NSW

Dolphin Charters  
Ronn Patterson

RSPCA Australia  
Anita Shooks  
Executive Officer

Greenpeace International  
John Frizell

Project Jonah Victoria Inc.  
Geoff Mosley  
Honorary Consultant

World Wide Fund for Nature  
Cassandra Phillips  
International Treaties Coordinator, Whales, Antarctica and Wetlands

British High Commission  
Sir Roger Carrick  
The High Commissioner

CSIRO Division of Marine Research  
Dr Chris Fandry  
Acting Chief of Division

Australian Conservation Foundation  
Jim Downey  
Executive Director

Australian and New Zealand Federation of Animal Societies Inc.  
Carol de Fraga

World Wide Fund for Nature Australia  
Margaret Moore  
Senior Conservation Officer

Project Jonah (NZ) Inc  
Rhys Nolan  
Chairman

Dolphin Research Institute  
Jeff Weir  
Director

Animal Welfare Institute  
Rick Spill  
Marine Mammal Research Analyst

Environmental Investigation Agency Ltd  
Allan Thornton  
Chairman

James Cook University  
Dr Peter Corkeron, Professor Helene Marsh, Dr Tony Preen

Fisheries Agency of Japan

International Cetacean Education and Research Centre  
Peppie Simpson  
Coordinator

Division International Traffic, Switzerland  
Dr T. Althaus  
Head, Endangered Species Section

Warneke Marine Mammal Services  
Robert M. Warneke

South Australian Museum  
Dr Catherine Kemper  
Curator of Mammals

Royal Society for the Prevention of Cruelty to Animals  
Helen McLachlan  
Senior Scientific Officer  
(UK)

Whale and Dolphin Conservation Society  
Chris Stroud  
Director of Campaigns

Erich Hoyt  
North Berwick, Scotland

ORCALAB  
Dr Paul Spong  
Director

Australian Dolphin Research Foundation  
Wildwatch Inc  
Dr Mike Bosley

Australian Whale Conservation Society  
Paul Hodda  
President

Humane Society International Inc (Australian Office)  
Michael Kennedy  
Director

Humane Society of the United States  
Patricia A. Forkan  
Executive Vice President

Whales Alive Australia  
Mick McIntyre

The Cousteau Society  
Clark Lee S. Merriam for Jacques-Yves Cousteau

Animal Liberation (Vic)  
Jim Roberts  
Manager

St Lucia  
Dr the Hon. Vaughan A. Lewis

Prime Minister and Minister for Foreign Affairs and Home Affairs

Department of Conservation, New Zealand  
Dr Alan Baker  
Manager Marine Protection, Species Protection Division  
for Director General

Embassy of the Federal Republic of Germany  
Manfred Auster,  
First Secretary

Commonwealth Department of Primary Industries and Energy  
Neil Hermes  
Acting Director, International Relations, Fisheries and Aquaculture Branch

Ministry for Foreign Affairs, Iceland  
Johann Sigurjonsson  
Ambassador

## **Appendix 2. Membership of the International Whaling Commission**

### **INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING 1946**

#### **Membership and Status, as at 22 June 1996**

<b>COUNTRY</b>	<b>DATE MEMBERSHIP EFFECTIVE</b>	<b>STATUS AT IWC48</b>
<b>Current Members</b>		
Antigua and Barbuda	21 July 1982	Voting rights suspended
Argentina	18 May 1960	Voting rights suspended
Australia	10 November 1948	
Austria	20 May 1995	
Brazil	9 May 1950, 4 January 1974	
Chile	6 July 1979	
People's Republic of China	24 September 1980	
Costa Rica	24 July 1981	Voting rights suspended
Denmark	23 May 1950	
Dominica	30 June 1983	Voting rights suspended
Finland	23 February 1953	
France	3 December 1948	
Germany	2 July 1982	
Grenada	7 April 1993	
India	9 March 1981	
Ireland	2 January 1985	
Japan	21 April 1951	
Kenya	2 December 1981	Voting rights suspended
Republic of Korea	29 December 1978	
Mexico	30 June 1949	
Monaco	15 March 1982	
Netherlands	10 November 1948, 4 May 1962, 14 June 1977	
New Zealand	2 August 1949, 15 June 1976	
Norway	10 November 1948, 23 September 1960	
Oman	15 July 1980	
Peru	18 June 1979	Voting rights suspended
Russian Federation	10 November 1948 (as USSR)	
St Kitts and Nevis	20 June 1992	
St Lucia	29 June 1981	
St Vincent & The Grenadines	22 July 1981	
Senegal	15 July 1982	Voting rights suspended
South Africa	10 November 1948	
Solomon Islands	30 June 1982, June 1993	
Spain	6 July 1979	
Sweden	28 January 1949, 15 June 1979	
Switzerland	29 May 1980	
UK	10 November 1948	
USA	10 November 1948	
Venezuela	17 June 1991	Voting rights suspended

