

INTERNATIONAL WHALING: REFRAMING THE IWC MORATORIUM FOR THE EFFECTIVE CONSERVATION OF WHALES

By
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Abstract

The ocean once teemed with whales at seemingly every tide and crest, but due to centuries of overexploitation, whales are now a rare and coveted sight in many parts of the world. Today, the challenge of preventing these magnificent giants from extinction remains prevalent, with slow recovery rates and continued whaling practices in direct conflict. This Article examines the history of global whaling practices and the International Whaling Commission's 1986 moratorium and argues for the establishment of an effective regulatory scheme permitting commercial whaling only on abundant whale stocks. The scheme would encourage whaling nations to remain members of the IWC. This in turn would give the IWC more supervision over whaling industries and allow whaling nations like Japan to respond to their declining market demand for whale products without the international hostility that pressures these industries to continue. Ultimately, this Article contends that by reframing the Commission's moratorium, the IWC will have a stronger international regulatory presence in ensuring the effective conservation of whales.

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I. Introduction

Whales have fascinated humankind for centuries, reigning as a marine charismatic species and one of the predominant symbols of the ocean.¹ Charismatic species frequently center in news stories, books, TV shows, movies, and other forms of media.² Whales are no exception.³ From famed literature like the *Moby Dick* to major blockbusters like *Free Willy*,⁴ whales have consistently captured the attention of the public and attracted millions to coastlines each year for whale watching.⁵ However, the popularity of whales was not always due to fascination and awe. Whaling—the capture and killing of whales to harvest commercial products⁶—was once a predominant global industry.⁷

At the global whaling industry’s peak, whales “seemed as limitless as the oceans in which they swam,” suggesting nations may not have considered the implications of overhunting.⁸ Aggressive whaling on a global scale thinned the global whale population quickly; in the twentieth century alone, the industry killed two million Southern Ocean whales.⁹ As a result, whalers hunted many whale species to the brink of extinction; for example, the Eastern Pacific gray whale was at high risk of extinction in both the mid-1800s and early 1900s.¹⁰ Those whales preferred to remain close to the coast, making them easily accessible targets that whalers harvested for their blubber to produce lamp oil.¹¹ Whalers hunted the whales to near extinction and predominantly targeted pregnant and nursing whales and their calves, leaving no capacity for the species to recover.¹²

¹ Saiyana Toran, Are Whales Making a Comeback?, OCEAN YOUTH ACAD. (Dec. 15, 2020), <https://perma.cc/N8J3-FS3H> (accessed Sept. 18, 2022); see, e.g., *Orca*, OCEANA, <https://perma.cc/HEB5-T9PX> (accessed Sept. 18, 2022) (describing orcas as “one of the ocean’s most iconic symbols”); see, e.g., *Humpback Whale*, OCEANA, <https://perma.cc/4CY3-HKA9> (accessed Sept. 18, 2022) (noting humpback whales as charismatic species).

² Zoe Glas, *Uninteresting, Strange, or Ugly: Protecting Non-Charismatic Species*, PURDUE UNIV. (Aug. 4, 2016), <https://perma.cc/7X3N-4QFY> (accessed Sept. 18, 2022).

³ Toran, *supra* note 1.

⁴ Sarah Chandler, *Things Only Adults Notice in Free Willy*, LOOPER (July 25, 2022, 1:46 PM), <https://perma.cc/6WKX-WL2L> (accessed Sept. 18, 2022).

⁵ *Whale Watching*, ANIMAL WELFARE INST., <https://perma.cc/X5EP-6P6B> (accessed Sept. 18, 2022) (globally, over 13 million people go whale watching each year).

⁶ *Whaling*, MERRIAM-WEBSTER DICTIONARY, <https://perma.cc/7L9L-2XR2> (accessed Sept. 18, 2022).

⁷ Gordon Jackson, *Whaling*, BRITANNICA, <https://perma.cc/WJ44-D9R6> (accessed Sept. 18, 2022).

⁸ *Id.*

⁹ Kate Whiting, *This Is How Humans Have Affected Whale Populations Over the Years*, WORLD ECON. FORUM (Oct. 28, 2019), <https://perma.cc/9XT3-UW82> (accessed Sept. 18, 2022).

¹⁰ Meghan E. Marrero & Stuart Thornton, *The Gray Whale: Past, Present, and Future*, NAT’L GEOGRAPHIC (June 28, 2019), <https://perma.cc/82QG-RP5A> (accessed Sept. 18, 2022).

¹¹ *Id.*

¹² *Id.*

Concern about the overexploitation of whales increased in the 1930s and led to the establishment of the International Whaling Commission (IWC) in 1946 to help stabilize whale populations and regulate the global whaling industry.¹³ The IWC is composed of both whaling and anti-whaling nations.¹⁴ It initially attempted to decrease harvests and reduce the length of whaling seasons.¹⁵ However, the reductions were minimal and gradual due to negotiation disputes and delays, meaning they were insufficient to curb the consistently declining whale populations.¹⁶ In response, the IWC implemented a moratorium on global commercial whaling in 1986 that remains in effect today.¹⁷ The moratorium significantly reduced the amount of whaling globally but has remained an international controversy, with many nations continuing to hunt whales under the guise of exceptions, through objections, or by leaving the IWC completely.¹⁸ Thus, even with the IWC moratorium still in effect, whaling has continued to decimate whale populations.¹⁹ Conserving whales and reducing the number of whales subject to whaling practices not only prevent whales' extinction, but also our own. As stated by World Wildlife Fund founder Sir Peter Scott: "If we cannot save the whales from extinction, we have little hope of saving mankind and the life-supplying biosphere."²⁰

This Article explores the history and impacts of whaling and the effectiveness of the IWC moratorium, concluding a reframing of the IWC moratorium is necessary to adequately conserve whales. Section II discusses the historical practices and impacts of whaling, primarily (A) cultural practices and (B) the commercial industry. Section III then outlines the framework for the IWC, concentrating on (A) its structure

¹³ *Why Are Whales Endangered? History and the Current Situation*, WHALE FACTS [hereinafter *Why Are Whales Endangered?*], <https://perma.cc/XK3P-4QLU> (accessed Sept. 18, 2022).

¹⁴ Benjamin van Drimmelen, *The International Mismanagement of Whaling*, 10 UCLA PAC. BASIN L. J. 240, 242 (1991).

¹⁵ *Id.* at 243.

¹⁶ *Id.*

¹⁷ *31,984 Have Been Killed by Whaling Since the IWC Moratorium*, WWF [hereinafter *31,984 Whales*], <https://perma.cc/DP9K-7FZ3> (accessed Sept. 12, 2022).

¹⁸ Ian Hurd, *Almost Saving Whales: The Ambiguity of Success at the International Whaling Commission*, ETHICS & INT'L AFFAIRS (Mar. 2012), <https://perma.cc/X96W-2F8B> (accessed Sept. 12, 2022); see also *31,984 Whales*, *supra* note 17 (noting that Iceland and Norway, although IWC members, continue whaling practices through official objections to the moratorium, and that Iceland and Japan— prior to its IWC departure—hunt whales under the "scientific whaling" exception); see also Rachel Fobar, *Japan Will Resume Commercial Whaling. Get the Facts.*, NAT'L GEOGRAPHIC (Dec. 26, 2018), <https://perma.cc/389Y-RY4F> (accessed Sept. 12, 2022) (describing Japan's departure from the IWC in 2018 and its resumption of commercial whaling in 2019).

¹⁹ *Stop Whaling*, WDC, <https://perma.cc/3JW4-MVHZ> (accessed Sept. 12, 2022) (noting 40,000 whales have been killed since the moratorium went into effect); see also Claudia Geib, *North Atlantic Right Whales Now Officially "One Step from Extinction"*, THE GUARDIAN (July 16, 2020, 6:00 AM), <https://perma.cc/F342-DSDU> (accessed Sept. 12, 2022) (describing the critically endangered North Atlantic right whales' struggle to recover from whaling).

