

Briefing on the Revised Management Scheme and other threats to the IWC moratorium on commercial whaling.

Introduction

In 1946, the fourteen nations then involved in commercial whaling met in Washington to conclude the International Convention for the Regulation of Whaling (ICRW). This Convention founded the International Whaling Commission (IWC), which first met in 1949.

The founding mandate of the IWC was to regulate the whaling industry so as to secure its long-term viability. However, dominated by whaling interests, the IWC presided over the greatest period of whale slaughter in history – known as the 'Whaling Olympics' - when an average of 50-60,000 whales were killed each year. In the early 1960s this average peaked at almost 70,000 whales, and the relentless and systematic destruction of the 'great' whales continued unabated.

IWC management schemes: The Blue Whale Unit

Initially the IWC used the *Blue Whale Unit* (BWU) to set whaling quotas. The BWU was based upon the relative oil yield of the different species. One BWU was equivalent to a blue whale, 2 fin, 6 sei or 2.5 humpback whales. Under the BWU scheme the largest and most profitable species became the mainstay of the industry. In Antarctica, blue whales were slaughtered in the tens of thousands each year peaking at over 30,000 animals killed in a single season during the 1930's. The blue whale has never recovered, and remains critically endangered, despite almost 40 years of protection.

The New Management Procedure

In 1972, the UN Conference on the Human Environment unanimously called for an immediate ten-year moratorium on commercial whaling. However, rather than stop a highly profitable industry, the IWC introduced a new management plan for whaling in 1975 known as the "*New Management Procedure*" (NMP). Under the NMP whaling quotas were set on a stock-by-stock basis for the first time, with each stock placed in management categories according to their estimated population status. The most depleted stocks were afforded immediate protection, while the remainder could be exploited at a level to produce a "*Maximum Sustainable Yield*" (MSY). The MSY is based on the theory that as hunting reduces animal populations there is a compensatory increase in the reproductive rate. A "surplus" of animals can then be taken without depleting the population further, rather like living off the interest on your savings without touching the capital. In whales, the 'sustainable' yield is theoretically maximized if the population is reduced to and maintained at between 60-80% of its original size.

Although the NMP resulted in vital protection for a number of seriously depleted whale populations, within five years serious doubts were raised about its overall reliability. In 1979, some members of the IWC's Scientific Committee argued that only a moratorium could ensure that whale stocks were not further over-exploited. However, under IWC rules, a three-quarters majority vote would be required for a moratorium and it took another three years before this was achieved.

In 1982, the membership of the IWC had grown to 37 nations; the vast majority opposed to whaling, and an indefinite moratorium on commercial whaling was passed, to be fully implemented by 1986. However, by exploiting legal loopholes in the ICRW the whalers found ways to continue whaling that undermine the moratorium to this day.

The Revised Management Procedure (RMP)

With the moratorium in place, the Commission charged its Scientific Committee to develop another management regime to replace the discredited NMP and, at its 1991 meeting in Iceland, the principle of a Revised Management Procedure (RMP) was agreed - that commercial whaling should not be permitted on severely depleted whale stocks and that depleted stocks should be allowed to recover as rapidly as possible. However, of 5 proposed RMP models produced, the Commission adopted the Cook, or 'C' Procedure, which was not the most conservative option available and was designed to deliver bigger quotas faster than the other models. If implemented, the RMP will reopen whaling on whales protected under the NMP, on seriously depleted whale populations that were protected before the moratorium!

The RMP is a management model developed for baleen whales. It must be emphasized that it could not be applied to toothed whales, such as sperm whales, currently being killed under Japan's 'scientific' whaling programme. In theory, the RMP agreed will reduce a targeted whale population to the Maximum Sustainable

Yield Level of 72% of its original numbers. The New Zealand Government refused to endorse the RMP. If applied to southern hemisphere minke whales, the present target of Japan's 'scientific' whaling, the RMP would permit the killing of 100,000 whales or more in order to reduce the population to this level. Although the Antarctic minke whales are presently protected by the IWC's Southern Ocean Sanctuary (SOS), the Sanctuary may not survive if a new management procedure is agreed and the moratorium is lifted.

The intense pressure being exerted upon the Commission by a small minority of whaling countries means it is very likely that commercial whaling will be reopened if and when an RMP is agreed. However, given the failure of the previous management regimes to prevent the decline in whale populations, serious doubts must remain about implementing yet another. These doubts can only increase as more concessions are made to the whalers in order to get them to accept it.

