SAVE THE WHALES–SAVE THE WHALERS–WAIT, JUST SAVE THE INTERNATIONAL WHALING COMMISSION: A FRESH LOOK AT THE CONTROVERSY SURROUNDING CULTURAL CLAIMS TO WHALE

ALYSON DECKER*

“I think that enforcing one’s own emotional attitudes upon other peoples . . . gradually will yield for the respect for other peoples’ right to live their [lives] in harmony with nature.”

Captain Spock: They are unhappy about the way their species has been treated by man.
Admiral James T. Kirk: They have a right to be.²

I. INTRODUCTION

When Iceland rejoined the International Whaling Commission (“IWC”) in 2002, it did so with the understanding that as of 2006 it would no longer be bound by the moratorium on commercial whaling.³ A few years later, Japan stated it would leave the IWC if it continued to be unhappy with the progress made by the organization.⁴ If Iceland was to return to commercial whaling without the approval of the IWC and Japan was to leave the IWC, the IWC would effectively cease to exist as an international organization capable of regulating whaling.

While most people in the United States find the thought of whaling utterly barbaric, and the idea of eating whales utterly disgusting, this is not

---

* J.D. Candidate, University of Southern California Law School, 2007. Thank you to Erika Decker for always knowing I had it in me to be published. And, a special thank you to William Gynan for always supporting me and driving me to Kinkos. I love you both.
¹ Lars Emil Johansen, Address, in WHALING IN THE NORTH ATLANTIC: ECONOMIC AND POLITICAL PERSPECTIVES, 16 (Gudrun Petursdóttir ed. 1997).
² STAR TREK IV: THE VOYAGE HOME (Paramount Pictures 1986).
a universal opinion. In some cultures, Japan for example, whales are considered nothing more than big “fish” and do not merit special protection above any other food source. Furthermore, despite the twenty-year ban on the commercial hunting of whales, whaling and whale products are still important parts of the cultures of Japan, Norway, and Iceland. It is unlikely that this will change anytime soon.

Currently, the primary international institution for controlling whaling and preventing the over-exploitation of whale stocks is the IWC. The IWC, however, is not able to regulate all of the whaling that currently takes place around the globe. For example, due to the combination of the continued demand for whale products and the international ban on commercial whaling, rogue and pirate whalers carry on hunts outside of the supervision of the IWC, which leads to the further decimation of vulnerable whale stocks. In addition, if the IWC continues to unconditionally support the moratorium on commercial whaling, it will soon lose its power to protect these large sea mammals as more and more pro-whaling nations find ways to escape the reach of the ban. A solution must be found that will not only protect whales from over-hunting, but will also bring together the two polarized sides of the debate, end the bitterness, strengthen the organization, and bring forth a new era of cooperation within the IWC.

Part II of this Note briefly discusses the history of the IWC and the current state of the international whaling industry; focusing particularly on the moratorium banning commercial whaling, the various responses taken by pro-whaling nations to the moratorium, and the growing tension.


6 See Totten III, supra note 5, at 3–4; Misaki, supra note 5, at 14–15.

7 See infra Part III.


10 See Michael Szabo, DNA Test Traps Whale Traders, NEW SCIENTIST, May 28, 1994, at 44 (discussing how DNA testing of whale meat in Japan has revealed “that some [of the] whale meat sold in Japan is part of an illegal trade in protected species”); C. S. Baker & S. R. Palumbi, Which Whales Are Hunted?: A Molecular Genetic Approach to Monitoring Whaling, 265 SCI. 1538, 1539 (1994) (stating that the evidence gathered from the genetic testing of whale products in Japan has shown that the “products available currently on the Japanese retail market may include species that have been imported illegally and others that have been hunted or processed illegally”).

between pro-whaling and anti-whaling nations. Part III delves into the culture of whaling in the three major pro-whaling states of the IWC: Japan, Norway, and Iceland. This portion of the note discusses the history of Small Coastal Whaling (“SCW”) in these pro-whaling states, the importance of whale products to the local and national culture, and how each of these nations has responded to the moratorium. Part IV introduces the Aboriginal Subsistence Whaling (“ASW”) exception to the IWC moratorium and gives a brief summary of how this exception has changed over time. Part IV also presents a comprehensive explanation of modern SCW and compares current day ASW exemptions to SCW operations. Part V reviews two possible solutions to the deadlock at the IWC and argues that while these theories may present a workable system for international whaling, it is unlikely that either of these solutions will resolve the international dispute over whaling. Part V also proposes a solution that takes into account both anti-whaling and pro-whaling sentiments and allows both sides to agree on a compromise that creates an exception to the moratorium for a specific form of culturally significant commercial whaling. In conclusion, this Note will emphasize the need for a resolution of the stalemate within the IWC and will stress the importance of the IWC to the regulation of international whaling, and, more importantly, to preserving the whales of Earth’s oceans for future generations.

II. THE INTERNATIONAL WHALING COMMISSION: FIRST WE SUPPORT, THEN WE BAN

A. THE INTERNATIONAL WHALING COMMISSION AND THE STATUS OF INTERNATIONAL WHALING

“[W]haling has always been an international question” because whales are not bound by country lines and live in the open sea. Since the sea is a common resource, whaling can be viewed as “an open access system,” which means that any efforts to manage or control whaling must be voluntarily made by all participants. In 1946, riding on its post-World War II status, the United States led the push in forming the International Convention for the Regulation of Whaling (“ICRW”), which established the IWC, a voluntary organization whose goal was to manage the world’s whale stocks. The overall theme of the ICRW is found in the preamble, which recognizes “the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks,” and acknowledges the goal of the drafting governments to “conclude a convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.” This theme of utilization of a natural resource for consumptive

15 ICRW, supra note 14, at preamble.
purposes is inherent throughout the treaty.\(^{16}\) Thus, the ICRW makes clear that the IWC’s original purpose was not to completely protect whales from being hunted, but rather to ensure that whales were kept at sustainable levels to allow for the continuation of whaling in perpetuity.\(^{17}\) The ICRW also empowered the IWC to set “protected and unprotected species” and to set “the time, method and intensity of whaling, including the maximum catches to be taken in any one season.”\(^{18}\)

Unfortunately, the original regulations developed by the IWC did more to severely reduce whale stocks than promote sustainable growth. This was because the IWC was not following the advice of the IWC Scientific Committee and was instead focusing on the demands for high quotas put forth by whaling nations.\(^{19}\) By the 1970s, due to the continued over-exploitation of whales, several whale species were hunted nearly to extinction.\(^{20}\) At the same time, whaling was beginning to become unprofitable, in part because whales were harder to find, but mainly because the market for whale oil had collapsed.\(^{21}\)

In 1982, in response to dropping whale stocks, a justified concern that all whales were going to be hunted to extinction if the whaling industry was not checked, and international pressure from environmental organizations, the IWC approved a moratorium on commercial whaling that set a zero-catch quota effective as of 1986.\(^{22}\) To come into effect, the moratorium, which was an amendment to the Schedule, had to be voted for by three-fourths of the voting members.\(^{23}\) Such a measure, even in the face of devastated whale stocks, would probably have been impossible if the IWC had remained composed of the fifteen original members, but by the 1980s the membership of the IWC had more than doubled, and a majority of these new members had never practiced whaling.\(^{24}\) In fact, several of these new

---

\(^{16}\) See, e.g., ICRW, supra note 14, Art. V(1) (stating, “The Commission may amend . . . the provisions of the Schedule by adopting regulations with respect to the conservation and utilization of whale resources . . . .”); ICRW, supra note 14, Art. V(2)(d) (stating, “These amendments of the Schedule . . . shall take into consideration the interests of the consumers of whale products and the whaling industry.”).


\(^{19}\) See Carlane, supra note 8, at 6; Anthony Matera, Note, Whale Quotas: A Market-Based Solution to the Whaling Controversy, 13 GEO. INT’L ENVTL. L. REV. 23, 27 (2000). The quotas determined by the IWC are supposed to be “based on scientific findings.” ICRW, supra note 14, Art. V(2) (listing four considerations for Schedule amendments, the second of which states, “These amendments of the Schedule . . . shall be based on scientific findings.”).

\(^{20}\) See Carlane, supra note 8, at 6; Friedman, supra note 3, at 306.

\(^{21}\) See Carlane, supra note 8, at 6; Friedman, supra note 3, at 306.

\(^{22}\) See Friedman, supra note 3, at 306–307; Suhre, supra note 11, at 310–311.

\(^{23}\) See ICRW, supra note 14, Art. III(b).

\(^{24}\) See Hodges, supra note 17, at 301–302. Some scholars have even gone as far as to say that the IWC’s new objective is so far from the ICRW’s original intent that it appears that the IWC has been kidnapped. See Christopher D. Stone, Summing Up: Whaling and Its Critics, in TOWARD A SUSTAINABLE WHALING REGIME, supra note 9, at 269, 273.
members had joined the IWC “at the urging of save-the-whales activists simply to vote against the practice of commercial whaling.”

This sea change in the IWC was caused by a growing international respect and concern for whales as one of the oldest and most majestic creatures of our planet. Whales have swum in our oceans for over fifty million years. They are not restricted by national borders, and travel “the world’s oceans to feed, give birth and engage in complex social behaviors.” Whales are highly intelligent mammals with the ability to “learn, communicate, and feel pain.” They possess unique traits that distinguish them from most other sea creatures, including “low rates of reproduction,” and the ability to form “complex family groups.” These “human” characteristics have led some people to believe that whales have an “inviolable right to life.” Additionally, the large size and innate beauty of whales have led many cultures to view them as a supreme symbol of the magnificence of nature. In some cultures, whales are even considered spiritual guardians, and are treated as natural treasures. Overall, the opinion of the anti-whaling movement is best stated by a quote from the forty-second annual IWC meeting, “the earth [is] our home and the seas our garden; the whales [are] the roses in our garden, and roses should bloom.”