<b>Past Members</b>	<b>Date Withdrawal Effective</b>
Belize	1988
Canada	1982
Ecuador	1995
Egypt	1989
Iceland	1992
Jamaica	1983
Mauritius	1988
Panama	1980
Philippines	1988
Seychelles	1995
Uruguay	1991

**Appendix 3. Whale products (tonnes) production by the Japanese whaling industry (1966-1985)**

<b>Year</b>	<b>Whale Oil</b>	<b>Whale Meat</b>	<b>Others</b>	<b>Total</b>
1966	88 545	180 215	11 080	279 840
1967	81 838	168 943	12 837	263 618
1968	81 213	156 766	16 850	254 829
1969	72 467	135 024	15 443	223 934
1970	72 604	139 230	15 836	227 670
1971	71 775	135 009	16 319	223 103
1972	61 196	121 926	11 350	194 472
1973	50 250	97 921	15 794	163 965
1974	42 794	89 592	13 141	145 527
1975	40 326	74 072	12 616	127 014
1976	24 518	43 594	9 187	77 299
1977	21 054	42 473	8 189	71 716
1978	12 827	24 327	5 008	42 162
1979	7 626	19 075	4 105	30 806
1980	7 166	20 538	4 540	32 224
1981	5 803	19 701	3 249	28 753
1982	4 686	21 016	2 910	27 713
1983	3 015	21 665	1 710	26 390
1984	2 713	21 064	1 477	25 254
1985	2 307	14 885	1 564	18 755

Notes:

\* Others include whale bone or baleen products—tennis rackets, fishing rods, cartridges etc.

Source: Fisheries Agency of the Japanese Government, *Outline of Japanese Whaling* (Tokyo: 1988), p 17.

#### Appendix 4. Whale meat consumption per capita in Japan

	Production	Import	Export	Supply 1	Total Population	Consumption
	(ton)	(ton)	(ton)	(ton)	(thousands)	(Kg)
1946	55 000	-	-	55 000	75 750	0.726
1947	82 000	-	-	82 000	78 101	1.050
1948	84 000	-	-	84 000	80 002	1.050
1949	87 000	-	-	87 000	81 773	1.064
1950	71 000	-	-	71 000	83 200	0.853
1951	52 000	-	-	52 000	84 541	0.615
1952	56 000	-	-	56 000	85 808	0.653
1953	56 000	-	-	56 000	86 981	0.644
1954	71 000	0	0	71 000	88 239	0.805
1955	76 000	0	0	76 000	89 276	0.851
1956	89 000	0	0	89 000	90 172	0.987
1957	112 000	0	0	112 000	90 928	1.232
1958	138 000	0	0	138 000	91 767	1.504
1959	143 000	105		143 105	92 641	1.545
1960	154 000	98		154 098	93 419	1.65
1961	179 000	33	49	178 984	94 287	1.898
1962	218 258	13 886	7636	224 508	95 181	2.359
1963	186 627	12 703	9996	189 425	96 158	1.970
1964	193 075	24 279	38752	178 502	97 182	1.838
1965	213 982	18 818	34221	198 579	98 275	2.021
1966	180 215	21 020	8351	192 884	99 036	1.948
1967	168 942	28 564	20589	176 917	100 196	1.766
1968	156 766	11 158	20383	147 541	101 331	1.458
1969	136 094	12 588	19571	129 111	102 536	1.259
1970	139 230	15 396	14454	140 172	103 720	1.351
1971	135 009	17 837	11149	141 697	105 145	1.348
1972	121 926	18 277	2173	138 030	107 595	1.283
1973	97 679	25 477	0.3	123 156	109 104	1.129
1974	89 592	28 578	0.5	118 170	110 573	1.069
1975	75 370	28 822	0.3	104 192	111 940	0.931
1976	43 616	32 476	172	75 920	113 094	0.671
1977	42 468	36 760	0.1	79 228	114 185	0.694
1978	24 327	34 006	0.1	58 333	115 190	0.506
1979	19 074	27 449	0.04	46 523	116 155	0.401
1980	20 538	25 378	0.03	45 916	117 060	0.392
1981	19 701	18 942	0.96	38 642	117 902	0.328
1982	21 016	19 612	1.35	40 627	118 728	0.342
1983	21 665	18 838	0.21	40 503	119 536	0.339
1984	21 064	16 738	0	37 802	120 305	0.314
1985	14 885	16 888	0	31 583	121 049	0.261