²⁰ Whiting, *supra* note 9.

and enforcement mechanisms and (B) the IWC moratorium. Section IV then turns to the whaling controversy prevalent today, outlining the arguments for (A) the conservation of whales and (B) sustainable whaling practices. Finally, Section V discusses the possibility and implications of reframing the IWC moratorium to permit commercial whaling with stringent regulations. This Article concludes that to provide effective conservation for the world's whales, the IWC needs to reframe its moratorium to induce more international participation in the IWC through a broader-reaching regulatory scheme on whaling.

II. Whaling: Historical Practices & Impacts

Whaling has historically been a popular practice, dating back to at least 3,000 BC.²¹ Whaling practices may even have developed as far back as 6,000 BC based on archeological discovery of ancient tools such as early harpoons with ropes or lines attached.²² Whaling was a common practice among many cultures over thousands of years, becoming a commercial industry in the seventeenth century in response to an increased need for goods and advances in technology.²³ The rate of whale killings rapidly increased with the development of the commercial whaling industry, leading to the swift and unprecedented decline of whale populations.²⁴

A. Cultural Whaling

Cultural whaling was a necessary subsistence strategy for many communities and is still prevalent today in areas like the Arctic, the Siberian tundras, the northwest coast of North America, Bequia in the West Indies, the Faroe Islands, and Lamalera in the Philippines.²⁵ Subsistence whaling provides food and other natural resources to these communities.²⁶ These communities typically harvest every part of the whale for things like baskets, fishing lines, roofing, toolmaking, and ceremonial items.²⁷ Subsistence whaling also helps communities maintain their traditional identity and practices, as many subsistence whaling cultures practice ceremonial rituals to recognize the “commu-

²¹ *History of Whaling: Why It Began and Where It Is Now*, WHALE FACTS [hereinafter *History of Whaling*], <https://perma.cc/L9AZ-SKRM> (accessed Sept. 12, 2022).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Cultures of Whaling*, NEW BEDFORD WHALING MUSEUM, <https://perma.cc/5LWZ-CP7U> (accessed Sept. 16, 2022).

²⁶ *Id.*

²⁷ Stuart Thornton & Meghan E. Marrero, *Big Fish: A Brief History of Whaling*, NAT'L GEOGRAPHIC (updated May 13, 2022), <https://perma.cc/6B4X-SKC4> (accessed Sept. 16, 2022) (“Meat, skin, blubber, and organs were eaten as an important source of protein, fats, vitamins, and minerals. Baleen was woven into baskets and used as fishing line. In warmer climates, baleen was also used as a roofing material. Bones were used primarily for toolmaking and carving ceremonial items such as masks.”).

nal relationship” between humans and whales.²⁸ Whales are highly regarded in many subsistence whaling communities; for example, many subsistence whaling cultures have whale characters dominating their traditional stories and folklore, often noting the community’s strong spiritual ties to whales.²⁹

As noted above, cultural subsistence whaling is a global practice, with the intricacies varying among communities. Indigenous tribes like the Makah Tribe in Washington state view whales and whaling as central to their culture.³⁰ A whale hunt in the Makah Tribe involves an extensive ritual, beginning with hunters isolating themselves for weeks or months to pray, fast, and ceremonially bathe prior to a hunt.³¹ Those participating in the hunt must be “spiritually read[y],” a designation hunters typically devote their entire lives preparing for.³² Once whalers complete a hunt, the whale is used for food, oil, and tools to support the entire community.³³

Meanwhile, in Japan, where communities have culturally harvested whales for more than 2,000 years, whale meat remains an integral part of Japanese dietary habits and a ceremonial food in traditions and festivals.³⁴ The ancient Japanese thought the whale was a “brave and great” fish³⁵ and erected altars and shrines in many fishing villages to worship Ebisu—the Japanese god of fisherman and good luck.³⁶ Some of these shrines include memorials to slaughtered whales, often bearing epigraphs of Buddhist scripture involving the rebirth of the whale as a Buddha.³⁷ On a hunt, Japanese fishermen typically recite the Buddhist formula for redemption—known as the *Namu Amida Butsu*—three times in front of the whale’s corpse, then sing cultural whale songs to “pacify” the whale’s soul.³⁸ Like the Makah Tribe, the Japanese also utilize all parts of a hunted whale, including its bones, blubber, and meat for uses other than food.³⁹

In the Faroe Islands, whaling has existed as a traditional annual hunt for the past 1,000 years, known as the *grindadráp*, or “the

²⁸ *Cultures of Whaling*, supra note 25.

²⁹ *Id.*

³⁰ Rob van Ginkel, *The Makah Whale Hunt and Leviathan’s Death: Reinventing Tradition and Disputing Authenticity in the Age of Modernity*, 17 *ETNOFOOR* 58, 60 (2004).

³¹ *Whaling*, OLYMPIC PENINSULA CMY. MUSEUM, <https://perma.cc/HYP5-JAF7> (accessed Sept. 18, 2022).

³² *Id.*

³³ van Ginkel, supra note 30, at 61.

³⁴ *Whales as Food and Japanese Culture*, ICR, <https://perma.cc/2CXR-9J4C> (accessed Sept. 18, 2022).

³⁵ *Id.*

³⁶ Nelly Naumann, *Whale and Fish Cult in Japan: A Basic Feature of Ebisu Worship*, 33 *ASIAN FOLKLORE STUD.* 1, 2 (1974).

³⁷ *Id.* at 4.

³⁸ *Id.* at 5.

³⁹ *Whales as Food and Japanese Culture*, supra note 34.

grind.”⁴⁰ The Faroe Islands communities believe self-sufficiency in obtaining food resources from the sea is integral to their culture, an expertise that they hand down over generations.⁴¹ The hunt is necessary to the people of the Faroe Islands to maintain community cohesion and provide affordable food for local households.⁴² Communities use whale meat and blubber from the hunts to feed themselves, a significant economic benefit because other sources of food are typically expensive due to the need for importation.⁴³ Many members of the Faroe Islands communities revere the annual hunt as a significant cultural tradition; as Bjarki Dalsgar, a native Faroese, stated, “I doubt you’ll experience the sense of community and teamwork anywhere else in the world. Everyone comes together to help provide for the community and for themselves.”⁴⁴

Likewise, in Indonesia, the coastal village of Lamalera centers whaling as an ancient and integral community tradition, in part due to the difficulty of receiving land imports of resources.⁴⁵ The Lamalera tradition reveres whaling boats as sacred and immortal living beings that link the village to its ancestors; when a boat “dies”—meaning it is no longer suitable for use—the village mourns its loss for two months while building its replacement.⁴⁶ During the hunt, once the crew spots a whale, they perform a number of ritualistic ceremonies, including lowering the sails and reciting a communal prayer.⁴⁷ The hunt itself involves only the use of ancient tools, primarily a bamboo-shafted harpoon with a long palm-front rope fastened to the end.⁴⁸ The village of Lamalera kills around twenty whales each year and principally uses the harvested whales to feed the village.⁴⁹ While cultural whaling practices like the Lamalera hunt have continued globally for thousands of years, scientists have not attributed most of these practices to the mass population decline of whales.⁵⁰ Instead, the decline of

⁴⁰ Jemima Webber, *Whaling in The Faroe Islands: What You Need to Know about the Controversial Tradition*, PLANT BASED NEWS (July 10, 2021), <https://perma.cc/CD32-368Z> (accessed Sept. 15, 2022).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*; see generally *Faroe Islands*, WORLD ATLAS, <https://perma.cc/2LL5-JRKC> (accessed Sept. 18, 2022) (noting the Faroe Islands need food importation due to their geographical location—between the North Atlantic Ocean and Norwegian Sea, 655 kilometers away from the European coast).