Although the moratorium is still in effect today, it was never expected to be permanent. Rather, the moratorium was “intended to last only until scientific data could show that a return to whaling was reasonable.” Additionally, the acceptance of the zero-catch limit “was contingent upon a review of its effects[,] to be undertaken by the year 1990 at the latest, based on the comprehensive assessment of whale stocks by the IWC Scientific Committee.” This information was being gathered to aid in the development of the Revised Management Procedure (“RMP”), which would set whaling quotas at sustainable levels. In 1991, the Scientific Committee presented the RMP to the IWC. The RMP, which recommended a resumption of whaling, was not adopted. This prompted the resignation

---

25 Schiffman, supra note 17, at 368. See also Elizabeth DeSombre, Distorting Global Governance: Membership, Voting, and the IWC, in Toward a Sustainable Whaling Regime, supra note 9, at 183, 187.

26 See Carlane, supra note 8, at 41.


29 Carlane supra note 8, at 41.

30 Carlane supra note 8, at 42.

31 Carlane supra note 8, at 42.


33 Jóhann Viðar Ívarsson, Science, Sanctions and Cetaceans: Iceland and the Whaling Issue 141 (Jeffrey Cosser trans., 1994) (quoting the opening statement of Mr. G. J. M. Brak, then the Dutch Minister of Fisheries, at the 42nd annual meeting of the IWC).


35 Hodges, supra note 17, at 303.

36 Misaki, supra note 5, at 17. See also Suhre, supra note 11, at 310–311.

37 See Suhre, supra note 11, at 311; Friedman, supra note 3, at 307.

38 See Suhre, supra note 11, at 311; Friedman, supra note 3, at 307–308.
of the then chairman of the IWC Scientific Committee, who stated in his
eresignation letter, “What is the point of having a Scientific Committee
when its unanimous recommendations are treated with such contempt?”
While in recent years more evidence has been gathered to support the
assertion that some whale stocks have recovered from over-whaling and
could be harvested at sustainable levels, and although the Scientific
Committee continues to fully support the feasibility of sustainable whaling,
the RMP has not yet been adopted due to continued debates over the
Revised Management Scheme (“RMS”), which would implement the
RMP.

B. THE INTERNATIONAL REACTION TO THE MORATORIUM AND
ONGOING WHALING

In response to the moratorium, IWC member states had two options:
they could either accept the zero-catch limitation, or they could lodge a
timely objection. Under the ICRW, a member state who presents an
objection to a Schedule amendment is not affected by the amendment,
unless the objection is later withdrawn. This has often been considered a
great weakness of the IWC, because, unless there is complete unanimity
among the members, major decisions may be rendered ineffective.
Nevertheless, without this objection option the formation of the IWC might
have been impossible.

Several member states did in fact lodge formal objections to the
moratorium, including Japan and Norway. Japan later withdrew its
objection, binding itself to the zero-catch quota set by the IWC. Norway,
on the other hand, never withdrew its objection, and therefore it is able to
legally practice commercial whaling under the IWC despite the
moratorium. In exercising its legal right to engage in commercial
whaling, Norway has stated that it does not accept “what [it] perceives as
cultural imperialism imposed by the majority of the members of the IWC
on the local communities of the nations and peoples who want to exercise
their sovereign cultural right to be different.” Norway has been

39 Georg Blichfeldt, Bigger than Whales, in 11 ESSAYS ON WHALES AND MAN, supra note 5, at 2, 4.
40 See International Whaling Commission [IWC], Chair’s Report for the 57th Annual Meeting (Revised)
June 2005, at 2–3 (July 2005) [hereinafter Chair’s Report 57th] (stating that the IWC’s Head of Science
“stressed that the RMP was probably the most rigorously tested management procedure in the world. It
still represented the unanimous recommendation of the Scientific Committee and the processes for its
practical application had been constantly reviewed and improved.”); Black, supra note 34; Richard
Black, Reform Likely on Whaling Process, BBC NEWS ONLINE, June 24, 2005,
also Ásgrímsson, supra note 5, at 12; Carlane, supra note 8, at 10; Friedman, supra note 3, at 312–13.
41 See ICRW, supra note 14, Art. V(3); Carlane, supra note 8, at 9; Gambell 2, supra note 18, at 33.
42 See ICRW, supra note 14, Art. V(3)(c).
44 See Gambell 2, supra note 18, at 33; SMALL, supra note 43, at 177.
45 See Suhre, supra note 11, at 312; Carlane, supra note 8, at 9.
46 See Suhre, supra note 11, at 313; Ívarsson, supra note 33, at 17.
47 See STOETT, supra note 12, at 79; Richard Black, Japan’s Whaling Fleet Sets Sail, BBC NEWS
48 STOETT, supra note 12, at 79 (quoting Norway’s representative to the IWC at the 1992 annual
meeting).
condemned by the IWC for its actions,\footnote{See Suhre, supra note 11, at 317.} and has also faced threats of economic sanctions and boycotts.\footnote{See Trond Bjørndal, Jon M. Conrad & Anders Toft, On the Resumption of the Norwegian Minke Whale Hunt, in WHALING IN THE NORTH ATLANTIC: ECONOMIC AND POLITICAL PERSPECTIVES, supra note 1, at 33. See Part III.B for more details on the attempts to economically punish Norway for engaging in whaling.}

Even though Japan withdrew its objection to the moratorium, it has continued to whale under the scientific research provision of the ICRW.\footnote{See Carlane, supra note 8, at 19; Schiffman, supra note 17, at 371.} Under the ICRW, any member country “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 . . . and . . . conditions as the Contracting Government thinks fit.”\footnote{See ICRW, supra note 14, at Art. VIII(1).} This right to grant special permits is unaffected by the Schedule or any resolutions or decisions passed by the IWC.\footnote{See Sets Sail, supra note 47; Suhre, supra note 11, at 317; Schiffman, supra note 17, at 371–72; Chair’s Report 57th, supra note 40, at 4, 12.} Over time, the size of the take granted by Japan to its nationals for scientific research has steadily grown; and, under the latest research program, JARPA-II, the take will approach levels close to that of the annual commercial quotas that were in place before the moratorium took effect.\footnote{See Jeffrey D. Lindemann, The Dilemma of the International Whaling Commission: The Loophole Provisions of the Commission vs. The World Conscience, 7 J. INT’L L. & PRAC. 491, 492–93 (1998); Sets Sail, supra note 47; Matera, supra note 19, at 33.} Japan’s scientific research programs have been criticized by international organizations, as well as by the IWC itself.\footnote{See Yasuo Lino & Dan Goodman, Japan’s Position in the International Whaling Commission, in THE FUTURE OF CETACEANS IN A CHANGING WORLD, supra note 8, at 3, 19; ICRW, supra note 14, Art. VIII(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.”).}

Japan’s lethal whale research has also been attacked as being nothing more than commercial whaling in disguise given that after the scientific research is complete, the whale meat collected from the hunt is sold as food.\footnote{See Whaling Fleets Return with Largest Catch Since Ban, Greenpeace International, Sept. 25, 2002, http://www.greenpeace.org/international/news/whaling-fleets-return-with-big (last visited Mar. 14, 2006).} Japan has responded to these attacks by pointing out that the ICRW authorizes, and actually requires, that the whales be processed after the research is completed, and that any proceeds from this may be used to support the research program.\footnote{See id. (stating that the 2005 North Pacific Summer hunt focused mainly on the Bryde whale, “the species with the highest commercial value.”).} The fact that the whale meat garnered from the scientific kills sold on the Japanese domestic market generates several billion yen each year, however, supports the argument that this form of whaling has highly commercial characteristics.\footnote{See id. (stating that the 2005 North Pacific Summer hunt focused mainly on the Bryde whale, “the species with the highest commercial value.”).} This argument is further supported by the fact that the scientific research has been known to focus on whales that have a high commercial value.\footnote{See id. (stating that the 2005 North Pacific Summer hunt focused mainly on the Bryde whale, “the species with the highest commercial value.”).}
Japan is not the only IWC member to currently engage in scientific whaling. Although Iceland left the IWC in protest in 1992, it returned to the IWC in 2002. \(^6\) When Iceland returned to the IWC, it did so with a reservation to the moratorium, and thus, like Norway, it is not currently bound by the zero-catch limitation. \(^5\) This has raised fears that Iceland’s behavior will encourage other states to leave the IWC and then rejoin with new reservations in order to get around IWC decisions that they no longer want to be bound by. \(^3\) This could severely weaken the IWC and lead to a loss of credibility. \(^2\) Unlike Norway, however, Iceland has not yet resumed commercial whaling; instead, Iceland has chosen to engage in research whaling. \(^5\) This commencement of scientific whaling has led Iceland to be criticized by the international community. \(^5\)

The IWC’s criticism directed at Norway, Japan, and Iceland for their actions has often taken the form of financial coercion by the United States in an effort to further the IWC’s majority policy. \(^6\) Economic threats have frequently been made, despite the fact that none of these states are acting illegally under the articles set forth in the ICRW. \(^2\) These economic threats fall under two domestic laws enacted by the United States Congress in the 1970s. \(^5\) The first is the Pelly Amendment to the Fisherman’s Protective Act, under which a country can be certified by the Secretary of Commerce if the country’s actions diminish the effectiveness of an international fishery management program. \(^5\) After a country has been certified, the President of the United States has the choice of imposing trade sanctions that would prohibit the importation of fish from the offending country. \(^5\) The second legal economic threat is the Packwood-Magnuson Amendment to the Fishery Conservation and Management Act, which leaves no discretion to the President. \(^5\) Under the Packwood-Magnuson Amendment, once a country is certified by the Secretary of Commerce for diminishing the effectiveness of the IWC, the Secretary of State must automatically