1. Supply is calculated as production + import - export. 2. Total population number is based on *Statistical outlook of Japan 1996 edition*. Figures from 1946 to 1962 are taken from *Food Supply and Demand Table* published by the Japanese Government Ministry of Agriculture, Forestry and Fisheries. Figures after 1962 are taken from *Fish Product Trade Statistics*. There is no data for whale meat export and import during 1946 to 1953. Consumption is calculated as: production/total population.

Appendix 5. Text of the International Convention for the Regulation of Whaling, Washington, 1946

**INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING 1946**

*signed at Washington, 2nd December, 1946*

The Governments whose duly authorised representatives have subscribed hereto,

- **Recognizing the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks;**
- **Considering that the history of whaling has seen over-fishing of one area after another and of one species of whale after another to such a degree that it is essential to protect all species of whales from further over-fishing;**
- **Recognizing that the whale stocks are susceptible of natural increases if whaling is properly regulated, and that increases in the size of whale stocks will permit increases in the number of whales which may be captured without endangering these natural resources;**
- **Recognizing that it is in the common interest to achieve the optimum level of whale stocks as rapidly as possible without causing widespread economic and nutritional distress;**
- **Recognizing that in the course of achieving these objectives, whaling operations should be confined to those species best able to sustain exploitation in order to give an interval for recovery to certain species of whales now depleted in numbers;**
- **Desiring to establish a system of international regulation for the whale fisheries to ensure proper and effective conservation and development of whale stocks on the basis of the principles embodied in the provisions of the International Agreement for the Regulation of Whaling, signed in London on 8th June, 1937, and the protocols to that Agreement signed in London on 24th June, 1938, and 26th November, 1945; and**
- **Having decided to conclude a convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry;**

Have agreed as follows:-

**Article I**

1. This Convention includes the Schedule attached thereto which forms an integral part thereof. All references to "Convention" shall be understood as including the said Schedule either in its present terms or as amended in accordance with the provisions of Article V.
2. This Convention applies to factory ships, land stations, and whale catchers under the jurisdiction of the Contracting Governments and to all waters in which whaling is prosecuted by such factory ships, land stations, and whale catchers.

**Article II**

As used in this Convention:-

1. "Factory ship" means a ship in which or on which whales are treated either wholly or in part;

2. "Land station" means a factory on the land at which whales are treated whether wholly or in part;
3. "Whale catcher" means a ship used for the purpose of hunting, taking, towing, holding on to, or scouting for whales;
4. "Contracting Government" means any Government which has deposited an instrument of ratification or has given notice of adherence to this Convention.

### Article III

1. The Contracting Governments agree to establish an International Whaling Commission, hereinafter referred to as the Commission, to be composed of one member from each Contracting Government. Each member shall have one vote and may be accompanied by one or more experts and advisers.
2. The Commission shall elect from its own members a Chairman and Vice-Chairman and shall determine its own Rules of Procedure. Decisions of the Commission shall be taken by a simple majority of those members voting except that a three-fourths majority of those members voting shall be required for action in pursuance of Article V. The Rules of Procedure may provide for decisions otherwise than at meetings of the Commission.
3. The Commission may appoint its own Secretary and staff.
4. The Commission may set up, from among its own members and experts or advisers, such committees as it considers desirable to perform such functions as it may authorize.
5. The expenses of each member of the Commission and of his experts and advisers shall be determined by his own Government.
6. Recognizing that specialized agencies related to the United Nations will be concerned with the conservation and development of whale fisheries and the products arising therefrom and desiring to avoid duplication of functions, the Contracting Governments will consult among themselves within two years after the coming into force of this Convention to decide whether the Commission shall be brought within the framework of a specialized agency related to the United Nations.
7. In the meantime the Government of the United Kingdom of Great Britain and Northern Ireland shall arrange, in consultation with the other Contracting Governments, to convene the first meeting of the Commission, and shall initiate the consultation referred to in paragraph 6 above.
8. Subsequent meetings of the Commission shall be convened as the Commission may determine.