⁴⁴ Webber, *supra* note 40.

⁴⁵ *Lamalera*, INCITO TOUR (July 28, 2014), <https://perma.cc/9MUL-6L7P> (accessed Sept. 18, 2022) (noting the village of Lamalera is isolated on the small Indonesian island of Lembata).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Why Are Whales Endangered?*, *supra* note 13 (noting this is likely due to the lack of resources necessary for these communities to hunt whales in large numbers).

whales began with the rise of the commercial whaling industry, which is the leading cause of whale endangerment and extinction.⁵¹

B. Commercial Whaling

The commercial whaling industry first gained its footing around 1,000 years ago when the Basques from present-day Spain began organized whaling.⁵² The Basques primarily hunted the Northern right whale, trading products like oil harvested from the whales.⁵³ The Dutch and British modeled their whale industries on the Basques' and developed a more 'efficient' whaling technique that involved fleets of small boats with harpoons.⁵⁴ The Dutch soon evolved their whaling methods further following a rapid decline of whale populations in the Netherlands due to overhunting and because whales learned to avoid whaling vessels.⁵⁵ Specifically, they built whaling ships that could operate farther from the coast, leading to the Dutch virtually becoming Europe's sole supplier of whale oil and bones by the seventeenth century.⁵⁶

Following suit, North Americans, Norwegians, and other nations began their own whaling industries, primarily hunting humpback and sperm whales due to their high contents of blubber used for oil production.⁵⁷ Commercial whaling operations in Nantucket highly valued sperm whales for a substance called "spermaceti," a waxy oil produced in the organ near a sperm whale's head.⁵⁸ Whalers used spermaceti to produce smokeless and odorless candles and to lubricate machinery.⁵⁹ As a result, whalers vastly overhunted whales in the Atlantic coast by the mid-1700s, causing American whaling fleets to extend their whaling operations into the Arctic and Antarctic oceans.⁶⁰ By the mid-1800s, the United States became the predominant commercial whaling industry, with New Bedford, Massachusetts, as the world's center for whaling.⁶¹ Known as "The City that Lit the World," over half of the world's whaling ships used New Bedford as their home port.⁶² In 1846,

⁵¹ *Id.*

⁵² Robert McNamara, *A Brief History of Whaling*, THOUGHTCO (Apr. 20, 2019), <https://perma.cc/K8ZT-GA9F> (accessed Sept. 12, 2022); *The History of Whaling and the International Whaling Commission (IWC)*, WWF (June 1, 2005) [hereinafter *The History of Whaling*], <https://perma.cc/7RAG-Z83Z> (accessed Sept. 12, 2022).

⁵³ *The History of Whaling*, *supra* note 52.

⁵⁴ *Id.*; McNamara, *supra* note 52.

⁵⁵ Jim Goyjer, *Dutch Whaling: The History of Whaling in the Netherlands*, DUTCH REV., (Jan. 24, 2020), <https://perma.cc/LS5P-ABQZ> (accessed Sept. 14, 2022).

⁵⁶ *Id.*

⁵⁷ *The History of Whaling*, *supra* note 52; McNamara, *supra* note 52.

⁵⁸ McNamara, *supra* note 52.

⁵⁹ *Id.*

⁶⁰ Thornton & Marrero, *supra* note 27.

⁶¹ McNamara, *supra* note 52.

⁶² *Id.*

the United States owned 640 whaling ships—triple the amount of the rest of the world’s whaling ships.⁶³

The commercial whaling industry transformed further in the nineteenth century with the development of steam-powered ships.⁶⁴ Steam-powered ships made faster hunting possible to catch whale species like the blue whale and fin whale while simultaneously permitting longer whaling excursions, enabling American fleets to operate hundreds of ships in the South Atlantic, Pacific, and Indian Oceans.⁶⁵ Furthermore, the technological advancement of harpoons, which were now gun-loaded and explosive, enabled hunting at farther distances with increased accuracy.⁶⁶ The 1921 invention of “slipways”—large, ramp-like openings on whaling ships allowing crews to “slip” dead whales onto the ship for processing—made commercial whaling even more efficient.⁶⁷ Along with technological advancements, the need for whale oil increased dramatically due to World War I when nations heavily relied upon it to produce explosives.⁶⁸

Both factors made commercial whaling a major global industry.⁶⁹ In the United States, the whaling industry contributed 10 million dollars to the gross domestic product, making it the fifth largest sector of the economy.⁷⁰ Some scientists claim the United States hunted more whales “in the early 1900s than in the previous four centuries combined.”⁷¹ “Between 1927 and 1931, whaling around the Antarctic quadrupled.”⁷² In the 1960s, the commercial whaling industry killed over 72,000 whales annually.⁷³ In total, scientists estimate the commercial whaling industry killed 2.9 million whales between 1900 and 1999,⁷⁴ representing “in terms of sheer biomass—the greatest wildlife exploitation episode in human history.”⁷⁵ As a result, most whale species faced extinction.⁷⁶ The lack of regulation in the commercial whaling

⁶³ Derek Thompson, *The Spectacular Rise and Fall of U.S. Whaling: An Innovation Story*, THE ATLANTIC (Feb. 22, 2012), <https://perma.cc/9HXP-EK7> (accessed Sept. 12, 2022).

⁶⁴ *The History of Whaling*, *supra* note 52.

⁶⁵ *Id.*; Thornton & Marrero, *supra* note 27.

⁶⁶ *The History of Whaling*, *supra* note 52.

⁶⁷ Liz Allen, *The International History of Whaling*, TREEHUGGER (July 26, 2021), <https://perma.cc/F7GZ-4RAM> (accessed Sept. 15, 2022).

⁶⁸ *The History of Whaling*, *supra* note 52.

⁶⁹ *Id.*

⁷⁰ Thompson, *supra* note 63.

⁷¹ Thornton & Marrero, *supra* note 27.

⁷² Allen, *supra* note 67.

⁷³ *Commercial Whaling*, ANIMAL WELFARE INST., <https://perma.cc/FE7U-XFV5> (accessed Sept. 18, 2022).

⁷⁴ *Id.*

⁷⁵ *Whale Conservation*, OCEAN ALL., <https://perma.cc/5RE3-YAZ5> (accessed Sept. 18, 2022).

⁷⁶ *A Brief History of Whaling*, OCEAN ALL., <https://perma.cc/B7EK-7L2F> (accessed Sept. 19, 2022); *Commercial Whaling*, *supra* note 73.

industry largely caused the overexploitation; as a response, the IWC was formed.⁷⁷

III. The International Whaling Commission

In 1925, the League of Nations, an international diplomatic group created to resolve international disputes, first recognized the need to address the overexploitation of whales.⁷⁸ Because of the migratory nature of whales and the international prevalence and travel of whaling fleets, the League of Nations (the League) acknowledged that international regulation of whaling was necessary to adequately conserve whales.⁷⁹ In 1930, the League established the Bureau of International Whaling Statistics, which would keep track of whales killed each year globally.⁸⁰ The following year, the League established the Convention for the Regulation of Whaling, the first international regulatory agreement.⁸¹ Twenty-two nations signed the agreement, but many whaling nations like Germany and Japan did not participate.⁸² Effective international regulation of the commercial whaling industry thus struggled to develop.⁸³ In 1946, Washington, D.C. held the International Convention for the Regulation of Whaling to create a Schedule of international rules.⁸⁴ On December 2, the convention created and signed the IWC.⁸⁵ The purpose of the IWC was to “provide for the proper conservation of whale stocks and thus, make possible the orderly development of the whaling industry.”⁸⁶

A. Structure and Enforcement

Countries can voluntarily join the IWC by formally adhering to the 1946 Convention.⁸⁷ Currently, there are eighty-eight member countries in the IWC.⁸⁸ Each member country is considered a “contracting government” and is represented by a commissioner, with as-

⁷⁷ *A History of the International Whaling Commission (IWC)*, WWF [hereinafter *History of the IWC*], <https://perma.cc/A8XR-8GVF> (accessed Sept. 21, 2022).