---

\(^6\) See Henderson, supra note 27, at 665, 667–68; Schiffman, supra note 17, at 373.
\(^3\) See We Want, supra note 3.
\(^2\) See We Want, supra note 3.
\(^5\) See Lizette Alvarez, Drop that Harpoon! Whale Hostilities Revisited, N.Y. TIMES, September 25, 2003, at A4; Friedman, supra note 3, at 310.
\(^5\) See Friedman, supra note 3, at 311.
\(^2\) See Caron, supra note 17, at 157–158. The actions of the United States are particularly ironic when directed at Norway because it was the United States delegate at the drafting of the ICRW who made the original proposal for the objection “safety valve” that Norway is currently using. See SMALL, supra note 43, at 177. In addition, the United States was responsible for encouraging Japan to engage in large-scale commercial whaling after World War II. See STOETT, supra note 12, at 62; ELLIS, supra note 27, at 405.
\(^6\) See, e.g., Steve Connor, US Threatens Trade War as Iceland Resumes Whaling, INDEP. (London), Aug. 20, 2003, at 9 (quoting Mr. Boucher, a spokesman for the United States State Department, as saying, “Although the programme is technically legal under the terms of the Whaling Convention . . . [t]he taking of whales by Iceland will trigger a review by the US Department of Commerce of Iceland’s lethal scientific whaling process programme for possible certification under the Pelly Amendment.”).
\(^5\) See Lindemann, supra note 56, at 498.
\(^5\) See Lindemann, supra note 56, at 498; Caron, supra note 17, at 158; Suhre, supra note 11, at 317; Gambell 2, supra note 18, at 33–34.
\(^5\) See Lindemann, supra note 56, at 498; Caron supra note 17, at 158; Suhre, supra note 11, at 317.
\(^5\) See Lindemann, supra note 56, at 498; Suhre, supra note 11, at 318.
reduce that country’s allocation of fish in U.S. waters by not less than fifty percent in the first year, and then completely suspend the allocation after that if the country does not alter its actions.72

Although these economic measures were effective in the 1980s,73 critics argue that since these economic sanctions have never actually been applied it is unlikely that any whaling nation will continue to be deterred in the future by such empty threats.74 Several members of the IWC, however, have encouraged powerful states to once again resort to ministerial measures to resolve whaling issues and to link whaling to other important matters, such as “Japan’s bid for a permanent seat on the United Nations Security Council.”75 This tying of other international topics to the whaling dispute has not been greeted favorably by whaling nations, and if carried out would probably lead to more conflict between pro-whaling and anti-whaling states, and increase state sovereignty concerns.76

As tension has grown between the pro-whaling and anti-whaling nations in the IWC, Japan has been accused of bribing “poor” countries to join the IWC for the sole purpose of voting against the moratorium.77 Former government officials from the Solomon Islands, Dominica, and Grenada have all come forward and admitted that in exchange for financial aid for their fishing industries, their countries agreed to vote for the resumption of commercial whaling.78 In addition, Japan also paid for the membership dues, airfare, and expenses of these delegates at the annual IWC meetings.79 Japan has also been connected with using its economic power to induce an “understanding” in regards to whaling issues with several other members of the IWC.80 Although this tactic was originally used by anti-whaling groups to change the face of the IWC,81 this “buying of votes” has led to harsh criticism of Japanese foreign policy and even accusations that this activity violates the spirit of international law.82

---

72 See Lindemann, supra note 56, at 498; Caron, supra note 17, at 158; Suhre, supra note 11, at 318; Gambell 2, supra note 18, at 34.
73 See Caron, supra note 17, at 158. Iceland decided to support the moratorium and give up research whaling before dropping out of the IWC in part because of fear of economic repercussions, including certification under the Pelly Amendment. See ÍVARSSON, supra note 33, at 17–19, 28; ELLIS, supra note 27, at 476. Japan agreed to withdraw its objection to the moratorium to avoid being sanctioned under the Packwood-Magnuson Amendment. See id. at 488–89.
74 See Suhre, supra note 11, at 318–319; Carlane, supra note 8, at 39–40.
75 Reform, supra note 40. See also Chair’s Report 57th, supra note 40, at 10 (stating that the Commission “AGREES to consider, if appropriate, ministerial, diplomatic, or other high-level possibilities to resolve these issues among the Contracting Governments to the Convention.”).
77 See Kirby, supra note 4; We Want, supra note 3.
79 See Peters, supra note 78; People’s Press, supra note 78.
80 See DeSombre, supra note 25, at 187–88.
81 See DeSombre, supra note 25, at 187.
While most of the criticism regarding whaling has been directed at the
governments of whaling nations, some of the most intense condemnation
has often been leveled at smaller, non-governmental targets. For example, a
Japanese restaurant chain that recently launched the whale burger was
besieged with irate letters and e-mails protesting the new dish. The most
dramatic response to whaling, however, remains the 1986 attack in Iceland
made by the environmental organization Sea Shepherd, which resulted in
the sinking of two whaling ships moored in Reykjavík Harbor and the
destruction of expensive technical equipment in the whale processing
station at Hvalfjörður. While these verbal and physical attacks have
generally been made outside of the political arena, delegates at the IWC
have also been harassed for their views regarding whaling. This harassment
has ranged from “accusations of murder” to the more drastic approach of
throwing “blood-colored liquid” at certain delegates. As one might
expect, this form of protest does not encourage cooperation or
understanding.

In response to anti-whaling sentiment, heated accusations, and the
continuation of the moratorium, Canada and several pro-whaling nations
have accused the IWC of going too far. Despite the fact that Canada had
actually banned commercial whaling in 1972, it left the IWC in 1982
because “Canadian officials saw the moratorium as an excessively intrusive
step.” This view is shared by all of the pro-whaling states, and more
extreme allegations of racism have also been leveled at the majority
members of the IWC. Some pro-whaling supporters have even gone so far
as to say that the antagonistic anti-whaling stance against Japanese whaling
is founded on “deep-seated, often subconscious prejudices,” based on
Japan’s participation in historic wars, “ruthless export policies beginning in
the 1960s . . . and the fact that the Japanese are not white.” Certainly, the
general behavior of the anti-whaling states has been considered by the pro-
whaling minority, and some sympathetic anti-whaling IWC members, to be
disrespectful of state sovereignty and a form of cultural imperialism. As
might be expected, this has altered the debate on whaling from one based
on economics and science, to one based on “the right to choose, or at least
not to be dominated."

---

83 See Eric Johnston, Whale Meat Again, GUARDIAN WKLY. (U.K.), available at
http://www.guardian.co.uk/guardianweekly/story/0,,1532601,00.html.
84 See ÍVARSSON, supra note 33, at 34.
85 Friedheim, supra note 9, at 3.
86 See Friedheim, supra note 9, at 3.
87 STOETT, supra note 12, at 68.
88 See Robert L. Friedheim, Negotiating in the IWC Environment, in TOWARD A SUSTAINABLE WHALING
REGIME, supra note 9, at 200, 210–211 [hereinafter Friedheim 2].
89 See ÍVARSSON, supra note 33, at 217; Misaki, supra note 5, at 22 (quoting Mr. Higgins, then the Irish
Minister of Culture and Tourism, at the 47th annual IWC meeting, “I believe it would be wrong and in
the nature of cultural imperialism for Ireland to attempt to impose our cultural values on those nations
whose populations have depended on the whale for generations.”); Nils D. Christoffersen, Whaling,
Cultural Diversity and Sustainable Communities, in 11 ESSAYS ON WHALES AND MAN, supra note 5, at
42, 45.
90 Stone, supra note 24, at 280.
One action taken by several whaling nations in response to the “inappropriate whale protectionist tendencies of the IWC,” and a growing “dissatisfaction with the IWC’s zero-catch quota,” was the formation of the North Atlantic Marine Mammal Commission (“NAMMCO”). In 1992, Iceland, Norway, Greenland, and the Faroe Islands signed the Agreement on Cooperation in Research, Conservation, and Management of the Marine Mammals in the North Atlantic, which established the organization known as NAMMCO. Unlike the IWC, all the members of NAMMCO are pro-whaling and all are located in the same geographic region. Thus, NAMMCO’s focus is on sustainable use as well as conservation of marine mammal resources. The regional nature of the organization also means that “local communities are involved in conservation and management decisions which may ultimately affect their lives and livelihoods.”

While NAMMCO might be seen as a threat to the legitimacy of the IWC, it has not yet taken on the role of a whaling management organization. NAMMCO has instead chosen to focus on conducting scientific research to support the resumption of commercial whaling. There is, however, a concern that the existence of NAMMCO could encourage other nations to form similar regional whaling commissions, which might be less concerned with preserving whales for future generations and more interested in maximizing the current profitability of whaling. In fact, Japan has repeatedly stated that it is contemplating either setting up a similar organization to govern whaling in the Pacific and Antarctic Oceans, or becoming a more active participant, instead of an observer, in NAMMCO. Such a move would mean that the three most vocal pro-whaling members of the IWC would also be members of other organizations with the ability to regulate whaling. This could seriously impair the authority of the IWC as an international organization entrusted with the management of the world’s whales.