The Revised Management Scheme

Following agreement on an RMP model, in 1992 the IWC drew up a set of management criteria for implementing the RMP known as the Revised Management Scheme (RMS). Talks on the RMS remain deadlocked after a decade of negotiations over key supervision and enforcement issues that are vital if the RMP is to meet its own management objectives. Although this impasse has maintained the moratorium, the whalers continue to exploit the same loopholes in the Convention that contributed to the failure of the NMP that preceded it.

During the moratorium, some 25,000 whales have been slaughtered and this year Japan, Norway and Iceland will catch a further 1400 whales between them. Iceland has announced it will resume commercial whaling under its 'objection' to the moratorium in 2006. This is clearly an attempt to pressure the conservation-minded countries into expediting the RMS and lifting the moratorium. The three remaining whaling nations have accused the conservation side of deliberately stalling agreement on the RMS and have repeatedly threatened to leave the Commission if the moratorium is not lifted in the near future. However, in reality, it is the whalers that are refusing to accept expensive regulations that would reduce catches and profits. They are also able to continue whaling without the restrictions that an RMS would impose.

The dilemma for anti-whaling governments and NGOs is that the RMS will, in theory, create a 'sustainable' whaling industry and thereby fulfill the mandate of the IWC. Additionally, most governments have committed to the principle of sustainable development and are unwilling to defend the moratorium on ethical or welfare grounds even though the majority of public opinion is opposed to whaling for these reasons.

Failings of the ICRW that will undermine the RMP/RMS

There are inherent problems with the ICRW that left unresolved will seriously undermine the effectiveness of the RMP/RMS. These same problems contributed to the failure of the NMP and include:

- the lack of comprehensive, legally binding enforcement mechanisms
- the absence of a comprehensive identification and monitoring scheme for whale products
- an independent observer scheme to ensure adherence to quotas
- the 'objections procedure', that allows contracting parties to opt out of decisions they don't like.
- Scientific permits that allow contracting parties to kill unlimited numbers of whales for 'research'

The behavior of the whaling countries during the moratorium reinforces concerns that whaling cannot be managed responsibly under internationally binding regulations. These same countries have pursued so-called "scientific" whaling, killing thousands of whales contrary to Scientific Committee advice and Commission recommendations. To this day, these countries continue to resist proposals under the RMS to monitor and enforce future whaling operations, despite blatant violations of regulations in the past.

For example, in 1994, the Russian Federation admitted to serious under-reporting of catches in the Southern Ocean. Between 1948-80 the Russians killed 88,888 whales more than was reported to the Bureau of International Whaling Statistics. The figures reveal the Russians killed over 48,000 humpback whales and reported a catch of less than 3,000; a catch of 10 pygmy blue whales when they slaughtered over 8,000! The Russians also under-reported catches of right, sei, Bryde's, and sperm whale, along with other unidentified species. Deliberate under-reporting of catches is also known to have taken place in Japan and Norway.

Smuggling of whale meat

The moratorium has provided the opportunity for ruthless people to profiteer at the increasing, and sometimes incredible, value of whale meat in Japan. For example, Campaign Whale found whale meat on

sale in a department store in Shimonoseki in 2002 for almost £160 per kilo and prices in exclusive restaurants can be much higher. Illegal consignments, involving hundreds of tons of whale meat have been intercepted coming from Russia, Norway, Iceland and south-east Asia. Whale meat from protected species such as humpback and gray whales has also been found on sale in Japan. However, without the existing moratorium, these smuggling operations, involving illegally caught whales, would probably have continued undetected. Even now, no one can be sure of the real scale of the whale meat smuggling problem.

The future

If an RMS is finally agreed it will be difficult for the majority of IWC member nations to defend the existing moratorium on commercial whaling. If they continue to support the moratorium after an RMS is agreed and adopted into the IWC Schedule, the whalers will see this as bad faith and justification for leaving the IWC with the potential of a return to unregulated whale slaughter.

However, the ICRW was negotiated over 50 years ago; the RMP agreed over 12 years ago, when our understanding of whale biology, population dynamics and the growing threats to the environment were less understood. The RMP is considered by some to be based on “..out-dated single species, maximum sustainable yield concepts” and could not, for example, respond adequately to the kind of dramatic environmental change predicted by climate change and ozone loss.

Adoption of an RMS has become a political goal for several ‘middle ground’ non-whaling IWC member governments who see this as the only way to restore the IWC’s control over whaling. The adoption of an RMS into the Schedule is seen as the only way of achieving this. However, adoption of an RMS would be premature unless and until these outstanding issues are resolved:

- The RMP is proven robust to growing environmental threats to whale populations.
- Issues of stock identity are resolved in order to prevent the depletion of non-target populations
- The inherent cruelty of killing methods is addressed
- The increasing threat to human health from increasingly contaminated whale products
- A comprehensive and legally binding monitoring, and enforcement regime is agreed

Other failings of the RMP

- The raw data required to calculate quotas is provided by sightings-surveys conducted by the whaling nations themselves and from historical catch data, both notoriously unreliable.
- Under current proposals sightings surveys will be conducted at 5-year intervals. It would take fifteen years for quotas to be phased out if these surveys were not conducted.