⁷⁸ *Id.*; *League of Nations*, HISTORY (updated Mar. 5, 2020), <https://perma.cc/2SCN-SWDJ> (accessed Oct. 23, 2022).

⁷⁹ *History of the IWC*, *supra* note 77.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*; *International Whaling Commission*, BRITANNICA, <https://perma.cc/HL2T-WABK> (accessed Sept. 19, 2022).

⁸⁵ *History and Purpose*, INT'L WHALING COMMISSION, <https://perma.cc/J2NY-N8Q2> (accessed Sept. 22, 2022).

⁸⁶ *Id.*

⁸⁷ *Membership and Contracting Governments*, INT'L WHALING COMM'N, <https://perma.cc/HD63-EDTQ> (accessed Sept. 22, 2022).

⁸⁸ *What Is Whaling and Why's it Controversial?*, BBC (updated Sept. 2, 2019, 10:03 AM) [hereinafter *What is Whaling*], <https://perma.cc/C2UE-4DFY> (accessed Sept. 22, 2022).

sistance from both experts and advisers.⁸⁹ A Chair and Vice-Chair head up the IWC; commissioners who serve two years as Vice-Chair and the next two years as Chair elect them.⁹⁰ The IWC divides work between six committees comprised of a series of subgroups.⁹¹ Some groups are long-standing, whereas others are created to address a specific area of concern.⁹² IWC members chair each group, including either commissioners, other members of national delegations, or subject matter experts, depending on the group's primary focus.⁹³

The IWC applies to factory ships, land stations, and whalers under the contracting governments' jurisdictions and in all waters where nations conduct whaling operations.⁹⁴ The IWC primarily focuses on measures governing commercial and subsistence whaling, specifically by meeting every other year to review and revise measures outlined in the legally binding Schedule included in the Convention, evaluate the condition of whale stocks, and modify conservation measures as necessary.⁹⁵ Any regulation of whaling or revision thereof must have the consent of each IWC member country; any member country may object to any amendment within ninety days and not be bound by the amendment.⁹⁶

Because of this objection exception, enforcement of the IWC is difficult.⁹⁷ IWC membership is voluntary, so nations that exit are not bound by IWC regulations.⁹⁸ The International Convention for the Regulation of Whaling (ICRW) founded the ICW but lacked any enforcement mechanisms.⁹⁹ As a result, the IWC could not prevent or punish illegal hunting or misreporting.¹⁰⁰ This lack of real legal teeth became evident between 1947 and 1973 when the Soviet Union whaling fleet killed approximately 180,000 more whales than it reported to

⁸⁹ *Membership and Contracting Governments*, *supra* note 87.

⁹⁰ *Id.*

⁹¹ *Structure and Organisation of the IWC*, INT'L WHALING COMMISSION, <https://perma.cc/564H-V43U> (accessed Sept. 23, 2022).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ International Convention for the Regulation of Whaling art. 1, Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72.

⁹⁵ *Id.* at art. 3.

⁹⁶ Angela Lang, *Overview of the International Whaling Commission*, ANIMAL LEGAL & HIST. CTR. (2002), <https://perma.cc/W3TS-KL9J> (accessed Sept. 24, 2022).

⁹⁷ Hurd, *supra* note 13.

⁹⁸ See *Commercial Whaling*, Int'l Whaling Comm'n, <https://perma.cc/6MH5-J4AU> (noting that Iceland once left and later rejoined the IWC and that Japan left in 2019 and is thereby not bound by the moratorium) (accessed Oct. 23, 2022). See also *Japan Leaves IWC to Resume Commercial Whaling*, NRDC (July 1, 2019) [hereinafter *Japan Leaves IWC*], <https://perma.cc/W2QY-QLLA> (accessed Sept. 23, 2022) (discussing Japan's intentional withdrawal from the IWC following failures to reach an agreement to resume commercial whaling).

⁹⁹ *IWC Governance*, ANIMAL WELFARE INST., <https://perma.cc/GPC9-QEPX> (accessed Oct. 23, 2022).

¹⁰⁰ *Id.*

the IWC, while Japan similarly falsified its catch reports to the IWC.¹⁰¹

In its operation over the past decades, the IWC has shifted its focus and its regulations heavily to respond to the majority member countries' concerns and needs.¹⁰² In the IWC's first twenty years, it primarily focused on managing the business aspects of whaling because the initial members of the IWC were whaling nations.¹⁰³ As whale populations continued to decline and other forms of fuel began to gain popularity, the whaling industry became less profitable.¹⁰⁴ Coupled with an increase in environmental awareness, the IWC began to shift its focus in the late 1960s to conservation management.¹⁰⁵ In the 1970s, anti-whaling nations gained the majority in the IWC, shifting the direction of the IWC into total whale conservation where it remains today following the 1986 moratorium.¹⁰⁶

B. *The 1986 Moratorium*

The IWC moratorium set zero quotas for commercial whaling on all stocks, creating a worldwide ban on commercial whaling.¹⁰⁷ The IWC first agreed to the moratorium in 1982 with a scheduled implementation date of 1986—effectively granting whaling nations a “three-year phase-out period” to gradually shut down their commercial whaling practices.¹⁰⁸ The moratorium ultimately banned the global trade of whale products so the IWC could properly assess whale population numbers while giving diminished whale populations the opportunity to recover.¹⁰⁹ While the IWC did not establish a duration period for the moratorium, it intended the moratorium to be temporary while it completed population assessments and developed sustainable commercial whaling regulations.¹¹⁰ However, the indefinite moratorium is still in effect today, and the IWC recently rejected proposals to end the moratorium.¹¹¹

¹⁰¹ *Id.*

¹⁰² Lang, *supra* note 96.

¹⁰³ *Id.*; *International Whaling Commission*, GREENPEACE, <https://perma.cc/39C7-VVDT> (accessed Sept. 21, 2022).

¹⁰⁴ Lang, *supra* note 96; *See* Thornton & Marrero, *supra* note 27 (describing the commercial whaling industry's plummet following kerosene, petroleum, and other fossil fuels' rising dominance).

¹⁰⁵ *International Whaling Commission*, *supra* note 103; Lang, *supra* note 96.

¹⁰⁶ *International Whaling Commission*, *supra* note 103 (noting many pro-whaling member nations began to shift towards anti-whaling, along with many pro-whaling nations becoming members of the IWC); Lang, *supra* note 96 (noting the United States shifted from being a “major whaling force” to a “strong anti-whaling component of the IWC” during this time).

¹⁰⁷ *IWC Governance*, *supra* note 99.

¹⁰⁸ *Id.*; Lang, *supra* note 96.

¹⁰⁹ Whiting, *supra* note 9; Lang, *supra* note 96.

¹¹⁰ *What Is Whaling*, *supra* note 88.

¹¹¹ *International Whaling Commission*, *supra* note 103.