III. TO WHALE, OR NOT TO WHALE, THAT IS THE QUESTION

A. JAPAN

The Japanese people have traditionally utilized the sea as a primary source of animal protein, in part because of the inadequate grazing land

---

92 Caron, supra note 17, at 163–164. See also Carlane, supra note 8, at 10, 29.
93 See Caron, supra note 17, at 163–64; STOETT, supra note 12, at 81.
94 See Grete Hovelsrud-Broda, NAMMCO – Regional Cooperation, Sustainable Use, Sustainable Communities, in THE FUTURE OF CETACEANS IN A CHANGING WORLD, supra note 8, at 143, 145; STOETT, supra note 12, at 81.
96 Sanderson, supra note 95, at 69.
97 See Carlane, supra note 8, at 30; Schiffman, supra note 17, at 374; Caron, supra note 17, at 165.
98 See Schiffman, supra note 17, at 374.
99 See Schiffman, supra note 17, at 373–74.
100 See IVARSSON, supra note 33, at 167; Kirby, supra note 4; Carlane, supra note 8, at 33–34; Hodges, supra note 17, at 311.
available for large land animals. Therefore, it is no surprise that in Japan
whales have been thought of as “gifts from heaven,” and are deeply
woven into the cultural fabric of the country. Formal whaling in Japan has a
history that dates back several centuries to the 1500s, although
consumption of whale meat from beached whales is believed to date back
over one thousand years. Initially, whales were chased into bays, after
which the entrance to the bay was closed off with a net and the whale was
killed. Eventually, this technique was replaced in the late seventeenth
century with more formal net hunting.

This second stage of net hunting involved the entire village. The hunt
began when lookouts, either posted on shore or in lookout boats, signaled
that a whale had been located. After a whale was spotted, between ten
and twenty hunting boats, each with about twelve crewmembers, were sent
out after the whale. These boats were each under the control of a skilled
harpooner. The boats would surround the whale and the whalers would
make noise to drive the creature toward the shore and the net-boats. After
the whale was caught in the nets, the hunting boats would approach the
whale and the men would attempt to spear it with harpoons. The injured
whale would eventually be worn out, at which point a single whaler would
jump onto the back of the whale and “cut a hole in the septum of the
blowholes, through which a heavy rope was passed.” After the whale was
secured, several whalers had to swim under the whale with ropes and tie
the whale to two wooden beams, which were used as floats. Only after
this was completed would the whale be killed by sword. Once back on
shore, the whale would be flensed, stripping the skin and blubber from the
carcass, by exceedingly skilled flensers. This traditional form of whaling
persisted until the early nineteenth century, at which point Japanese whalers
were influenced by Norwegian whaling methods.

The 1930s marked the start of what is currently known as SCW. This
form of whaling makes use of small-scale boats, mounted with modern
harpoon guns, which are used to hunt minke and other small whales in
local waters. Because of the small scale and local nature of this form of

101 See Lino & Goodman, supra note 57, at 7.
102 Misaki, supra note 5, at 14.
103 See ELLIS, supra note 27, at 80; Junichi Takahashi, Arne Kalland, Brian Moeran & Theodore C.
Bestor, Japanese Whaling Culture: Continuities and Diversities, 2 MAST 105, 107 (1989); ARNE
104 See ELLIS, supra note 27, at 83–84; Creason, supra note 28, at 97.
105 See ELLIS, supra note 27, at 84.
106 See ELLIS, supra note 27, at 84.; Takahashi et al., supra note 103, at 108–09.
107 See Takahashi et al., supra note 103, at 108–09.
108 See Takahashi et al., supra note 103, at 108–09.
109 See Takahashi et al., supra note 103, at 109; ELLIS, supra note 27, at 85.
110 See ELLIS, supra note 27, at 85–86; Takahashi et al., supra note 103, at 109.
111 ELLIS, supra note 27, at 86. See also Takahashi et al., supra note 103, at 109.
112 See Takahashi et al., supra note 103, at 109.
113 See Takahashi et al., supra note 103, at 109.
114 See Takahashi et al., supra note 103, at 110.
115 See Takahashi et al., supra note 103, at 110. See Part III.B for details on Norwegian whaling
methods.
116 See Takahashi et al., supra note 103, at 111, 119; KALLAND & MOERAN, supra note 103, at 104.
117 See Takahashi et al., supra note 103, at 111, 119; KALLAND & MOERAN, supra note 103, at 104.
whaling, the hunt seldom lasts more than a day. The crews of these boats are very small, consisting of only a handful of men who are personally connected to and recruited by the owner of the boat, often the gunner, or his family. The crew is recognized as a distinct social group and the owner pays the crew a partial wage all year long, even after the whaling season ends “in order to maintain crew social solidarity throughout the year.”

Because of the small scale of the hunt, the land processing stations are also limited in size. A small group of specialized flensers are employed full time, but the bulk of the workforce is composed of local women and old people who are employed part time.

Despite the modernization of the hunt, the processing of the whale has remained relatively unchanged. In Japan, unlike in most other whaling countries, the entire whale carcass is utilized. The primary purpose of whaling in Japan has always been the meat, especially after World War II when whale meat saved the Japanese people from starvation. In 1947, forty-seven percent of the total animal protein consumed in Japan came from whale meat. Even today, the meat, blubber, skin, and flukes are used for food. Utilization of the carcass, however, goes beyond simply harvesting for food. The bones and intestines are used for several purposes, including fertilizer, and other parts of the whale, including the baleen, are used to produce culturally important handicrafts, such as the puppets for bunraku, a cherished Japanese theatrical art form.

Whaling and whale products are deeply woven into the coastal whaling communities of Japan. Early Japanese whalers ritualized the hunt for whales, and throughout the whaling season various ceremonies and dances were performed to celebrate different aspects of the hunt. In modern times, two categories of ceremonies are still practiced in whaling communities. The first is comprised of religious obligations to the whales;

---

118 See Takahashi et al., supra note 103, at 119; KALLAND & MOERAN, supra note 103, at 105.
119 See Takahashi et al., supra note 103, at 119–120; KALLAND & MOERAN, supra note 103, at 105.
121 Milton M.R. Freeman, Culture-Based Conflict in the International Whaling Commission: The Case of Japanese Small-Type Whaling, in THE FUTURE OF CETACEANS IN A CHANGING WORLD, supra note 8, at 33, 43.
122 See Takahashi et al., supra note 103, at 122.
123 See Takahashi et al., supra note 103, at 122.
124 See Takahashi et al., supra note 103, at 123; KALLAND & MOERAN, supra note 103, at 110.
125 See Takahashi et al., supra note 103, at 123; ELLIS, supra note 27, at 87; KALLAND & MOERAN, supra note 103, at 110; Misaki, supra note 5, at 14.
126 See ELLIS, supra note 27, at 87, 405; KALLAND & MOERAN, supra note 103, at 194; Misaki, supra note 5, at 14.
127 See KALLAND & MOERAN, supra note 103, at 90. The majority of this meat came from massive pelagic whaling operations conducted around the world. See ELLIS, supra note 27, at 405–406; Hodges, supra note 17, at 310–311.
128 See Takahashi et al., supra note 103, at 123; KALLAND & MOERAN, supra note 103, at 110.
129 See Takahashi et al., supra note 103, at 123–24, 129; KALLAND & MOERAN, supra note 103, at 110; Misaki, supra note 5, at 22.
130 See ELLIS, supra note 27, at 87.
these are called kujira kuyo.131 An example is the Buddhist rite of kuyo, a memorial service “designed to appease the soul[s] of the dead whales and to permit them to rest in peace.”132 The second category is that of kujira matsuri, or celebrations of whaling.133 Many of these celebrations involve local Shinto shrines where whaling crews pray for good catches and the female family members of the whalers make daily visits during the whaling season.134 In addition, on board each boat is a shrine at which Shinto priests perform purification ceremonies.135 Other less religious celebrations focus on the dramatic staging of whaling techniques.136

Whale meat is also part of regular community gatherings, such as weddings and funerals, and various important annual celebrations, such as the New Year.137 Furthermore, whale meat is exchanged in a complex gift giving tradition that unifies not only the hunters and flensers, but also the entire community.138 This gift giving is further enhanced by the fact that many of the whaling participants are paid with whale meat in addition to money.139

At the start of the moratorium, Japan objected to the zero-catch limitation, thus, it was not legally bound to follow the moratorium.140 Japan, however, later withdrew its objection and, due to economic pressure exerted by the United States under the Packwood-Magnuson Amendment, agreed to stop its commercial whaling by 1988.141 In exchange for the withdrawal of the objection, Japan was allocated fishing quotas in the United States’ two hundred-mile Exclusive Economic Zone (“EEZ”).142 Since Japan ceased commercial whaling, it has repeatedly requested from the IWC an exemption to the moratorium that would allow for an interim quota for its local coastal community whalers based on the cultural and economic importance of whaling in these communities.143 The IWC has yet to grant any such interim quota.144

In spite of Japan’s inability to legally engage in commercial whaling, Japan has participated in various scientific research whaling programs since

131 See Freeman, supra note 121, at 48.
132 Takahashi et al., supra note 103, at 126; “[D]eath registers of the names and details of dead whales are kept” at Buddhist temples in various whaling communities. Creason, supra note 28, at 100.
133 See Freeman, supra note 121, at 48.
134 See Takahashi et al., supra note 103, at 126; Creason, supra note 28, at 100.
135 See Creason, supra note 28, at 100.
136 See Takahashi et al., supra note 103, at 126.
137 See KALLAND & MOERAN, supra note 103, at 148.
138 See KALLAND & MOERAN, supra note 103, at 141–45; Freeman, supra note 121, at 46; Takahashi et al., supra note 103, at 129; Creason, supra note 28, at 99–100.
139 See Freeman, supra note 121, at 45; Takahashi et al., supra note 103, at 129.
140 See Friedheim, supra note 9, at 11; IVARSSON, supra note 33, at 17.
141 See ELLIS, supra note 27, at 488–89.
142 See Friedheim, supra note 9, at 11. (stating that the United States later eliminated all foreign fishing in the EEZ).
143 See Lino & Goodman, supra note 57, at 29; Ray Gambell, Recent Developments in the IWC Aboriginal Subsistence Whaling Category, in WHALING IN THE NORTH ATLANTIC: ECONOMIC AND POLITICAL PERSPECTIVES, supra note 1, at 123, 129–130 [hereinafter Gambell 3]; STOETT, supra note 12, at 76, 121–22; Hodges, supra note 17, at 311. See, e.g., Chair’s Report 57th, supra note 40, at 4.
1987. In 2005, Japan announced its newest scientific research program, known as JARPA II, which will involve the taking of nearly one thousand whales. This is a drastic increase in the number of whales taken in previous research programs and has led to widespread international disapproval, both within the IWC and outside of the commission. Despite the negative publicity received from this announcement, Japan has not backed down from its stance on the research program.