No data, such as changes to the ecosystem or changes in population dynamics, input to the RMP unless they impact upon the size of the population over time. This means that sub-lethal effects, such as decreasing fertility, would not be considered until a population decline was identified. If such a decline were not detected in a population survey that population could continue to decline rapidly for a further six years before another survey was conducted. Only if *that* survey detected a problem could the quota be adjusted, but even so, , the RMP can only reduce or revoke a quota; it could not mitigate or reverse any decline. In other words, the RMP is a reactive mechanism that cannot adequately account for the impact of environmental changes when delivering calculating quotas. It could only respond once a decline in a population has been detected, and that might prove too late.

Justin Cooke of the IUCN, who devised the ‘C’ RMP model, said the RMP was not a system for detecting changes in populations, this was the job of the population surveys. However, another former Scientific Committee member Sidney Holt wrote that these surveys “...are so imprecise that even dramatic stock changes could not be detected quickly”.

As things stand, catch limits might be set in 2006 until 2021 (with a five year phase out in 2016) with no requirement for new data on the status of the targeted populations. With the combined impact of environmental decline difficult to predict, a catastrophic decline in a population may go undetected between surveys and whaling continue with disastrous consequences.

Norway ‘retunes’ the RMP

About halfway through the development of the RMP, the IWC Scientific Committee asked the Commission about the “tuning level” it desired. Choice of this was needed to permit the completion and testing of the

proposed RMP. The Commission, with then, a large majority of non or anti-whaling members, opted for the most conservative or "high" tuning offered. This would deliver lower quotas. After several years of computer testing, the Commission accepted this RMP tuning level and instructed the Scientific Committee that *'the RMP should not be reconfigured in any way without the consent of the Commission'*.

However, when Norway began commercial whaling under its objections both to the moratorium and to the 'Protected Stock' status of the Northeast Atlantic minke stock under the NMP, it claimed to be setting its unilateral catch limits in accordance with the agreed RMP's 'catch-limit algorithm'. However, the Norwegian Government found that with the results of a recent sightings survey, and the sex composition of its recent catches (mostly female), this would, when fed into the RMP, lead to a severe reduction in future catch limits, probably by about 50%. To avoid this, and contravening the explicit earlier instructions of the Commission to the contrary, the Norwegians lowered the tuning level in order to raise catches and maintain them at a similar level to previous years. This is a result of the Norwegian Government being under pressure from the whalers to increase catches in anticipation of meat and blubber exports being allowed to Japan. Even now, quotas two or three times present catches are being demanded by the whalers.

Enforcement

At IWC 52 in Adelaide, Resolution 2000-3 instructed the Secretariat to "prepare a draft text for a Schedule Amendment that would incorporate the structure and elements of the RMS, including the RMP, into the Schedule".

The IWC has been debating specific elements of Chapter V of the Schedule 'Supervision and Control', since 1994. However, it has never actually discussed or agreed the 'structure and elements of the RMS'. Subsequent drafts of Chapter V and the proposed revisions to the rest of the Schedule circulated by the Secretariat simply do not add up to a comprehensive management regime, and discussing how they might be incorporated into the Schedule are premature.

To be an effective monitoring, control and surveillance (MCS) regime, the Revised Management Scheme needs to agree binding procedures and systems for the management of (i) data collection and analysis; (ii) surveillance of whaling operations and markets; and (iii) reporting, investigating, prosecuting and punishing offences. Just to amend the Schedule to include certain requirements of contracting governments, does not amount to a management regime to implement and enforce those requirements.

The main elements of the RMS were first proposed in 1992 in Resolution 43:40. A narrow interpretation of this resolution has limited subsequent RMS discussions to creating "an effective observation and inspection scheme" under Chapter V of the Schedule, rather than the creation of a regime of 'supervision and control'. By focusing only on issues of 'supervision' (i.e. observation and inspection), and not considering issues of 'control', the IWC may end up with an RMS that is quite unenforceable.

In Resolution 2000-3, the Commission agreed that, while the RMS "shall be structured as agreed in Resolution 1994-5", discussions on the RMS "shall not be limited to the elements identified in 1992 and subsequent Resolutions of the Commission on the RMS". This language leaves open the possibility of insisting that compliance and other issues, such as welfare, can be raised prior to any implementation or adoption of the RMS into the Schedule.