The moratorium still permits two different types of whaling: subsistence and scientific.¹¹² Through the moratorium, Indigenous communities may kill and harvest a set number of whales to support and feed themselves.¹¹³ The moratorium limits subsistence whaling to certain whale stocks with catch limits based on cultural, subsistence, and whale population sustainability needs.¹¹⁴ On the other hand, scientific whaling enables IWC contracting governments to issue special permits to nations to “take” whales to enhance general knowledge about species.¹¹⁵ IWC member nations may also continue to whale by officially filing an objection to the moratorium, which permits contracting governments to remain in the IWC and not be bound by the moratorium.¹¹⁶

Since the IWC implemented the moratorium, whaling nations have killed over 42,000 whales through objection or special permits.¹¹⁷ Norway and the Russian Federation commercially whale under objections; meanwhile, until its recent departure from the IWC, Japan had conducted extensive whaling operations through the scientific whaling exception.¹¹⁸ The moratorium is “largely successful” in whale conservation, with many whale species populations making progress towards recovery.¹¹⁹ However, some whale populations, like many baleen whale species and the North Atlantic right whale, remain endangered.¹²⁰ Some scientists estimate that most whale populations, although recovering, have failed to reach adequate numbers in the nearly four decades since the moratorium’s implementation for global sustainable commercial whaling to resume.¹²¹

¹¹² Whiting, *supra* note 9.

¹¹³ Lang, *supra* note 96.

¹¹⁴ *International Whaling Commission*, NOAA FISHERIES, <https://perma.cc/8JJM-762G> (accessed Oct. 24, 2022).

¹¹⁵ Lang, *supra* note 96.

¹¹⁶ *IWC Governance*, *supra* note 99.

¹¹⁷ *Id.*

¹¹⁸ *See id.* (explaining Japan’s exploitation of the scientific whaling exception in order to hunt tens of thousands of whales resulted in an International Court of Justice ruling that deemed Japan’s scientific whaling program illegal; Japan disputed the ruling, arguing the court lacked jurisdiction over global ocean resources, thus continuing its lethal scientific research program until it departed from the IWC in 2019).

¹¹⁹ *E.g.*, Whiting, *supra* note 9 (stating Western gray whale populations have increased from 115 individuals in 2004 to 174 whales in 2015. Meanwhile, the Western South Atlantic humpback whale has increased its populations by over 24,000 in the last forty years).

¹²⁰ *See id.* (noting six out of thirteen whale species remain endangered, while the North Atlantic right whale populations have continued to steadily decline).

¹²¹ *See* Lang, *supra* note 96 (“Only the minke whale exists in populations large enough for sustainable whaling to be considered.”).

IV. Controversy of Whaling Today: Conservation vs. Commercialism

Because the IWC initially intended the moratorium to be temporary¹²² and many whale populations have struggled to adequately recover in the decades since the moratorium's implementation, substantial controversy exists over whether the IWC moratorium should remain in place or whether whaling practices should resume.¹²³ On one hand, ending the moratorium and resuming commercial whaling may destroy whale populations' chances at reaching adequate levels, causing the endangerment and extinction of many species. On the other hand, ending the moratorium and instead establishing new regulations on commercial whaling may enable the IWC to effectively monitor and control the international whaling industry to prevent further exploitation.¹²⁴

A. *Conserving the World's Whales*

During the peak of unregulated commercial whaling between the 1860s and 1900s, the whaling industry eradicated more whales than in the previous four centuries combined.¹²⁵ Now, even though global whaling has vastly declined, whale biomass remains at less than 25% of pre-whaling levels.¹²⁶ Whales have struggled to make an expedient recovery from over-whaling, with most populations only recovering at a rate of about 6%.¹²⁷ Some whale species, like the North Atlantic right whale, remain in critical danger of extinction.¹²⁸

The loss of whales like the North Atlantic right whale will have an incredibly detrimental effect on the marine ecosystem. Whales have likely had a "strong influence" on marine ecosystems, acting as an integral part of the marine food web and providing several "ecosystem ser-

¹²² *What is Whaling*, *supra* note 88.

¹²³ See David Child, *IWC Rejects Japan's Proposal to Lift Commercial Whale Hunting Ban*, AL JAZEERA (Sept. 14, 2018), <https://perma.cc/ZM8J-5E2A> (accessed Sept. 16, 2022) (discussing whaling nations' arguments for ending the IWC moratorium and conservationists' arguments for continuing the moratorium).

¹²⁴ Lisa Kobayashi, *Lifting the International Whaling Commission's Moratorium on Commercial Whaling as the Most Effective Global Regulation of Whaling*, 29 ENVIRONS 177, 205 (2006).

¹²⁵ CherylAnn Butman et al., *Whaling Effects on Deep-Sea Biodiversity*, 9 CONSERVATION BIOLOGY 462, 463 (1995).

¹²⁶ Andrew J. Pershing et al., *The Impact of Whaling on the Ocean Carbon Cycle: Why Bigger Was Better*, 5 PLoS ONE 1, 2 (2010).

¹²⁷ Some reports show values over 10%. *Id.*

¹²⁸ See Geib, *supra* note 19 (noting that North Atlantic right whale populations have struggled to recover from commercial whaling; they are now just "one step from extinction"); see also Sarah Kaplan, *These Whales Will Be Extinct in 25 Years, Scientists Say—Unless We Act Now to Save Them*, WASH. POST (Apr. 20, 2018), <https://perma.cc/88NB-QQU2> (accessed Sept. 16, 2022) (noting that North Atlantic right whales will likely go extinct within the next twenty-five years and discussing how the species' decline is causing them to act in strange ways, such as avoiding favored feeding grounds and birthing less calves).

vices.”¹²⁹ In the ocean’s food web, whales consume fish and invertebrates—keeping these prey species at sustainable population levels—and are themselves prey for other large marine predators.¹³⁰ Whales are both reservoirs of and vertical and horizontal vectors for nutrients and detrital energy sources.¹³¹ Through defecation, whales fertilize microscopic plants such as phytoplankton, and because of their migratory nature, whales distribute these nutrients on a global scale.¹³² In turn, phytoplankton influence the planet’s temperature through carbon sequestration—capturing more than 40% of all produced carbon, which is four times more than the Amazon’s rainforests.¹³³

Whales also influence the planet’s temperature, as their bodies are massive carbon stores.¹³⁴ When whales die, their carcasses sink to the bottom of the ocean floor, releasing all the carbon stored within their bodies.¹³⁵ All the released carbon remains in the deep sea for several centuries instead of settling on the ocean’s surface waters and being absorbed into the atmosphere.¹³⁶ Prior to the rise of the commercial whaling industry, scientists estimate whales “sunk” 190,000 to 1.9 million tonnes of carbon annually to the ocean floor.¹³⁷ However, whaling counteracts this process by preventing whale carcasses from sinking to the seabed, instead bringing their bodies to the surface and instantly releasing the stored carbon from their bodies into the atmosphere.¹³⁸ The commercial whaling industry at its peak added an immense amount of carbon to the atmosphere; scientists estimate twentieth century commercial whaling alone added 70 million tonnes of carbon dioxide.¹³⁹

Therefore, if the IWC ended its moratorium and permitted global commercial whaling, many whale species populations which are already struggling to recover would go extinct.¹⁴⁰ The further loss of whale populations would negatively impact the entire marine ecosystem.¹⁴¹ Prey fish stocks could increase at unsustainable rates, while predator species populations may decline due to a lack of food.¹⁴² Phy-

¹²⁹ Joe Roman et al., *Whales as Marine Ecosystem Engineers*, 12 *FRONTIERS ECOLOGY & ENV'T* 377, 377 (2014).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *The Green Whale*, WHALE & DOLPHIN CONSERVATION, <https://perma.cc/HR7B-LJN9> (accessed Sept. 12, 2022).

¹³³ Sophie Yeo, *How Whales Help Cool the Earth*, BBC (Jan. 19, 2021), <https://perma.cc/SRF6-XYU6> (accessed Sept. 12, 2022).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Child, *supra* note 123.