Japan, perhaps the most vocal pro-whaling nation in the world, has received the most criticism from anti-whaling advocates. Nevertheless, it is extremely doubtful that the Japanese people will stop hunting whales anytime in the near future. Despite the fact that national Japanese consumption of whale meat has been on the decline since before the moratorium, a domestic market for whale meat still exists. However, although whale meat is found in sushi and sashimi restaurants all over Japan, and is starting to make its way into burgers, whale meat is more of a delicacy than a common food staple, and is not commonly eaten in most households. Yet, throughout Japan, whale meat “is associated with many social events.” Thus, it seems very unlikely that the Japanese people will allow foreign nations to eliminate such a culturally relevant food source from their diet. Indeed, Japan has the strongest claim of all the whaling nations to a cultural right to whale. Not only is whaling woven into the religious and community foundations of Japanese coastal whaling communities, whale meat itself is a part of the Japanese culture as a whole.

B. NORWAY

The sea has always been a major source of food for Norwegians. Accordingly, the Norwegians have a whaling history that dates back over a thousand years. It has even been suggested that Norwegian whaling dates back over ten thousand years, and there is evidence of whaling in

---

145 See Carlane, supra note 8, at 19; Hodges, supra note 17, at 311.
146 See Chair’s Report 57th, supra note 40, at 4; Sets Sail, supra note 47.
147 See Sets Sail, supra note 47.
149 See Creason, supra note 28, at 117–18.
151 See Creason, supra note 28, at 118.
152 See ELLIS, supra note 27, at 255.
northern Norway dating back to the Stone Age.\textsuperscript{156} Norse law, medieval literature, and the famous thirteenth century text \textit{Kongespleilet}, all record the importance of whaling in Norwegian communities.\textsuperscript{157} The earliest whaling in Norway developed around the fjords. When a whale was spotted entering a fjord, a net would be drawn across the entrance and the whale would be trapped inside.\textsuperscript{158} The local men would then use small boats to approach the whale and kill it with lances, arrows, and eventually rifles.\textsuperscript{159}

Norway would later come to dominate the modern whaling industry; Norwegian whalers being responsible for many of the now infamous whaling technological advancements, including the exploding harpoon.\textsuperscript{160} The exploding harpoon, developed in the mid-1800s by Svend Foyn, revolutionized commercial whaling by making whaling both easier and more efficient.\textsuperscript{161} Norway was also one of the first nations to be involved in pelagic whaling, which is the form of commercial whaling chiefly responsible for the quick decline of whales during the nineteenth and twentieth centuries.\textsuperscript{162} Despite this large-scale whaling, Norway has always maintained a SCW industry and is currently engaging in a highly limited form of SCW, where a majority of the meat harvested from the hunt is consumed locally in small fishing communities.\textsuperscript{163}

Although whaling was briefly stopped in Norway in 1987,\textsuperscript{164} commercial whaling was resumed in 1993.\textsuperscript{165} Even though Norway is a member of the IWC, this return to commercial whaling was legal because Norway had lodged, and has consistently maintained, an objection to the moratorium, and is therefore not bound by the zero-catch limitation.\textsuperscript{166} Current Norwegian whaling is focused around minke whales which, unlike other kinds of whales, are not endangered and can support limited harvesting.\textsuperscript{167} While modern minke whaling dates back to the 1920s, this form of hunting is merely an expansion of the small cetacean and minke whale hunting which has been historically practiced in Norway.\textsuperscript{168} The purpose of these hunts is for meat; there is no Norwegian market for the

\begin{footnotesize}
\begin{enumerate}[\textsuperscript{156}]
\item See Jóhann Sigurjónsson, \textit{Whale Resources in the North Atlantic and the Concept of Sustainability, in WHALING IN THE NORTH ATLANTIC: ECONOMIC AND POLITICAL PERSPECTIVES, supra note 1, at 17, 19.}
\item See Arne Kalland, \textit{Marine Mammals in the Culture of Norwegian Coastal Communities, in DEVELOPMENTS IN MARINE BIOLOGY 4: WHALES, SEALS, FISH AND MAN 689, 690 (Arnoldus Schytte Blix, Lars Walløe & Øyvind Utlang eds., 1995); Hodges, supra note 17, at 313.}
\item See ELLIS, supra note 27, at 255; Kalland, supra note 157, at 691.
\item See ELLIS, supra note 27, at 255; Kalland, supra note 157, at 691.
\item See ELLIS, supra note 27, at 255; Kalland, supra note 157, at 691.
\item See ELLIS, supra note 27, at 258.
\item See Suhre, supra note 11, at 308, 327.
\item See infra Part III.B.
\item See ÍVARSSON, supra note 33, at 192; Carlane, supra note 8, at 37.
\item See STOETT, supra note 12, at 79; Hodges, supra note 17, at 314.
\item See Heidi Sørensen, \textit{The Environmental Movement and Minke Whaling, in 11 ESSAYS ON WHALES AND MAN, supra note 5, at 27.}
\item See Gambell, supra note 11, at 77; Hodges, supra note 17, at 313; Gambell 3, supra note 143, at 129.
\end{enumerate}
\end{footnotesize}
other parts of the carcass. Furthermore, while the consumption of whale meat is highest in the coastal areas where the hunting takes place, whale meat is a “traditional part of the Norwegian diet.”

The hunt is organized seasonally, with whales being hunted in the summer, between the cod and herring fishing seasons. The same boat and crew is generally used for all three fishing seasons. The boats are fairly small in size, with crews composed of about six local men. The Norwegian whaling industry is built around “household units of ownership and crew, which gives a strong support to the traditions and way of life of these remote northern communities,” in which the whaling industry is based. Most of the individual whaling boats are family owned and operated, often by brothers. In addition, the crew is often composed of relatives or community members with close kinship ties. These familial connections promote a strong cultural whaling environment. While men primarily dominate the hunting, a majority of the individuals employed in the whale processing are women from the local community. Thus, both aspects of the whaling industry, the hunting and the processing, involve many members of the community.

Initially, Norway’s return to commercial whaling sparked much negative international attention, including threats of economic sanctions and boycotts; but in time this has faded and the international community has begun to, if not accept, at least tolerate Norwegian SCW. One of the reasons for this is that the Norwegian government has always been quick to self-police. Norway was “the first country in the world to adopt restrictive whaling regulations through legislative action,” and it continues to regulate its whaling industry. Norwegians believe that whales are a natural resource that can be utilized through sustainable harvesting. Thus, the nationally set whaling quotas are based on the scientific analysis of local whale stocks. In addition, Norway is less vulnerable to boycotts than other pro-whaling countries because its primary exports are raw materials and semi-finished products, including oil and fish, which, unlike finished

---


170 See Georg Blichfeldt, An Insight into the Ethical Arguments, in 11 ESSAYS ON WHALES AND MAN, supra note 5, at 12, 13.

171 Suhre, supra note 11, at 314.

172 See MØNNESLAND ET AL., supra note 164, at 5; Jusnes, supra note 154.


174 See Jusnes, supra note 154; Shukman, supra note 169.

175 Gambell 4, supra note 173, at 704.

176 See Suhre, supra note 11, at 327; Matera, supra note 19, at 29.

177 See Matera supra note 19, at 29; Kalland, supra note 157, at 694.

178 See MØNNESLAND ET AL., supra note 164, at 57.

179 See Bjørndal et al., supra note 50, at 36–38. Although Norway was certified under the Pelly Amendment in 1993, economic sanctions were never implemented. See MØNNESLAND ET AL., supra note 164, at 38.

180 SMALL, supra note 43, at 143.

181 See Jusnes, supra note 154; Carlane, supra note 8, at 36.

182 See Jusnes, supra note 154; Hodges, supra note 17, at 313–14.
products, are harder to form a successful boycott against. In the future, however, the Norwegian whaling policy may become more controversial and attract negative attention as national whaling quotas are increased. Norway publicly announced in 2004 that they plan to increase their take of approximately eight hundred whales to eighteen hundred whales by 2008. This would drastically increase the Norwegian hunt and might lead the way for other countries to increase their own scientific, and eventually commercial, whaling quotas.

Whaling in Norway, except for a brief hiatus in the late 1980s and early 1990s, has been carried on for thousands of years and throughout the country’s modern existence. While whaling techniques and international opinions regarding whaling have changed over time, what has remained constant is the involvement of the community and the family within the SCW industry. Whaling is a valid part of the Norwegian culture, and while a national market for whale meat exists, it is doubtful that the Norwegian people will allow the international community to decide whether they have a right to whale.

C. ICELAND

Iceland is a small island country whose main source of food and income is supplied by the surrounding seas. This may be the primary reason that whaling is so deeply woven into the Icelandic culture and has become a key rallying point for issues regarding state sovereignty. Icelanders did not play a part “in the early history of whaling on the open seas,” but there is evidence in medieval manuscripts that whale meat was consumed by the Icelandic people as far back as the thirteenth century. Similar to early Norwegian and Japanese whaling, the traditional forms of hunting whales in Iceland included harpooning, spearing, and forced beaching. Despite the small scale of Icelandic whaling in comparison to other whaling nations, whales are very important to the nation’s culture. Whale meat “often filled the desperate need for food when times were hard,” and the Icelandic word hvalreki (“stranded whale”) has come to mean “a godsend.”

