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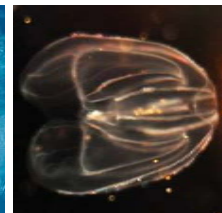
translating **nature** into **knowledge**

INSTITUTE FOR MARINE AND ANTARCTIC STUDIES

Southern Ocean Whaling

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8 – Southern Ocean Whaling

In this session we will discuss the International Whaling Commission, the International Convention for the Regulation of Whaling and the political climate in which they operate in the Antarctic. It focuses on the Southern Ocean Whale Sanctuary, Japanese scientific research by permit, the Australian case before the International Court of Justice, and the protest action by Sea Shepherd Conservation Society against the Japanese.

Recommended Reading

Jabour J (2010) The double-edged sword of Australia's whaling policy. In Gullett W, C Schofield and J Vince (eds) Marine Resources Management, LexisNexis Butterworths, 157–169.

Types of Whales

(cetaceans)

- Baleen

- ~11 species
- eg. right, grey androrqual families
 - right, blue, fin, sei, humpback, minke
- Have plates of keratin (baleen) that filter food from water
- Have double blowhole

- Toothed

- ~67 species
- eg. sperm, orca (killer), pilot
- Use echolocation to find prey
- Have teeth to capture prey
- Have single blowhole

All species have different location, shape and size of dorsal fin; fins, tail flukes and colour patches aid identification



Blue (baleen) whale 33m long, weighing 160 t = 25 elephants!!



Orcinus orca (toothed whale) has distinctive markings - saddle and eye patch

Features of old Western whaling

Records from mid-11th Century but opportunistic taking of whales earlier...?

Stationary, shore-based coastal whaling expanded to pelagic (open ocean) whaling late 18th/19th C.

“Right” whales slow swimmers, very fat (float), very long baleen (sometimes more valuable than their oil)

- Sailing ships
- Hand-thrown harpoon
- Blubber boiled in pots for oil (major wastage)
- Oil used for lighting, lubrication, soap
- Baleen used in corsets etc (old fashioned plastic!)
- Whale meat and blubber were also treasured food source in some societies



Modern Western whaling


After World War II to present

- Mostly rorquals (blue, fin, humpback, minke)
- Steam-driven catchers; floating factories with stern ramp
- Needed new methods because “rights” were gone and rorquals sank when harpooned
- Harpoon with line attached fired; grenade burst inside whale
- Line used to haul up sinking whales, towed to shore station or processed on factory ship
- Blubber, bones, flesh all boiled in pressure cookers for oil
- Oil used for margarine, soap, food