### Article IV

1. The Commission may either in collaboration with or through independent agencies of the Contracting Governments or other public or private agencies, establishments, or organizations, or independently
  - (a) encourage, recommend, or if necessary, organize studies and investigations relating to whales and whaling;
  - (b) collect and analyze statistical information concerning the current condition and trend of the whale stocks and the effects of whaling activities thereon;

*(c)* study, appraise, and disseminate information concerning methods of maintaining and increasing the populations of whale stocks.

2. The Commission shall arrange for the publication of reports of its activities, and it may publish independently or in collaboration with the International Bureau for Whaling Statistics at Sandefjord in Norway and other organizations and agencies such reports as it deems appropriate, as well as statistical, scientific, and other pertinent information relating to whales and whaling.

## Article V

1. The Commission may amend from time to time the provisions of the Schedule by adopting regulations with respect to the conservation and utilization of whale resources, fixing *(a)* protected and unprotected species; *(b)* open and closed seasons; *(c)* open and closed waters, including the designation of sanctuary areas; *(d)* size limits for each species; *(e)* time, methods, and intensity of whaling (including the maximum catch of whales to be taken in any one season); *(f)* types and specifications of gear and apparatus and appliances which may be used; *(g)* methods of measurement; and *(h)* catch returns and other statistical and biological records.

2. These amendments of the Schedule *(a)* shall be such as are necessary to carry out the objectives and purposes of this Convention and to provide for the conservation, development, and optimum utilization of the whale resources; *(b)* shall be based on scientific findings; *(c)* shall not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory or ship or land station or to any group of factory ships or land stations; and *(d)* shall take into consideration the interests of the consumers of whale products and the whaling industry.

3. Each of such amendments shall become effective with respect to the Contracting Governments ninety days following notification of the amendment by the Commission to each of the Contracting Governments, except that *(a)* if any Government presents to the Commission objection to any amendment prior to the expiration of this ninety-day period, the amendment shall not become effective with respect to any of the Governments for an additional ninety days; *(b)* thereupon, any other Contracting Government may present objection to the amendment at any time prior to the expiration of the additional ninety-day period, or before the expiration of thirty days from the date of receipt of the last objection received during such additional ninety-day period, whichever date shall be the later; and *(c)* thereafter, the amendment shall become effective with respect to all Contracting Governments which have not presented objection but shall not become effective with respect to any Government which has so objected until such date as the objection is withdrawn. The Commission shall notify each Contracting Government immediately upon receipt of each objection and withdrawal and each Contracting Government shall acknowledge receipt of all notifications of amendments, objections, and withdrawals.

4. No amendments shall become effective before 1st July, 1949.

## Article VI

The Commission may from time to time make recommendations to any or all Contracting Governments on any matters which relate to whales or whaling and to the objectives and purposes of this Convention.

#### Article VII

The Contracting Government shall ensure prompt transmission to the International Bureau for Whaling Statistics at Sandefjord in Norway, or to such other body as the Commission may designate, of notifications and statistical and other information required by this Convention in such form and manner as may be prescribed by the Commission.

#### Article VIII

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

2. Any whales taken under these special permits shall so far as practicable be processed and the proceeds shall be dealt with in accordance with directions issued by the Government by which the permit was granted.

3. Each Contracting Government shall transmit to such body as may be designated by the Commission, in so far as practicable, and at intervals of not more than one year, scientific information available to that Government with respect to whales and whaling, including the results of research conducted pursuant to paragraph 1 of this Article and to Article IV.