Modern whaling began in Iceland in 1883 when Norwegian whalers set up the first whaling station in Iceland. Minke whaling was not practiced until the early 1900s, at which point these whales were hunted for meat. From 1915 until 1935, commercial whaling was banned in Iceland.

184 See Bjørndal, supra note 50, at 36–37.
185 See Kirby, supra note 4; Shukman, supra note 169; Jusnes, supra note 154.
186 See Ásgrímsson, supra note 5, at 12 (“Icelanders depend for their livelihood on the sea and its resources. Marine products account for almost 80% of Iceland’s total export earnings.”).
187 See JAVRÍS, supra note 33, at 217 (“Iceland has tended to view the whaling dispute as an attempt by other states to show disrespect to Iceland’s sovereignty . . . .”).
188 See Stöft, supra note 12, at 82.
189 See Sigurjónsson, supra note 156, at 21.
190 See Sigurjónsson, supra note 156, at 21.
191 See Ellis, supra note 27, at 471.
192 See Ellis, supra note 27, at 471–72.
Subsequently, from 1949 to 1985, Iceland hunted whales in accordance with IWC quotas. Similar to Norwegian whaling, Icelandic whaling operations and crews were typically small in size and based around kinship connections. The hunts were small in scale; small boats were used and the hunt took place in local coastal waters. In addition, reminiscent of the Japanese use of whale meat in certain celebrations, “in some parts of Iceland whale meat is used to celebrate the arrival of spring.”

Despite a preference to continue hunting whales, Iceland originally agreed to the IWC moratorium on whaling because the Icelandic government and people feared that to do otherwise would endanger their trade relationship with the United States, which was Iceland’s primary export market at the time. This meant that Iceland, unlike Norway, which never withdrew its objection to the moratorium, was legally bound by the moratorium to refrain from commercial whaling. After the moratorium was passed, however, Iceland was the first country to engage in scientific whaling. This did not last long because Iceland was quickly informed that if it were to continue scientific whaling, it would be certified under the Pelly Amendment and would most likely face other economic sanctions, including massive boycotts. In 1989, Icelandic research whaling came to a halt. In 1992, Iceland left the IWC due to frustration with the organization and in protest of the moratorium. According to the Minister for Foreign Affairs at the time, “Iceland’s withdrawal was confirmation of the fact that Iceland no longer intended to be made a fool of in sham institutions.”

After withdrawing from the IWC, Iceland threw itself into forming a new regional whaling organization, NAMMCO. Despite the formation of NAMMCO, Iceland did not return to commercial or research whaling. In 2001, Iceland decided it was time to rejoin the IWC on the condition that the IWC accept its new reservation to the moratorium. Iceland’s reservation was rejected and, in effect, Iceland was not allowed to rejoin the IWC. The same thing occurred again at the 2002 annual meeting of the IWC. That fall, however, a special IWC meeting was called. This time, Iceland presented a newly amended reservation and was re-admitted.
to the IWC as a full member.\textsuperscript{210} Iceland’s reservation stated that despite its objection to the moratorium, “the Government of Iceland will not authorise whaling for commercial purposes . . . before 2006 and, thereafter, will not authorise such whaling while progress is being made in negotiations within the IWC on the RMS.”\textsuperscript{211}

Throughout, Iceland has consistently maintained its position “that safe harvesting of the whale stocks under active supervision and based on scientific foundation offers an economical and sustainable way of utilizing the resources of the ocean.”\textsuperscript{212} In accordance with this belief, after a fourteen-year hiatus from whaling, Iceland began a scientific research whaling program in 2003,\textsuperscript{213} but has not yet returned to commercial whaling. This return to scientific whaling has been made in the face of international protest similar to the censure previously faced by Iceland when it began research whaling shortly after the passage of the moratorium.\textsuperscript{214}

Although whaling may be an important sovereignty issue for Icelanders, the cultural claims for whaling in Iceland may not be as strong as those of Japan and Norway. One of the key differences between Iceland and other whaling nations is that, although whale meat is “a source of traditional Icelandic cuisine,”\textsuperscript{215} “the domestic market is for all intents and purposes insignificant.”\textsuperscript{216} With a limited national market for whale meat, questions arise as to whether there is actually a cultural demand for the meat, or if the demand is based on an economic desire to sell whale products internationally.\textsuperscript{217} Yet, like the other whaling states, Iceland does have a lengthy historical and cultural background in whaling,\textsuperscript{218} and it is unlikely that Icelanders will give up their right to whale without a fight.

IV. ABORIGINAL SUBSISTENCE WHALING VERSUS SMALL COASTAL WHALING

A. AN OVERVIEW OF THE ABORIGINAL SUBSISTENCE WHALING EXCEPTION

The question of ASW exceptions first arose in the IWC in the mid-1900s as particular species of whales in danger of being hunted to

\textsuperscript{210} See Detsky, supra note 203, at 41; Henderson, supra note 27, at 667–68; Chair’s Report 5th, supra note 61, at 2, 5–6; We Want, supra note 3.
\textsuperscript{211} Chair’s Report 5th, supra note 61, at 2.
\textsuperscript{212} Asgrímsson, supra note 5, at 13.
\textsuperscript{213} See Alvarez, supra note 64.
\textsuperscript{214} See Friedman, supra note 3, at 311; Connor, supra note 67.
\textsuperscript{215} Friedman, supra note 3, at 309. See also Alvarez, supra note 64. One example of a traditional Icelandic whale meat dish is blubber soaked in sour milk for several months. See Henderson, supra note 27, at 676.
\textsuperscript{216} Thórdur Fridjónsson, Whaling and the Icelandic Economy, in WHALING IN THE NORTH ATLANTIC: ECONOMIC AND POLITICAL PERSPECTIVES, supra note 1, at 39.
\textsuperscript{217} See Ivarsson, supra note 33, at 25; Fridjónsson, supra note 216, at 40.
\textsuperscript{218} See Henderson, supra note 27, at 676.
extinction were granted protection from commercial whaling. The members of the IWC agreed that these prohibitions on hunting certain types of whales would not apply to traditional hunts performed by aboriginal peoples. This exception is based on the belief that aboriginal communities should be exempt from some of the restrictions placed upon commercial whalers because these communities hunt whales for subsistence and cultural purposes, and not for profit.

The original wording of this exception was very vague, simply stating that catch limits should be set to satisfy aboriginal subsistence demands. It was not until 1981 that this description was elaborated upon by the Ad Hoc Technical Committee Working Group on Development of Management Principles and Guidelines for Subsistence Catches of Whales by Indigenous (Aboriginal) Peoples. These new definitions created an emphasis on the cultural, as well as nutritional, needs of aboriginal, indigenous, and native communities to hunt whales: “Aboriginal subsistence whaling means whaling for the 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.”

The definition of local consumption was also expanded to include all customary uses of whale products, whether for nutritional or cultural needs, and to allow for the commercial trade of by-products from the hunt. No set criteria, however, have been formulated to determine when a group of people is considered “aboriginal,” which has led to the inconsistent application of the ASW exemption.

Originally, to fall within the ASW exception a community had to prove that they needed to hunt whales for nutritional purposes; however, over time the emphasis on nutritional demands has been overshadowed by cultural claims. An example of this can be found in the ASW exemption granted to the Makah Nation (“the Makah”). Although the Makah had historically hunted whales, and whaling had been an important part of their culture, at the time they applied for their ASW quota the Makah had not hunted whales for over seventy years. Thus, the basis for the hunt was not really nutritional since the Makah people had not eaten whale meat for

220 See Gillespie, supra note 219, at 80–81.
221 See Hodges, supra note 17, at 303; Henderson, supra note 27, at 669.
222 See Hodges, supra note 17, at 304.
223 See Hodges, supra note 17, at 304; Gambell 3, supra note 143, at 124.
225 See Hodges, supra note 17, at 304; Lindemann, supra note 56, at 494.
226 See Gillespie, supra note 219, at 95–96; Creason, supra note 28, at 86.
227 See Henderson, supra note 27, at 669; Hodges, supra note 17, at 304–05.
228 See Henderson, supra note 27, at 671–73; Lindemann, supra note 56, at 497; Suhre, supra note 11, at 325.
several decades. Instead, the basis was largely cultural. 229 Similarly, the Bequia people, of St. Vincent and the Grenadines, were granted an ASW exception based completely on cultural, rather than nutritional, needs. 230 This exception for the people of Bequia, however, has been criticized because the whaling culture of the area is based on the enlistment of local seamen by colonial whalers and “has a history of only about 100 years.” 231

Since the inception of the exemption, the type of hunting technology used by indigenous people covered by ASW exceptions has also changed. 232 While aboriginal whalers were once defined by their use of self-propelled boats and traditional hunting methods, these techniques have been discarded at the request of IWC members for more efficient and less inhumane forms of whaling. 233 This change in permitted technology has removed one of the most obvious ways to differentiate aboriginal subsistence whale hunting from other forms of whaling; however, this demonstrates the IWC’s commitment to the humane treatment of whales. 234

To qualify for an ASW exception, a group of indigenous people must petition, through their IWC member state, for an exemption from the moratorium. 235 The request must “establish a specific cultural connection with hunting a certain whale species.” 236 Only a handful of ASW petitions have been granted over the years, and only four whale stocks are currently being hunted by recognized ASW operations. 237 These whale populations are described as the Bering-Chukchi-Beaufort Seas bowheads off Alaska, the eastern North Pacific gray whales, the common minke and fin whales off Greenland, and the North Atlantic humpback whales of the Caribbean. 238

B. AN OVERVIEW OF SMALL COASTAL WHALING

The IWC currently divides whaling into three different forms: commercial, small-type, and aboriginal. 239 This differentiation between small-type whaling and aboriginal whaling recognizes that “‘there is a fairly fine distinction to be drawn between different kinds’ of small-scale whaling operations.” 240 Those operations that are considered commercial in nature, as adverse to subsistence based, are labeled as SCW and are banned under the current moratorium. 241 This distinction between commercial and