¹⁴¹ Roman et al., *supra* note 129, at 377.

¹⁴² *Id.*

toplankton may also decline, causing mass releases of carbon like surfacing whale carcasses into the atmosphere.¹⁴³ Thus, moratorium proponents argue reviving commercial whaling would devastate whales and their marine ecosystem and contribute to climate change.¹⁴⁴

B. Sustainable Whaling

Proponents of ending the IWC moratorium argue ending the moratorium would better align with the IWC's purpose and allow for more effective regulation of the whaling industry.¹⁴⁵ When established, the IWC's stated purpose was to "provide for the proper conservation of whale stocks and thus, make possible the orderly development of the whaling industry[;]" this purpose remains in place today.¹⁴⁶ To effectuate this conservation, the IWC is responsible for setting commercial whaling quotas to effectively regulate the industry and maintain sustainable whale populations.¹⁴⁷ Since the moratorium went into effect in 1986, it has set the commercial whaling quota at zero.¹⁴⁸ The IWC intended for the moratorium to be temporary while it conducted the population assessments necessary to develop sustainable whaling regulations and practices.¹⁴⁹ It even has a framework in place for this assessment and development process called the Revised Management Procedure (RMP).¹⁵⁰ The IWC adopted the RMP in 1994 but has not implemented it, leaving the moratorium in effect indefinitely.¹⁵¹

The RMP essentially requires integrating scientific management advice into the development of commercial whaling regulations to permit whaling while maintaining sustainable whale stocks.¹⁵² The RMP involves two stages: (1) the development of the Catch Limit Algorithm (CLA), a mathematical formula relying on current whale population estimates and past catch numbers to determine a "safe catch

¹⁴³ *Id.*

¹⁴⁴ Child, *supra* note 123; Roman et al., *supra* note 129, at 377; Yeo, *supra* note 133.

¹⁴⁵ Joji Morishita & Dan Goodman, *The IWC Moratorium on Commercial Whaling Was Not a Value Judgment and Was Not Intended as a Permanent Prohibition*, 1 AEGEAN REV. L. SEA 301, 301–02 (2011).

¹⁴⁶ *History and Purpose*, *supra* note 85.

¹⁴⁷ *Conservation and Management*, INT'L WHALING COMM'N, <https://perma.cc/ND8E-MSDC> (accessed Sept. 16, 2022).

¹⁴⁸ *Id.*

¹⁴⁹ *What Is Whaling*, *supra* note 88; see also Joji Morishita & Remi Parmentier, *Perspectives on the Whaling Controversy*, A PLANET FOR LIFE (2011), <https://perma.cc/T5J4-G9XT> (accessed Sept. 21, 2022) (quoting the IWC that "by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits" and noting how the IWC has failed to adhere by its own requirements within the moratorium, instead keeping the moratorium in place indefinitely).

¹⁵⁰ *The Revised Management Procedure*, INT'L WHALING COMM'N, <https://perma.cc/4MX8-33GA> (accessed Sept. 16, 2022).

¹⁵¹ *Id.*

¹⁵² *Id.*

limit[,]”¹⁵³ and (2) the Implementation Review, which involves region-specific analyses on all available information on each whale species.¹⁵⁴ The RMP uses the information from these analyses to distribute the CLA to each region among different whale populations within those regions.¹⁵⁵ Once completed, the IWC cannot implement the RMP for whaling until it completes the accompanying Revised Management Scheme (RMS).¹⁵⁶ The RMS is essentially the enforcement mechanism of the RMP, establishing inspection, observation, and compliance practices to ensure nations do not exceed their assigned whale catch limits.¹⁵⁷ Development of the RMS reached an impasse in 2007, and the IWC has not completed nor scheduled for any further work on the RMS in the fourteen years since.¹⁵⁸

Proponents of ending the moratorium, like Hideki Moronuki, Japan’s IWC senior fisheries negotiator and commissioner, believe the failure to resolve the impasse—keeping the moratorium in effect indefinitely—is inconsistent with the IWC’s original purpose of conserving whales while permitting “the sustainable use of whales.”¹⁵⁹ In 2018, Japan proposed a package of measures to end the moratorium, which included establishing a Sustainable Whaling Committee, setting sustainable catch limits only for “abundant” whale stocks, and creating mechanisms to more easily establish whale sanctuaries.¹⁶⁰ The IWC voted Japan’s proposal down,¹⁶¹ resulting in Japan’s departure from IWC membership and its subsequent resumption of commercial whaling in 2019.¹⁶² Thus, Japan is no longer bound by the IWC moratorium and can harvest whales without any regulation or control by the IWC.¹⁶³

Some nations and conservation groups believe a compromise between whaling and conservation, in place of the moratorium, is the best route to prevent other nations from leaving the IWC, like Japan did, and resuming commercial whaling without international regulation.¹⁶⁴ Proponents argue ending the moratorium and implementing

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Revised Management Scheme*, INT’L WHALING COMM’N, <https://perma.cc/TJ94-UY5L> (accessed Sept. 17, 2022).

¹⁵⁸ *Id.* (noting no further work on the RMS has been identified).

¹⁵⁹ Andreas Illmer, *Japan Says It’s Time to Allow Sustainable Whaling*, BBC (Sept. 7, 2018), <https://perma.cc/ZW97-PBPG> (accessed Sept. 19, 2022).

¹⁶⁰ *Id.*

¹⁶¹ Sui Phang & Peter Bridgewater, *Japan Resumes Commercial Whaling—Researchers on How the World Should Respond*, THE CONVERSATION (July 1, 2019, 9:15 AM), <https://perma.cc/QS4T-VPHZ> (accessed Sept. 19, 2022).

¹⁶² *Japan Leaves IWC*, *supra* note 98.

¹⁶³ Phang & Bridgewater, *supra* note 161.

¹⁶⁴ *See generally At a Glance: Whaling Moratorium*, SBS NEWS (updated August 23, 2013, 2:09 PM), <https://perma.cc/X9Z3-J32V> (accessed Sept. 19, 2022) (“Many nations and most conservation groups have decided that a compromise deal is a lesser evil than the status quo, however distasteful a de-facto lifting of the moratorium might be.”); *see*

sustainable and enforceable international whaling regulations would allow the IWC to retain the membership of whaling nations and effectively regulate international whaling activities.¹⁶⁵ Through effective regulation, the IWC could control the amount, method, and location of commercial whaling globally and even establish punitive measures to enforce such regulations, thereby preventing the overexploitation of the past commercial whaling industry.¹⁶⁶ Ultimately, proponents of ending the IWC moratorium believe permitting sustainable whaling will make the IWC consistent with its original purpose, improve IWC credibility, increase international membership, effectively conserve whales through stringent regulations, and create a stronger international framework for sustainable resource management and global regulation.¹⁶⁷

V. Reframing the IWC Moratorium

Reframing the IWC moratorium to permit regulated commercial whaling on certain whale stocks with strict enforcement mechanisms is the most effective way to globally regulate whaling and conserve whale populations. Allowing regulated commercial whaling on certain stocks would neither violate nor end the moratorium.¹⁶⁸ Furthermore, allowing some regulated commercial whaling may deter further abuses of the scientific whaling exception in the moratorium and possibly end whaling under an objection to the moratorium.¹⁶⁹ Additionally, reframing the moratorium would likely encourage whaling nations like Japan to return and remain active IWC members, leading to a broader scope of international regulation.¹⁷⁰ Ultimately, reframing the IWC moratorium to permit some commercial whaling would result in a more effective regulatory scheme for the conservation of whales.¹⁷¹

When the IWC adopted the Schedule in 1982,¹⁷² it solidified the catch limits for all stocks at zero but provided that the moratorium be

also Kobayashi, *supra* note 124, at 205 (stating the failure to resolve the controversy of the moratorium within the IWC could lead to whaling nations withdrawing from the IWC and resuming whaling “without effective international controls”).

