

History and Future



ATTEMPTS TO REGULATE COMMERCIAL WHALING

Concerns about the overexploitation of whale stocks by the whale oil industry led the League of Nations to call for regulations and conservation measures in 1925. Many nations were alarmed at the rapid depletion of whales and there were concerns over the inequitable sharing of the resources.

In 1931, 22 nations signed the Geneva Convention for the Regulation of Whaling, focused on bringing Antarctic whaling under control. This treaty was rewritten with the addition of protocols in 1938 and 1945 and eventually led to **the current International Convention for the Regulation of Whaling (ICRW) signed in Washington in 1946.**

The ICRW established the International Whaling Commission (IWC) to keep under review and revise as necessary the measures to conserve whale populations and regulate whaling (contained in the Schedule to the Convention). Through its Schedule the IWC completely protected certain species or stocks, designated specified areas as whale sanctuaries, set limits on the numbers and size of whales which could be taken, prescribed open and closed seasons and areas for whaling, and prohibited the capture of suckling calves and female whales accompanied by calves.

It is historical fact that the limitations of the IWC's initial efforts – e.g. setting catch limits which were arbitrarily set in 'blue whale units' (1 blue whale = 2.5 humpback whales) and routinely exceeded – resulted in the massive depletion of one species after another in a situation described as the "Whaling Olympics" with nations competing against time, weather and each other to maximise their take of whales. It is also the case that provisions under which individual IWC members can grant permits for lethal research on whales or opt out of binding decisions to limit or prohibit commercial whaling have also been used to undermine collective management decisions.

THE INTERNATIONAL WHALING COMMISSION

The IWC meets annually and membership is open to any country that formally adheres to the ICRW. Members in good financial standing have the right to participate in decisions of the Commission.

The IWC operates by majority will of its members for most administrative and non-binding purposes. But key binding decisions that require amendments to the Schedule (e.g. the moratorium on commercial whaling and whale sanctuaries) are made by a $\frac{3}{4}$ majority of voting members. This ensures that where a binding decision is made it reflects the view of the overwhelming majority of its contracting governments, to keep the Schedule relevant in the context of emerging international legal norms and practice.

The IWC has remained the primary international body for the management and conservation of whales while the global oceans management legal system has evolved.

These include the United Nations Convention on the Law of the Sea (UNCLOS), Convention on International Trade in Endangered Species (CITES), Convention on Migratory Species (CMS), regional fisheries management organisations and the Antarctic Treaty System, including the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). For example, CITES mirrors the decisions of the IWC and its Scientific Committee when considering whether to list or de-list whale species from its register of banned wildlife trade.

THE CURRENT STATE OF THE IWC AND ITS CONVENTION

IWC membership has expanded rapidly in recent years and now represents the vast majority of the world's population.

Voting records indicate that the membership is more-or-less evenly split between those states that support non-consumptive use of cetaceans and comprehensive protection of whales, and those that support a resumption of commercial whaling.

The IWC has adapted to reflect principles of modern oceans management that have emerged in the past three decades from numerous declarations, resolutions and studies, including the United Nations Conference on Environment and Development, the Rio Declaration and Agenda 21. Key principles guiding current debates include the precautionary approach, intergenerational equity, and an integrated approach to ecosystem based management. Whale sanctuaries, the moratorium and the conservation work of the Commission are all responses that have used the existing IWC framework to adapt to changing circumstances.

Current IWC sanctuaries (the Southern Ocean Sanctuary and the Indian Ocean Sanctuary) provide international protection for whales in key breeding and feeding areas by prohibiting commercial whaling. The IWC has also established a Conservation Committee to advise the Commission on what actions it should take to deliver its conservation agenda.

THE FUTURE OF THE IWC

The ICRW was drafted in the 1940s in different circumstances to today. Since that time, the whale oil industry has disappeared, whale watching has become a significant economic activity, and whale research no longer requires lethal means. In this context, the ICRW has had some success in developing, agreeing and implementing measures for the conservation of whales. Some whale populations are returning from the brink of extinction, but the emerging challenges are not limited to the threat of overexploitation through whaling.

The IWC must now also consider other threats such as marine pollution, cetacean diseases, risks associated with growing whale watching industries, ship strikes, and habitat disturbances.

Australia is one of many IWC members working to help the IWC to continue to 'modernise' to reflect international norms and standards for the conservation of marine living resources, and eliminate the key sources of tension – i.e. whaling operations under scientific whaling and objection provisions in the ICRW. On the other hand, efforts to 'normalise' the IWC are a thinly disguised attempt to rewrite the ICRW, overturn the moratorium and unwind key conservation achievements of the Commission in recent years.

The polarisation in views across the IWC caused a perceived impasse in consensus decision making and led to an intersessional meeting of the Commission in March 2008 to discuss the future of the IWC. Australia presented a proposal to the meeting for modernising the IWC in our paper **'Whale Conservation and Management: A Future for the IWC'**. **The paper recommends increased collaboration, through the development of internationally-agreed, cooperative conservation management plans, collaborative research programs, and reforming the management of science, to conserve and manage whales in a way that should be able to attract support from all sides of the whaling debate.**

Australia hopes that its constructive ideas will be considered carefully in the discussions arising from this meeting.