229 See Henderson, supra note 27, at 673; Suhre, supra note 11, at 325.
230 See Gillespie, supra note 219, at 115–121.
231 Gillespie, supra note 219, at 121–22.
234 See Gillespie, supra note 219, at 98–99.
235 See Creason, supra note 28, at 86; Henderson, supra note 27, at 669–70.
236 Creason, supra note 28, at 86.
237 See Hodges, supra note 17, at 304; Chair’s Report 57th, supra note 40, at 2.
238 See Hodges, supra note 17, at 304–05; Chair’s Report 57th, supra note 40, at 2.
239 See Hodges, supra note 17, at 326; Study Group, supra note 120, at Introduction.
240 See Gambell 2, supra note 18, at 41; Gillespie, supra note 219, at 84–85; Hodges, supra note 17, at 303; Henderson, supra note 27, at 670 (“Under the IWC, the key distinction between commercial whaling and subsistence whaling is that the former is conducted for profit, while the latter is conducted for survival and cultural purposes.”).
subsistence has become harder to define as it has become increasingly difficult to separate dietary need from economic subsistence in the modern world.\textsuperscript{242} The problem has also been exacerbated by the fact that all currently approved ASW grants include a commercial component.\textsuperscript{243} Additionally, ASW “has evolved in practice to such an extent that [it] is virtually indistinguishable” from SCW.\textsuperscript{244}

Small-type whaling is defined by the IWC as “catching operations using powered vessels with mounted harpoon guns hunting exclusively for minke, bottlenose, beaked, pilot or killer whales.”\textsuperscript{245} This definition, however, merely discusses the general appearance of such hunts and ignores the defining features of the communities that engage in SCW. SCW communities share many common characteristics that set them apart from other groups of people who engage in different forms of commercial whaling.\textsuperscript{246} For example, these communities are usually “small and relatively remote,” “rely on a wide range of marine resources for subsistence,” and “generally have few land-based resources available.”\textsuperscript{247}

Many SCW communities also have “society structures and traditions” similar to the populations that are currently granted ASW exceptions by the IWC.\textsuperscript{248} Whaling is typically a large part of the local identity, and whale meat generally satisfies both a nutritional need and plays an important part in “local cultural practices and beliefs.”\textsuperscript{249} In addition, SCW operations often make use of payment in-kind for those involved in the whale hunting and processing.\textsuperscript{250} While ASW communities have been able to maintain these cultural traditions by exercising their right to whale, SCW communities claim that they have faced many problems because of their reliance on the social, cultural, and consumptive aspects of the customary whaling that they are no longer able to engage in.\textsuperscript{251}

The commonalities between ASW and SCW operations can easily be seen in the case of the Greenlandic ASW exception. The methods used to hunt whales by the Greenlanders are identical to those used by some of the SCW whalers.\textsuperscript{252} The products derived from the hunt are also similarly distributed in the local community through payment in-kind and extensive

\textsuperscript{242} See Hodges, supra note 17, at 303–04.
\textsuperscript{243} See Gambell, supra note 11, at 78.
\textsuperscript{244} Hodges, supra note 17, at 327. See also Gambell, supra note 11, at 77; Gillespie, supra note 219, at 83 (stating that ASW and SCW “are not necessarily easily distinguishable.”).
\textsuperscript{245} IWC Schedule, 2005, I(1)(C).
\textsuperscript{246} See Study Group, supra note 120, at Introduction, Common Characteristics of Small-Type Whaling. See also Part III for a detailed discussion of the SCW operations of three different nations.
\textsuperscript{247} Study Group, supra note 120, at Introduction.
\textsuperscript{248} Ray Gambell, The International Whaling Commission Today, in WHALING IN THE NORTH ATLANTIC: ECONOMIC AND POLITICAL PERSPECTIVES, supra note 1, at 47, 61. See also Study Group, supra note 120, at Introduction, Common Characteristics of Small-Type Whaling.
\textsuperscript{249} Study Group, supra note 120, at Introduction. See also Part III for a detailed discussion of the cultural significance of whaling in small coastal communities in Japan, Norway, and Iceland.
\textsuperscript{250} This form of in-kind payment often leads to the non-cash distribution of whale products throughout the community. Such in-kind payments are also made in ASW communities. See Study Group, supra note 120, at Common Characteristics of Small-Type Whaling Part 3.
\textsuperscript{251} See Gambell 3, supra note 143, at 129.
\textsuperscript{252} Hodges, supra note 17, at 327; Study Group, supra note 120, at Introduction, Common Characteristics of Small-Type Whaling Part 1.
gifting networks. Additionally, whale products from these whaling operations are disseminated both in the regional and national markets.

Although the IWC has recognized that some SCW operations do resemble currently authorized ASW hunts, the commission has never granted any SCW exemptions and has stated that the ASW exception will not be expanded to cover culturally significant SCW. Critics have argued that this is a double standard; if SCW is bad, then ASW is equally bad. In support of this argument, pro-SCW individuals point out that the communities requesting SCW exemptions are looking to hunt only whales that have been scientifically shown to be able to endure sustainable harvesting, whereas ASW exemptions have been granted despite scientific advice against permitting such hunts. Thus, it appears that concern for the welfare of whales is not the primary reason behind banning SCW.

V. A NEW SOLUTION TO A GROWING PROBLEM

A. A BRIEF OVERVIEW OF TWO POSSIBLE SOLUTIONS TO THE INTERNATIONAL WHALING DILEMMA

One of the most talked about solutions for resolving the international whaling dilemma is the continued development of regional whaling organizations, such as NAMMCO. The debate over whaling would therefore be removed from the international realm and dealt with on a local scale involving states located within the same region. This approach allows the actual resource users to participate in the management of that very same resource. Furthermore, because of the small size of these regional organizations, local communities can be more involved in the decision-making process. One of the benefits of this approach is that “regional bodies, operating on the basis of consensus and shared conservation objectives, benefit from the greater degree of cultural understanding that a regional regime allows.” In addition, the formation of new and limited membership organizations helps to ensure that all the participating members share the same beliefs. In contrast to the IWC, the members of these new regional organizations would have the same basic

253 See Study Group, supra note 120, at Common Characteristics of Small-Type Whaling Part 3.
254 See STOETT, supra note 12, at 143.
255 Of particular concern is the granting of ASW exceptions that allow for the taking of bowhead and gray whales, two stocks of whales that have faced the possibility of extinction in recent years. See Gillespie, supra note 219, at 130–135; Suhre, supra note 11, at 325; Misaki, supra note 5, at 19–20.
256 This approach of turning over management of natural resources to those with a direct interest has been tested in other areas of “wildlife and nature management.” Sigurjónsson, supra note 156, at 29.
257 See also Sanderson, supra note 95, at 69.
258 See Sigurjónsson, supra note 156, at 29; Sanderson, supra note 95, at 69.
259 See Sanderson, supra note 95, at 69.
260 See Freeman, supra note 121, at 37.
261 See Freeman, supra note 121, at 37; Hovelsrud-Broda, supra note 94, at 145.
goals. This would make it easier for member states to reach an agreement and would probably promote cooperation.

The problem, however, with this solution is the very thing that makes it so efficient; members of these regional organizations will all have the same goal of continuing to commercially hunt whales. As one can see with NAMMCO, no anti-whaling states appear to be included in these existing and hypothetical organizations. This shows a marked break from the general theory “that the commons should be managed by as many states as possible.” Since whales are creatures of the commons, traveling across international borders and living largely in international waters, they belong to no one state. Yet, the actions of one state can affect the appreciation and use of whales for all other states. Thus, it seems logical that one would want as many states involved in the management of whales as possible. In addition, it has been historically shown that if the management of whaling is controlled solely by whalers, whale stocks are generally hunted beyond sustainable limits. Without the participation of anti-whaling states in the administration of whaling organizations it is likely that not only will the existence of whales be put at risk for future generations, but also that there will be an increase in ministerial measures to prevent whaling states from engaging in the hunting of whales. In short, an international forum for the discussion of whaling issues would cease to exist, but the international dispute over whaling would continue, a result that would do little but create more tension.

Another solution to the current deadlock in the IWC involves developing a tradable whale quota system. In this system, each member state in the IWC would receive a quota of whales based both on the number of whales that could be sustainably harvested and the population of each member state. As whale stocks increased, quotas would also be increased. The quotas of whales that were used for hunting, however, would increase at a slower rate than the quotas used for other purposes because the members using their quotas for hunting would not contribute to the increase in whale stock populations. Because these quotas would be tradable, anti-whaling states would “bear some of the cost of saving the whales.” Whaling states would also bear an increased cost for buying quotas from other states because under this system any additional whales that are bought and killed would be deducted from future increased

263 This would resolve the problem that anti-whaling states currently have with the ICRW, where the goals and objectives of the current members are not the same as those stated in the original charter. See Freeman, supra note 121, at 37.
264 See STOETT, supra note 12, at 81; ÍVARSSON, supra note 33, at 167; Hodges, supra note 17, at 311 (“Japan, Russia, and South Korea, [all former whaling states,] have met to discuss establishing a regional whaling organization to regulate commercial whaling in the northwestern Pacific.”).
265 STOETT, supra note 12, at 81.
266 See Part II.A.
267 See Matera, supra note 19, at 39–45.
268 See Matera, supra note 19, at 41.
269 See Matera, supra note 19, at 41.
270 Matera, supra note 19, at 42. Anti-whaling states would bear this cost by either not selling their quotas, not fully utilizing their quotas, or by buying up the quotas of other states to ensure that those allotted whales would not be hunted.
allocations in quotas. The ability to sell whale quotas might also encourage the cessation of whaling, in that if quotas are worth more than the products harvested from hunting whales, whaling nations are going to be less likely to engage in whaling.

