

By Carolyn Raffensperger

Exploiting 'Science' Flaw In Whale Law

The moot point is, whether Leviathan can long endure so wide a chase, and so remorseless a havoc; whether he must not at last be exterminated from the waters, and the last whale, like the last man, smoke his last pipe, and then himself evaporate in the final puff.

—HERMAN MELVILLE

In July, Japanese whaling ships set sail for the northwestern Pacific. The Japanese have been hunting minke whales, but for the first time since the International Whaling Commission placed a moratorium on commercial whaling in 1987, this hunt included sperm and Brydes whales, both protected under the Convention on International Trade in Endangered Species.

The Japanese say the hunt is for scientific purposes, a limited exception granted by the IWC, a sister organization to CITES. Conservationists feel the "research" is an excuse to supply Japanese restaurants with whale meat, a \$100-million a year business.

Over the two hundred years of large-scale whaling, many populations were hunted to the edge of extinction. As a response to the catastrophic decline, the first Whaling Convention was signed in 1931. Some species may be on the rise again, but their status is tenuous.

The increase in the number of whales is largely due to the moratorium. However, that moratorium continues to be challenged by Japan and Norway through the science exemption. Japan set a science quota of 600 minke whales for the 1999-2000 season — more than whalers could even catch. They returned in April from Antarctic seas with

439 minke whales. Norway set its quota at 655, arguing that because it has a standing objection to the moratorium, it can simply ignore it.

The IWC was created to implement the 1946 International Convention for the Regulation of Whaling. There is sharp disagreement between commercial whaling countries and those that oppose it over what the IWC is supposed to oversee. Opponents (Australia, New Zealand, and the United States) want the IWC to provide for whale research and manage whale watching. Whaling supporters believe the IWC should manage whale resources for hunting. Until the 1970s the IWC was a sporting club that set bag limits, the opening day of the hunting season, etc. Whaling increased under the jurisdiction of the convention and the IWC from 1933, when 30,000 were killed, to 1962, when 67,000 were killed.

Neither side believes that the moratorium will stand much longer for two reasons. First, some whale populations are apparently increasing, although the science of population health is less advanced than the capacity to identify individuals. Countries maintain DNA records to track the size and diversity of populations. However, neither Japan nor Norway has allowed other countries to study their DNA records. But DNA testing of meat in Tokyo markets shows that some comes from severely threatened or endangered species such as the Mexican humpback whale.

We do not know why some populations are rebounding and others have not recovered. The science of terrestrial ecosystems is fraught with uncertainty, but that uncertainty pales in comparison to the science of the seas. While we assume that some whales are recovering, others, like the northern right whale, are not. New theories about how pollution might affect immune and reproductive systems are just coming to the fore as scientists are seeing new diseases among whales. Grey whales were recovering, but only this year huge numbers are dying. It appears that their food supply has collapsed because of warming waters in the Arctic.

Countries that wish to resume commercial whaling argue that decisions about whaling should be made on the basis of "sound science" and not on

emotions such as an affinity or reverence for whales. Accordingly, if some populations are increasing, then countries should be allowed to hunt them.

The second reason the moratorium is shaky is that the IWC lacks enforcement powers. Until the World Trade Organization was created, the United States policed the IWC moratorium under the Pelly Amendment to the U.S. Fishermen's Protection Act by threatening trade sanctions. But WTO rules prohibit punitive trade sanctions.

CITES provides a weak enforcement mechanism which reinforces the moratorium. The treaty, which governs international trade in endangered and threatened species, not just whales, went into force in 1975 and now has 152 member countries. There are three categories of species at risk. The first is those that are threatened with extinction. Appendix I bans international trade in these species. The next tier of risk is those that might become endangered. Under Appendix II, countries are to regulate and monitor trade of those species. Appendix III gives similar status to "all species which any party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation." Depending on the species, at least one of the appendices can be applied to whale populations that are at risk.

In a CITES meeting in April, Norway and Japan tried to reopen whaling, challenging the moratorium. Before the meeting, both had lobbied the poorest African and Caribbean countries with promises of glittering aid packages if they would approve taking certain species off the list. They also sought to trade votes with African countries that want to reopen the elephant ivory trade. These strategies failed and endangered whales are still safe, but only from commercial international trade under CITES. Countries that ignore the moratorium or exploit its science exemption cannot be stopped from whaling as long as they don't engage in trade.

It is time we closed all loopholes and protected Leviathan. It cannot endure this remorseless havoc.

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