Six periods of Southern Ocean whaling

1. Right - to 1912
2. Humpback - 1904–1912
3. Blue - 1913–1937
4. Fin - 1937–1965
5. Sei - 1965–1975
6. Minke - present



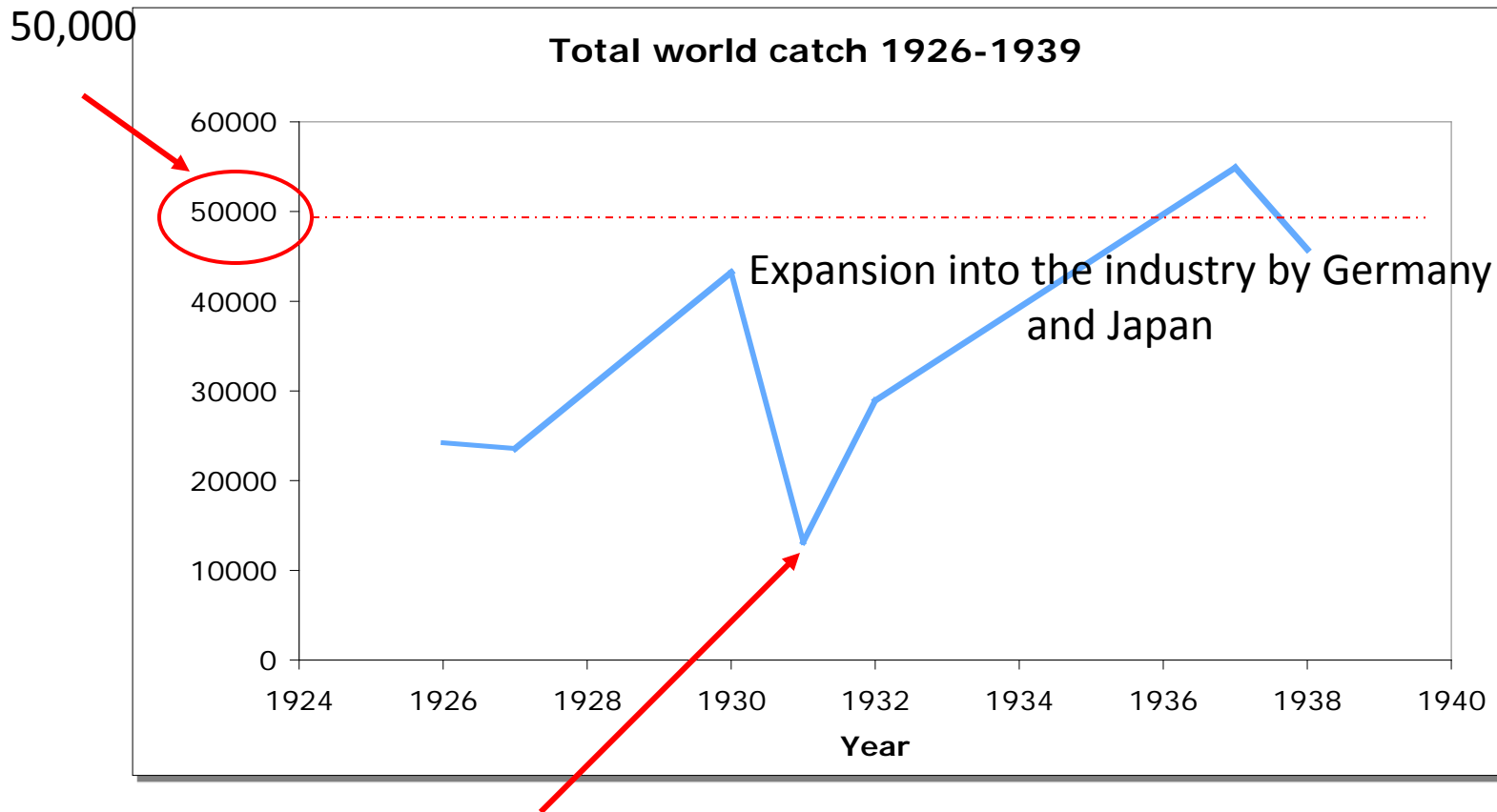
Transition
coincided with
decimation of
stocks eg. USSR
Slava fleets
admitted under-
or mis-reporting
take

20th C Antarctic whaling

Season	Shore Stations/ Floating Factories	Catchers	Whales
1904-5	1	1	95
1905-6	3	5	712
1906-7	4	8	1112
1907-8	7	14	2312
1908-9	10	21	4125
1909-10	13	37	6099
1910	Northern Seas	83	3448

Source: Tønnessen & Johnsen 1982

20th C Global whaling



Voluntary suspension of operations by two Norwegian whaling companies due to overproduction and crashing prices for whale oil. Waiting for demand to pick up. Better production methods increased utility of whale oil but petroleum-based products eventually became competitive

Chaos Pre 1946

- Disputes between Norway, Britain & Germany over crewing, quotas, methods, ships, bonuses, concessions
- Butter v. margarine (butter shortages during war); petroleum products v. whale oil
- Price fluctuations chaotic; over-harvesting was commonplace
- 1931 *International Convention for the Regulation of Whaling*: failed
- 1932 Agreement on quota allocations: worked but was for 1 year only
- World War II

“Oil & Fat Industries”

The Editor's Page, July 1931

Producers, refiners and consumers of oils and fats must recognize this new important factor in their field. Whale oil apparently has come to stay, and the best reports obtainable from the Antarctic indicate that the supply can be maintained at high levels for many years. Undoubtedly, in time the market will be stabilized so that other fatty oils will not be affected so keenly in price by the whale oil run as in the past year or two, but for the present all producers and refiners of other fats and oils must exert their best efforts to maintain their markets for their own commodities.

International Convention for the Regulation of Whaling (1946)

- A framework Convention + Schedule of rules
- Objective (Intention):
 - ‘...proper conservation of whale stocks and [thus make possible] the orderly development of the whaling industry’
 - Achieved by giving “an interval of recovery” to certain species of whale [that were then] depleted in numbers
- Establishes a Commission of all Parties (International Whaling Commission) and other committees, including Scientific