The problem with this tradable whale quota system is that it devalues both pro-whaling and anti-whaling beliefs and would most likely lead to further unrest within the IWC. Whaling nations are unlikely to support this solution because it divides whale stocks between all members of the IWC, regardless of whether they are located in the same region as the particular stock of whales, whether they are landlocked, or whether they have any actual interest or cultural background in whales or whaling. Whale preservationists are unlikely to agree with such a proposal because it ignores the spiritual aspect of whales and treats them solely as a commodity. Instead of respecting the views of member states who regard whales as individuals and intelligent creatures, this solution reduces their status to that of international livestock. This solution also provides incentives for poor and landlocked nations to sell their quotas to the highest bidder, and not to consider the long ranging impact of their decisions. Moreover, if there is already concern about the buying of votes within the IWC, a system where the lives of whales are actually bought and sold is much more likely to cause widespread international criticism.

B. A CULTURAL SOLUTION TO THE INTERNATIONAL WHALING DISPUTE

Another solution to the impasse at the IWC would be to allow limited whaling under the SCW form of hunting, while continuing to ban large-scale commercial operations. It has been suggested that any such exception to the moratorium should be considered a subsistence allowance, similar to the ASW exemptions, and should be granted only to coastal communities “that can establish a long history of cultural and nutritional reliance on whales.” This would allow for SCW enterprises, which are similar to current ASW operations, to engage in whaling, despite the moratorium, due to a recognition of the need to preserve and respect the whaling culture within these communities. The theory behind this suggested solution is that while it may be acceptable to impose an ethical norm upon the citizens of one’s own nation, especially if that national standard is reached through democratic methods, the same cannot be said

271 See Matera, supra note 19, at 42, 44.
272 See Matera, supra note 19, at 43.
273 This distinction between intelligent animals and common cattle is one of the main issues being debated. Pro-whaling supporters often compare whales to cows, and have stated that “[w]hales that are left out to pasture in the great oceans should be carefully counted, cared for, and managed for future use as is done with cattle.” Masahiro Nishiwaki, Failure of Past Regulations and the Future of Whaling, in THE WHALING ISSUE IN U.S.-JAPAN RELATIONS, supra note 5, at 44, 53. See also Misaki, supra note 5, at 15.
274 See Hodges, supra note 17, at 327–28; Study Group, supra note 120, at Small-Type Whaling for Sustainable and Equitable Development; Caron, supra note 17, at 174.
275 Suhre, supra note 11, at 329.
276 See Hodges, supra note 17, at 327–28.
for imposing the same moral imperative on the international community without complete consent.277

Before this solution can be properly considered, it must be expanded upon; it must be fleshed out into a structured program that balances the interests of pro-whaling and anti-whaling parties and acknowledges the strongest arguments on both sides. Any solution that fails to do this will be unable to garner support from the IWC as a whole and will lead to continued tension. In some ways, this will merely be an expansion of the ASW exception to include SCW in specific circumstances. This does not mean that ASW and SCW would be collapsed together into the same category. Instead, if a coastal community was involved, or wanted to be involved, in a form of whaling that fell within the broad definition of SCW, as established by the IWC, they would be eligible to apply for an exemption from the moratorium if a specific set of criteria was met. ASW and SCW would remain separate classes of whaling, as ASW is intended to be granted solely to indigenous people for subsistence and non-economic needs, and SCW would, in contrast, apply to small-scale commercial whalers. Nevertheless, there would be a similar process for determining whether a community was eligible for an SCW exemption as there currently is for ASW grants.

The first major hurdle a group would have to overcome when applying for this new SCW exemption would be that they would have to show a cultural need for whaling and whale products.278 The first prong of this cultural prerequisite would require coastal communities, through their IWC member state representatives, to show that they have a relevant cultural background in small-type whaling; basically, that whaling, similar to modern SCW, had been historically practiced in the area and that this was woven into the cultural fabric of the region, and in some cases into the nation as a whole. Examples of this are shown in the SCW operations of Japan, Norway, and Iceland.279

The coastal communities of these nations would satisfy the first prong of the cultural prerequisite because, without whaling, the community as a whole is impacted due to the loss of a significant cultural activity. While modern SCW became prevalent in these three countries during the early 1900s, the history of small-type whaling in Japan, Norway, and Iceland dates back at least several centuries, and in some cases over a thousand years. In each country, the whaling crews of these operations are organized around close personal bonds or kinship ties, and the whale processing is performed, in part, by the local women of these communities. Furthermore, in Japan whaling is strongly connected to local religious traditions and ceremonies. Thus, what differentiates these communities from other SCW communities is that they have not only a history of whaling, but also a history of whaling that involves many members of the community.

277 See Gambell 2, supra note 18, at 41.
278 This is similar to the requirements for an ASW exemption, as discussed in Part IV.A.
279 Please refer to Part III for detailed descriptions of these whaling nations and a more in depth review of the cultural information discussed infra.
The second prong of this requirement involves a cultural need for whale products. This ensures that communities are not granted a SCW exemption unless they, themselves, have a dietary, or subsistence need for whales. In other words, one would be ineligible for such a grant if one was merely hunting whales in order to sell whale goods to other people. Those granted an SCW exemption, however, would be able to sell whale products nationally. This condition, like the first prong, would also be met by the three countries discussed above. In Japan, Norway, and Iceland, whale meat is a part of the traditional diet, not only in the coastal communities where whaling is practiced, but also on a national level. Whale meat in Japan and Iceland is also associated with various celebrations and has historically been a great source of protein during times of starvation. In Japanese coastal villages, whale meat is used in a complex gift-giving network that incorporates the entire community. Furthermore, in Japan the entire carcass of the whale is utilized, both for food and for various other purposes. This double-pronged cultural requirement would mean that historic whaling nations could not use this exception to return to whaling unless they had actually consumed whale meat as part of the traditional local diet. For example, the whalers of the American Northeast would not be able to apply for an SCW exemption because whales were hunted solely for oil and not for food in this region.\footnote{Overview of American Whaling, http://www.whalingmuseum.org/kendall/amwhale/am_index.html (last visited Mar. 14, 2006).}

The second part of this test would revolve around the kind and number of whales that could be hunted. In order to comply with the IWC definition of small-type whaling, coastal communities would only be able to apply for this SCW exception if they planned to hunt minke, bottlenose, beaked, pilot, or killer whales. Additionally, requests would only be considered if they had the full support of the IWC Scientific Committee. In other words, the stock of whales in question would need to be able to support sustainable harvesting and the quota requested would have to be within sustainable limits. Unlike ASW exceptions, which have been granted despite the Scientific Committee’s warning that such hunts are not within sustainable levels, these SCW exemptions would not be granted when there is any risk of extinction. Lastly, the size of the quota would also be determined by the cultural needs of coastal communities engaging in the whaling and their respective nations. Thus, Japan’s quota would be higher than the quota granted to Norway, as long as this was within sustainable limits, because of the larger demand for whale products in Japan. Consequently, Iceland would have the lowest quota of these three whaling nations because the demand for whale products within Iceland is rather limited.

While this solution does authorize a limited return to commercial whaling, satisfying some of the demands of the pro-whaling nations, it also limits the exception to only culturally relevant forms of small-type whaling. This would not allow for a rebirth of large-scale commercial whaling because the IWC definition of small-type whaling restricts the type of whales that can be hunted and the name “Small Coastal Whaling” further
limits this form of whaling to coastal hunts performed in small boats, with small crews, lasting no more than a day at a time. The fact that the quota is set only high enough to satisfy national cultural needs restricts the selling of whale products internationally and reduces some of the commercial aspects of this form of whaling. The cultural requirements also reduce the number of groups that can request a SCW exemption while at the same time emphasizing that whales are being given a status above that of livestock in that their deaths must serve a cultural use, not simply an economic purpose. In addition, the involvement of the Scientific Committee would help to ensure that whale stocks are properly managed and would prevent over-hunting, preserving whales for future generations. At the same time, acknowledging the cultural claims of pro-whaling states would remove any claims of cultural imperialism and racism from the whaling debate. This would reduce international tension, strengthen the IWC, and encourage future cooperation. In short, this solution would allow the IWC, and hence the international community, to remain in control of whaling because it presents a compromise that both sides of the whaling dispute will be able to agree upon.

VI. CONCLUSION

The debate over whaling sparks intensely personal responses from all those involved. While anti-whaling preservationists often consider the hunting of whales to be incredibly inhumane and a crime against nature, the pro-whaling faction believes that any imposition of foreign ethics upon a group of people that does not share the same moral norm is cultural imperialism and an attack on state sovereignty. Despite that a majority of IWC members support the moratorium, one cannot simply “say no to whaling,” because “[w]haling will continue anyway, and the best thing to do is to work cooperatively to make improvements” to the regulation of international whaling. If the members of the IWC continue to refuse to recognize the cultural importance of whales to both pro-whaling and anti-whaling nations, the IWC will eventually be weakened beyond repair and the principal forum for the international discussion of whaling issues will cease to exist. Without this international organization it is likely that unchecked whaling will resume and that whales will once again be over-hunted. In order to preserve all whales, and to ensure that whales will be swimming in our oceans for many generations to come, there must be cooperation between the whalers and the conservationists within the IWC. Allowing for limited commercial whaling in the case of culturally significant SCW is a compromise that will prevent a return to full-scale commercial whaling while satisfying the most basic demands of the pro-whaling states. This will keep the whaling nations in the IWC and ease international tension. In a perfect world, whales would be free to travel our oceans without fear of the harpoon, but in our world, concessions must be made in order to maintain an open dialogue and to save the primary

281 Jusnes, supra note 154.
international organization for the regulation of the whaling industry. To preserve whales and to ensure that these magnificent creatures are never returned to the point of extinction, the IWC must be saved.