¹⁶⁵ Kobayashi, *supra* note 124, at 205.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 219.

¹⁶⁸ Morishita & Goodman, *supra* note 145, at 303–04.

¹⁶⁹ See generally *Over Recent Decades, the IWC has Taken Some Encouraging Steps in Changing its Emphasis Towards Conserving and Studying Whales, Most Recently in 2003 with the Establishment of a Conservation Committee*, WWF [hereinafter *IWC Conservation*], <https://perma.cc/6EVR-YMAQ> (accessed Sept. 18, 2022) (discussing countries’ abuses of the scientific whaling exception in order to harvest more whales for commercial purposes under the guise of scientific research).

¹⁷⁰ Kobayashi, *supra* note 124, at 207 (noting the importance of whaling nations remaining members of the IWC).

¹⁷¹ *Id.* at 219.

¹⁷² Morishita & Goodman, *supra* note 145, at 303 (describing how the Schedule is the IWC’s means for adopting legally binding regulations).

“kept under review, based upon the best scientific advice.”¹⁷³ The binding language of the moratorium also included that “by 1990 at the latest, the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits.”¹⁷⁴ Reframing the moratorium to allow commercial catch quotas only on whale stocks the “best scientific advice” deems abundant would be consistent with the moratorium’s regulatory language.¹⁷⁵ In fact, it would follow the action the moratorium calls for by “consider[ing] modification of this provision and the establishment of other catch limits.”¹⁷⁶ Establishing catch limits for sustainable commercial whaling would neither be inconsistent with the moratorium language nor lift the moratorium and thereby subject all whale populations to commercial whaling.¹⁷⁷ The plain language of the moratorium only permits non-zero commercial catch limits for whale stocks when the IWC’s Scientific Committee completes a comprehensive scientific assessment and establishes a sustainable catch quota for those stocks.¹⁷⁸ Thus, the moratorium accounts for some whale stocks eventually having non-zero commercial catch limits and sets clear language in place to prevent commercial whaling quotas on whale stocks that cannot sustain further decimation.¹⁷⁹

Permitting commercial whaling on specific whale stocks may also prevent further abuses of the scientific exception in the IWC moratorium. Until Japan’s departure from the IWC, Japan continued to hunt whales for commercial purposes under the “guise of scientific research.”¹⁸⁰ Japan hunted whales in both the Antarctic and North Pacific oceans under the claim that whaling was necessary to answer “critical management questions.”¹⁸¹ Japan argued lethal scientific techniques were necessary to allow examinations of whales’ stomach contents, which Japan’s lead scientists argued would help calculate sustainable hunting levels for different whale species.¹⁸² However, Japan commercially sold whale meat harvested from these “scientific” expeditions, raising questions as to whether Japan’s whaling was truly for scientific research.¹⁸³ In 2014, the United Nations’ International Court of Justice determined Japan’s whaling was “not for purposes of

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 304.

¹⁸⁰ *IWC Conservation*, *supra* note 169.

¹⁸¹ *Id.*

¹⁸² Larry Pynn, *What’s the True Scientific Value of Scientific Whaling?*, HAKAI MAG. (Oct. 27, 2016), <https://perma.cc/LXV7-GUR7> (accessed Sept. 18, 2022).

¹⁸³ *Id.*

scientific research” and that Japan was abusing the scientific exception to the moratorium for commercial purposes.¹⁸⁴

Furthermore, permitting commercial whaling on specific whale stocks may end whaling under filed objections to the moratorium. Iceland and Norway commercially hunt whales through objections to the moratorium.¹⁸⁵ Iceland hunts minke and fin whales.¹⁸⁶ From 2006 to 2009, Iceland increased its whaling quotas from 30 to 100 minke whales and from 9 to 150 fin whales.¹⁸⁷ Iceland’s fin whale quota is more than three times higher than the IWC Scientific Committee’s determined sustainable amount even though fin whales are endangered.¹⁸⁸

The abuses under both the scientific exception and filed objections to the moratorium have resulted in excessive whaling and the “collapse of many whale stocks.”¹⁸⁹ Permitting countries to practice sustainable commercial whaling through stringent regulations to avoid excessive catches may deter further abuses, whaling under the scientific exception, and whaling through objections. Under that approach, whaling countries may satisfy their industry needs while subject to IWC quotas instead of setting their own.¹⁹⁰

Permitting some commercial whaling under the IWC moratorium may also encourage the participation and compliance of whaling nations like Japan. Whaling nations’ participation in the IWC is necessary for the global prevention of the overexploitation of whale stocks.¹⁹¹ By allowing some sustainable whaling practices to continue under the moratorium for commercial purposes, Japan may re-enter the IWC, where the commission may regulate its whaling.¹⁹² Regardless, Japanese commercial whaling may continue to decline due to decreased demand.¹⁹³ Japanese political culture centers on public cohesion so that the nation appears to be unified in nearly all matters.¹⁹⁴ Political practices such as international shaming targeted at Japan tend to have an adverse effect, antagonizing the criticized behavior rather than effectively persuading the country to change its

¹⁸⁴ *Id.*

¹⁸⁵ *IWC Conservation*, *supra* note 169.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *See generally* Kobayashi, *supra* note 124, at 205 (discussing how permitting commercial whaling under the IWC moratorium would result in a more regulated whaling industry globally).

¹⁹¹ *Id.* at 207.

¹⁹² *See id.* at 205 (discussing the aspects of commercial whaling the IWC could regulate).

¹⁹³ *Japan Whaling: Why Commercial Hunts Have Resumed Despite Outcry*, BBC (July 2, 2019), <https://perma.cc/HM7U-K2FZ> (accessed Sept. 16, 2022).

¹⁹⁴ Michal Kolmas, *When Shaming Fails: Japanese Withdrawal from the International Whaling Commission*, *AUSTL. INST. INT’L AFFS.* (Nov. 18, 2020), <https://perma.cc/P8TC-4Y35> (accessed Sept. 13, 2022).

ways.¹⁹⁵ As a result, the criticized behavior becomes an “emblem of national pride” as the nation’s form of protest against the global shaming it is enduring, even though consuming whale meat—the criticized behavior’s product—is largely unpopular.¹⁹⁶

This phenomenon, where shaming generates more resistance to altering the criticized behavior, is evident in Japan’s whaling.¹⁹⁷ Japan has endured heavy global criticism for its whaling practices, including both global protests and attacks on its whaling ships.¹⁹⁸ But support for whaling in Japan has steadily increased despite Japanese society’s decline in whale meat consumption.¹⁹⁹ Thus, global shaming of Japanese whaling has had the opposite intended effect, causing national support for a dying industry.²⁰⁰ If the IWC permits regulated commercial whaling under the moratorium and thereby reduces global shaming of Japan, Japan’s commercial whaling industry may naturally decline on its own, as the industry is only fueled by a drive for national unity against international pressure and not a heavy market demand.²⁰¹

Commercial whaling in other whaling nations declined where market demand directly influenced the industry. Iceland, a historic whaling nation, closed its minke whaling company in 2020 following a national market decline making it “no longer profitable to hunt for minke whales in Icelandic waters.”²⁰² Iceland’s fin whaling company, while not permanently closed yet, has not engaged in fin whaling since 2019 due to a lack of profitable market demand.²⁰³ Similarly, in Norway, only 4% of the domestic population reported consistent consumption of whale meat in 2019, while two-thirds of the population reported

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*; Justin McCurry, *Japan Resumes Commercial Whaling for First Time in 30 Years*, THE GUARDIAN (June 30, 2019), <https://perma.cc/5EZ8-TBN3> (accessed Sept. 13, 2022).