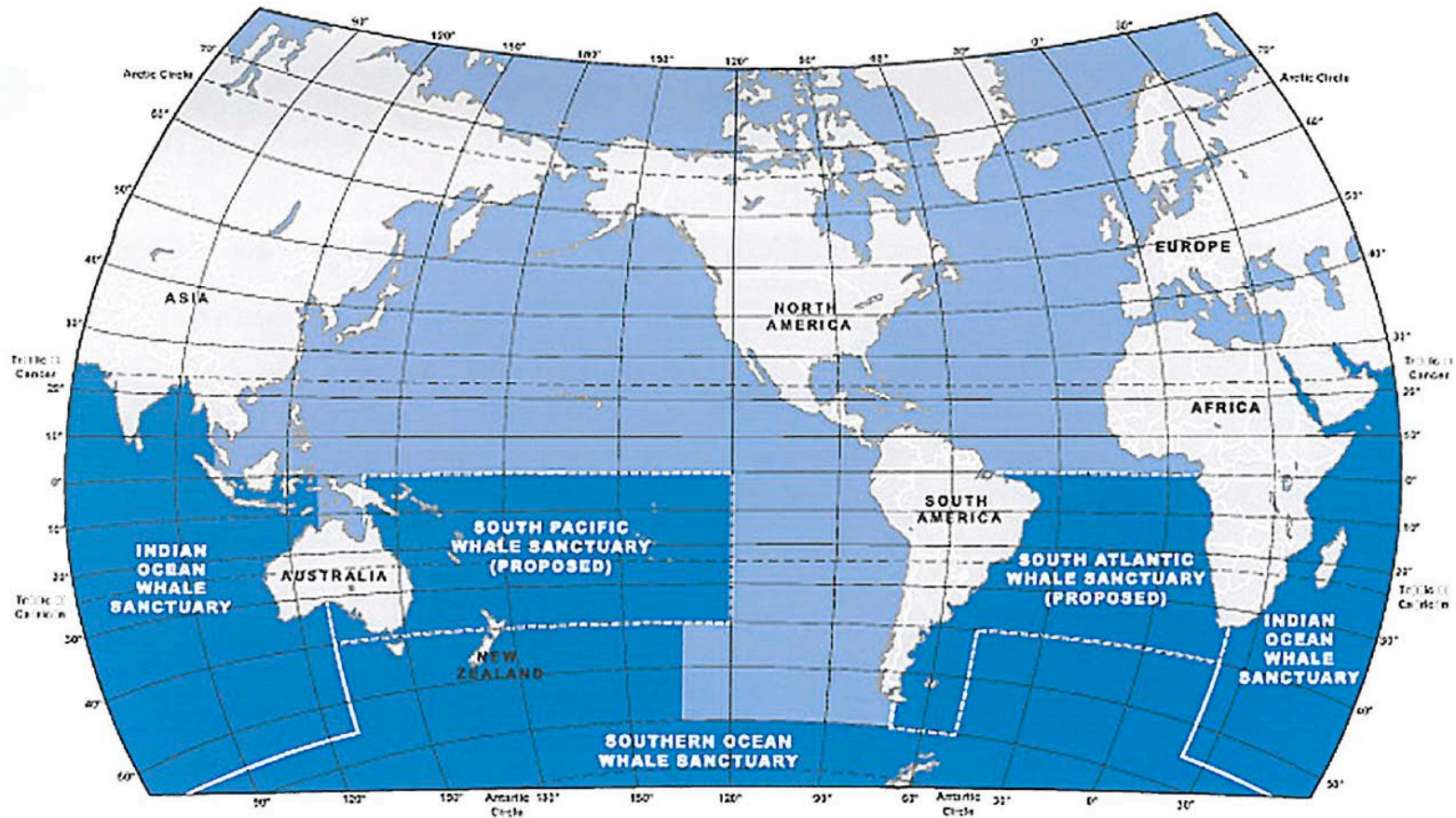
IWC Management Scope

- Schedule (rules) on:
 - Species protection; seasons; waters; sanctuaries (scientific justification); size limits for species; time, methods and intensity of whaling (including catch limits)
 - Collection of catch data (decisions based on scientific evidence)
 - Scientific research (does not exclude lethal means)
- 3/4 majority voting to amend the Schedule to make changes to these rules (but changing Convention requires consensus)

IWC Major Decisions

- “Moratorium” on commercial whaling (ie. zero quota, irrespective of conservation status) since 1982 (in force 1985/86 season)
 - States may make objections and not be bound; both Norway and Iceland have done so
- Indian and Southern Ocean Whale Sanctuaries (SOWS)
 - Japan objected to SOWS and can therefore conduct scientific research in the Southern Ocean (ie. taking of Minke whales by lethal means)

IWC Whale Sanctuaries



(www.iwcoffice.org)

The situation today...