4. Recognizing that continuous collection and analysis of biological data in connection with the operations of factory ships and land stations are indispensable to sound and constructive management of the whale fisheries, the Contracting Governments will take all practicable measures to obtain such data.

#### Article IX

1. Each Contracting Government shall 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 by persons or by vessels under its jurisdiction.

2. No bonus or other remuneration calculated with relation to the results of their work shall be paid to the gunners and crews of whale catchers in respect of any whales the taking of which is forbidden by this Convention.

3. Prosecution for infractions against or contraventions of this Convention shall be instituted by the Government having jurisdiction over the offence.

4. Each Contracting Government shall transmit to the Commission full details of each infraction of the provisions of this Convention by persons or vessels under the jurisdiction of that Government as reported by its inspectors. This information shall include a statement of measures taken for dealing with the infraction and of penalties imposed.

#### Article X

1. This Convention shall be ratified and the instruments of ratifications shall be deposited with the Government of the United States of America.
2. 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.
3. The Government of the United States of America shall inform all other signatory Governments and all adhering Governments of all ratifications deposited and adherences received.
4. This Convention shall, when instruments of ratification have been deposited by at least six signatory Governments, which shall include the Governments of the Netherlands, Norway, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, enter into force with respect to those Governments and shall enter into force with respect to each Government which subsequently ratifies or adheres on the date of the deposit of its instrument of ratification or the receipt of its notification of adherence.
5. The provisions of the Schedule shall not apply prior to 1st July, 1948. Amendments to the Schedule adopted pursuant to Article V shall not apply prior to 1st July, 1949.

#### Article XI

Any Contracting Government may withdraw from this Convention on 30th June, of any year by giving notice on or before 1st January, of the same year to the depository Government, which upon receipt of such a notice shall at once communicate it to the other Contracting Governments. Any other Contracting Government may, in like manner, within one month of the receipt of a copy of such a notice from the depository Government give notice of withdrawal, so that the Convention shall cease to be in force on 30th June, of the same year with respect to the Government giving such notice of withdrawal.

The Convention shall bear the date on which it is opened for signature and shall remain open for signature for a period of fourteen days thereafter.

In witness whereof the undersigned, being duly authorized, have signed this Convention.

Done in Washington this second day of December, 1946, in the English language, the original of which shall be deposited in the archives of the Government of the United States of America. The Government of the United States of America shall transmit certified copies thereof to all the other signatory and adhering Governments.

## **Protocol to the International Convention for the Regulation of Whaling Signed at Washington under date of December 2, 1946**

The Contracting Governments to the International Convention for the Regulation of Whaling signed at Washington under date of 2nd December, 1946 which Convention is hereinafter referred to as the 1946 Whaling Convention, desiring to extend the application of that Convention to helicopters and other aircraft and to include provisions on methods of inspection among those Schedule provisions which may be amended by the Commission, agree as follows:

### **Article I**

Subparagraph 3 of the Article II of the 1946 Whaling Convention shall be amended to read as follows:

"3. 'whale catcher' means a helicopter, or other aircraft, or a ship, used for the purpose of hunting, taking, killing, towing, holding on to, or scouting for whales."

### **Article II**

Paragraph 1 of Article V of the 1946 Whaling Convention shall be amended by deleting the word "and" preceding clause (h), substituting a semicolon for the period at the end of the paragraph, and adding the following language: "and (i) methods of inspection".

### **Article III**

1. This Protocol shall be open for signature and ratification or for adherence on behalf of any Contracting Government to the 1946 Whaling Convention.
2. This Protocol shall enter into force on the date upon which instruments of ratification have been deposited with, or written notifications of adherence have been received by, the Government of the United States of America on behalf of all the Contracting Governments to the 1946 Whaling Convention.
3. The Government of the United States of America shall inform all Governments signatory or adhering to the 1946 Whaling Convention of all ratifications deposited and adherences received.
4. This Protocol shall bear the date on which it is opened for signature and shall remain open for signature for a period of fourteen days thereafter, following which period it shall be open for adherence.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Protocol.

DONE in Washington this nineteenth day of November, 1956, in the English Language, the original of which shall be deposited in the archives of the Government of the United States of America. The Government of the United States of America shall transmit certified copies thereof to all Governments signatory or adhering to the 1946 Whaling Convention.