²⁰⁰ McCurry, *supra* note 199 (stating the Japanese government spends billions of yen funding its commercial whaling industry despite a lack of whale meat consumption by the Japanese population); Kolmas, *supra* note 194 (“Although a vast majority of the Japanese do not regularly, or at all, eat whale meat, there has been steady support for whaling, and, if anything, a growing tendency to support whaling after these campaigns took place. The reason for this lies in the incompatibility of confrontational style of shaming strategies with Japanese political culture”).

²⁰¹ Kolmas, *supra* note 194; McCurry, *supra* note 199 (noting the lack of market demand for whale meat in Japan).

²⁰² *Whaling in Iceland*, WHALE & DOLPHIN CONSERVATION, <https://perma.cc/W3KE-BZJB> (accessed Sept. 13, 2022) (quoting Gunnar Bergmann Jonsson, managing director of Icelandic minke whaling company IP-Utgerd, regarding the decision to close Iceland’s minke whaling company permanently).

²⁰³ *See id.* (noting Iceland’s whaling market has been steadily declining for at least the past decade; for example, a 2018 Gallup poll for IFAW (International Fund for Animal Welfare) found that 84% of Icelanders said they had never eaten whale meat, while only 2% reported they had eaten whale meat six times or more a year).

never consuming whale meat or only consuming it “a long time ago.”²⁰⁴ In response, the Norwegian whaling industry has downsized by half; in 2003 Norway registered thirty-five whaling vessels, but in 2021 only seventeen vessels remain licensed to hunt whales.²⁰⁵ Permitting commercial whaling would encourage whaling nations to participate in the IWC, promote broader global regulation of whaling, and allow Japan’s commercial whaling to subside—all of which will create a more effective international whale conservation scheme.²⁰⁶

VI. Conclusion

The global practice of whaling has been in effect for centuries,²⁰⁷ becoming a massive wildlife exploitation event with the rise and development of unregulated industrial whaling.²⁰⁸ This industry decimated global whale populations, some beyond recovery.²⁰⁹ The effects persist today.²¹⁰ The generally slow reproduction rates of whales,²¹¹ coupled with climate change,²¹² have made it difficult for global whale populations to fully recover and reach sustainable levels for the global commercial whaling industry to resume.²¹³ The IWC global moratorium on commercial whaling has remained in effect for nearly four decades, causing strife and disagreements within the IWC.²¹⁴ This conflict eroded the IWC’s international prominence; six past U.S. Commissioners described the IWC’s fall as a “steady decline . . . from a world-class international organization for the conservation and management of the great whales to a nearly dysfunctional body.”²¹⁵

²⁰⁴ *Norwegian Whaling*, ANIMAL WELFARE INST., <https://perma.cc/KDY5-RJMS> (accessed Sept. 13, 2022).

²⁰⁵ *Id.*

²⁰⁶ Kobayashi, *supra* note 124, at 205; McCurry, *supra* note 199 (noting the lack of market demand for whale meat in Japan).

²⁰⁷ *History of Whaling*, *supra* note 21.

²⁰⁸ *Whale Conservation*, *supra* note 75.

²⁰⁹ Marrero & Thornton, *supra* note 10.

²¹⁰ Pershing et al., *supra* note 126, at 2.

²¹¹ Joshua Learn, *These Whales Are Suffering a Slow-Motion Extinction*, OCEANA (Oct. 30, 2018), <https://perma.cc/MQJ4-UUSM> (accessed Sept. 16, 2022).

²¹² See generally Carissa Wong, *Climate Change Could Slow Recovery of Southern Right Whales*, NEWSIDENTIST (Oct. 15, 2021), <https://perma.cc/XVX3-BHMT> (accessed Sept. 16, 2022) (asserting that climate change is causing more frequent and severe weather events, such as El Niño events, which lead to warmer surface waters that cause Arctic ice shelves to melt, reducing the amount of many whales’ major food source—krill).

²¹³ See Pershing et al., *supra* note 126, at 2 (noting today’s global biomass of whales is a shadow of its former numbers prior to the whaling industry).

²¹⁴ See *Revised Management Scheme*, *supra* note 157, at 1, 4 (noting the impasse in 2007 caused by disagreements in the IWC); see also *Japan Leaves IWC*, *supra* note 98 (describing Japan leaving the IWC following years of its commercial whaling proposals being shut down by other IWC members).

²¹⁵ *U.S. Leadership in the Int’l Whaling Comm’n and H.R. 2455, The Int’l Whale Conservation and Protection Act of 2009: Joint Hearing Before the Subcomm. on Int’l Organizations, Human Rights and Oversight, and Subcomm. on Asia, The Pacific and the Global Environment of the H. Comm. on Foreign Affs.*, 111th Cong. 20 (2010) (transcrib-

To remain a prominent and respected international body, the IWC must reframe its moratorium to encourage more widespread global participation and establish a more effective regulatory scheme for the conservation of whales.²¹⁶ An effective regulatory scheme is generally composed of two elements: (1) practical policies and (2) supervision mechanisms that establish a “credible threat of enforcement.”²¹⁷ The IWC already satisfied the first element in its framework for RMPs, which legal scholars have recognized as “one of the most comprehensive conservation management procedures developed for any living marine resource.”²¹⁸ To satisfy the second element and implement an effective regulatory scheme, the IWC must complete the RMS in a manner that ensures whaling countries do not exceed their quotas.²¹⁹ The IWC should include stringent observation and enforcement mechanisms in the RMS—like satellite-based vessel tracking systems, registers, and market monitoring with DNA—to hold whaling nations accountable.²²⁰ Finally, by completing the RMS the IWC could implement an effective commercial whaling regulatory scheme.

By establishing an effective regulatory scheme and thereby permitting commercial whaling only on abundant whale stocks, the IWC could efficiently regulate the industry and provide for the conservation of whales on a broader scale.²²¹ Because the moratorium would remain in effect,²²² recovering whale populations would remain protected, and scientific quotas to prevent overexploitation would limit hunts on populations with suitable numbers.²²³ Permitting strictly regulated commercial whaling on some whale populations would then encourage whaling nations to participate in the IWC and abide by its rules,²²⁴ both of which are necessary for the proper and effective conservation of whales.²²⁵ Whaling nations like Japan may even reduce their commercial whaling practices as a result. With less international resistance and hostility, whaling nations may assess whether their whaling industries are profitable enough to continue and adjust accordingly.²²⁶ By developing effective regulation and thus permitting commercial

ing testimony of David A. Balton, Deputy Assistant Secretary of the Bureau of Oceans and International Environmental and Scientific Affairs, quoting a letter from Monica Medina to the President).

²¹⁶ Kobayashi, *supra* note 124, at 216.

²¹⁷ SHEETAL RADIA, CFA SOC'Y U.K., EFFECTIVE REGUL. 3 (2011), <https://perma.cc/4H2N-NQTC> (accessed Sept. 17, 2022).

²¹⁸ Kobayashi, *supra* note 124, at 212.

²¹⁹ *Id.* at 209.

²²⁰ *Id.* at 215.

²²¹ *Id.* at 205.

²²² Morishita & Goodman, *supra* note 145, at 303–04; *see supra* Section V (discussing lifting the moratorium).

²²³ Morishita & Goodman, *supra* note 145, at 303–04.

²²⁴ *See supra* Section IV (discussing this possibility in depth).

²²⁵ Kobayashi, *supra* note 124, at 207.

²²⁶ *See supra* Section IV (describing the unintended effect of international whaling disapproval on whaling nations.)

whaling on certain whale populations, the IWC could effectively protect whales from overexploitation and allow these magnificent giants to fill the world's seas once again.