Accordingly, although the Schedule sets out some activities that constitute infractions (e.g. it is prohibited to use a factory ship, cold harpoon, etc); in order to create an effective MCS regime, the Commission must actually first agree and adopt a system for reporting, investigating, prosecuting and punishing infractions. In addition, a 'report back' mechanism is vital to ensure that if the Party concerned does not take action in response to an infraction as identified by the Commission, its non-reporting must itself be deemed an infraction, thus ultimately giving the Commission the right to withhold a quota. How the withholding of a quota might be enforced remains unaddressed and unresolved.

The economics of whaling

Whales reproduce at much slower rates than interest accrues on money invested in the bank. From an economic point of view, it makes more sense for the whaling industry to kill as many whales as they can, and as quickly as possible, in order to reinvest the proceeds and maximize profits. If a sustainable level of harvesting whales were actually possible, and that remains in theory only, then it would simply be less profitable.

If commercial whaling resumes, as seems increasingly likely, economics would seemingly undermine a basic

premise of the ICRW Convention "to provide for the proper conservation of whale stocks in order to make possible the orderly development of the whaling industry" because to achieve this, whaling would simply not be profitable. Furthermore, the attitude of the whaling nations suggests that it would only be a matter of time before the RMS was revised to, or replaced by a less conservative regime through further vote-buying. In the end, the same market forces that led to the destruction of the largest species of great whales would then be able to decimate the remainder.

The Irish Proposals

When the IWC adopted the Southern Ocean Sanctuary (SOS) in 1994, some governments were prepared to consider a compromise proposal that would permit limited coastal whaling under the RMP with all pelagic whaling operations banned. In 1996, the Irish Government tabled a formal proposal that the RMS should allow limited coastal whaling within the 200 mile EZ's of Member States for 20 years. The 'Irish Proposals', as they became known, also required that international trade in whale products would be banned. The Irish have insisted that this remains within the RMS package.

At the IWC's annual meeting in Shimonoseki in 2002, a coalition of countries, including 8 EU members, backed a Swedish resolution on adopting an RMS that included the provision to limit commercial whaling to coastal waters. This resolution, and a counter RMS resolution by Japan, was defeated. However, it is ironic that the Irish Proposals, originally proposed as a compromise, may suit Norway and Iceland's whaling aspirations but they have seemingly become a major obstacle to Japan's agreement to the RMS.

CITES

Since the IWC introduced a moratorium on commercial whaling, CITES has a complimentary ban on trade in whale products since 1975(?). However, the IWC has only 50 or so Member States whereas CITES has 150(?). CITES parties meet biannually to discuss the listing of species and all cetacean species are listed on Appendix 1, which forbids trade. However, Japan, Norway and Iceland all hold reservations to Appendix 1 listings for whales and could trade whale products between each other quite legally. Japan has also been recruiting countries to CITES in order to support its down-listing proposals for whale species. If CITES parties were to down-list any whale population or species for trade it would totally undermine the IWC moratorium. Although Japan and Norway's attempts to down-list whales have all failed, the threat remains and is often used to argue that an RMS must be adopted by the IWC as a matter of urgency, particularly prior to a CITES meeting. Japan has already submitted down-listing proposals for minke whales to this years CITES meeting.

Conclusion

When the IWC's indefinite moratorium on commercial whaling came fully into force in 1986, five nations: Japan, Norway, Soviet Union, Iceland and the Republic of Korea, continued whaling by exploiting legal loopholes in the ICRW; by lodging an 'objection' or by conducting so-called 'scientific research'. As a consequence, around 25,000 whales have been killed during the moratorium, over and above the number of whales taken each year for subsistence purposes under the IWC's Aboriginal Whaling Scheme.

The whaling industry has relentlessly pushed one whale population after another to the brink of extinction, and has never demonstrated a serious commitment to conservation. During the moratorium there has been no change in the behavior of the whaling nations, nothing to suggest that if commercial whaling is allowed to resume that the tragic history of overkill will not be repeated. This is why the moratorium became so necessary, in order to protect whale stocks, and why it must continue.

The RMP/RMS, if agreed and adopted, will be another attempt to regulate an industry that has defied all controls in the pursuit of profit, at a time when the whales and their environments are under threat as never before from environmental decline. Whether the RMP can adequately predict and respond to these changes is uncertain at best. Whether an RMS can be agreed that would effectively ensure that the RMP is respected remains doubtful. Either way, to lift the moratorium would be a gamble that only the whales can lose.