Dual objectives (conservation + harvesting) common in fisheries management BUT political and legal stalemate in IWC:

- 3/4 majority vote on matters of substance - moratorium on commercial harvesting, Aboriginal Subsistence Whaling, resumption of commercial harvesting through RMP/RMS - all deadlocked

Possibility of the adoption of the Revised Management Scheme/Revised Management Procedure (RMP/RMS) and revision of zero quota
= possible resumption of commercial harvesting

But only stock possible to harvest from with current level of scientific info would be Southern Ocean Minkes

RMP (adopted 1994)

Scientific Committee developed Revised Management Procedure

- Catch limit algorithm, rules about stock boundaries, allocation of catches to small areas, what to do if many more of one or other sex are caught, etc

Two essential parameters:

- estimates of current abundance taken at regular intervals
- knowledge of past and present catches

Objectives

- catch limits should be as stable as possible
- catches should not be allowed on stocks below 54% of the estimated carrying capacity
- highest possible continuing yield should be obtained

RMS

Combination of scientific (RMP) and non-scientific (political) factors comprise the Revised Management Scheme

Working group set up in 1994 to create

- inspection and observation scheme;
- arrangements to ensure catches comply with Revised Management Scheme;
- incorporation into the Schedule of RMP/RMS, meaning an end to the moratorium

In 17 years this has not been successful because of the $\frac{3}{4}$ majority voting system and because RMP/RMS together may mean the reintroduction of commercial whaling (only stock would be Southern Ocean minke)

IWC Major Obstacles



- Adoption of RMP
 - Ideological objections not necessarily supported by scientific evidence
- Scientific Research
 - Despite constant objections through (non-binding) Resolutions to Japan issuing permits to its nationals to take whales by lethal means for scientific research (Article VIII), Parties unable to amend Convention to prohibit killing (no consensus)
 - right to issue permits is in the CONVENTION not the SCHEDULE, therefore requires CONSENSUS to amend

Anti-Whaling Position

“Whales are biologically, ecologically, culturally, politically, symbolically special” (Task Force 1997)

- Primarily Australia, UK which argue that:
 - Whaling is cruel, unsafe, unsustainable, unhealthy, uncontrollable, unethical
 - Whales are special, conscious and intelligent, relate to humans, are not a resource
 - Whales are mammals
 - There are benign alternatives to killing whales

Pro-Whaling Position

“The whale is beautiful, tremendous, awe-inspiring and tastes good” (Olsen 1997)

Primarily Norway, Iceland, Japan, which argue that:

- Scientific studies support managed harvest of some stocks of some species in some areas (eg. Southern Ocean Minke)
- Aboriginal subsistence and traditional harvests are cultural rights
- Killing techniques are humane
- “Whales eat fish” (surplus yield model)

Rational Position

“We can’t stop it; we can only try to control it”

Monica Medina (US IWC delegate)

- Primarily NZ, USA which hope to introduce rigorous oversight of limited coastal whaling through:
 - Strict monitoring of whaling activities
 - Tracking devices on whaling vessels
 - Observers on vessels
 - Whale DNA registry to track world trade (no world trade)

“The IWC is a mess. I think this is probably the last chance [it] has to cure itself” Sir Geoffrey Palmer (NZ IWC delegate)

NAMMCO alternative

- North Atlantic Marine Mammal Commission – a confederation of states whose people hunt marine mammals for food, for skins and other resources, and for export
- Members are
 - Iceland *
 - Norway *
 - Greenland
 - Faroe Islands
- + Observers
 - governments, NGOs, IGOs etc

*also IWC member states





Inuit hunters cutting up a Bowhead for distribution among the community



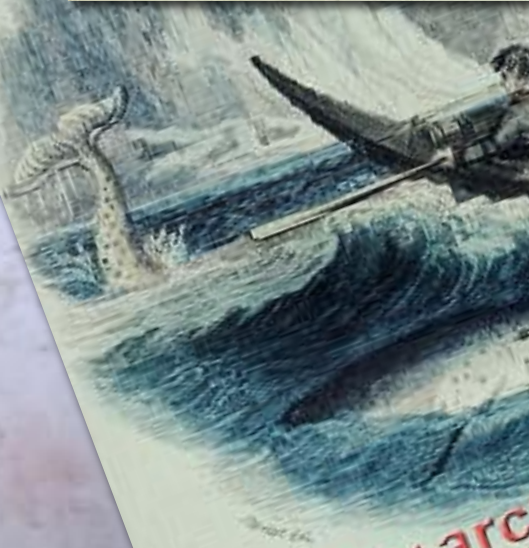
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GREENLAND WHALE.

Whaling is traditional

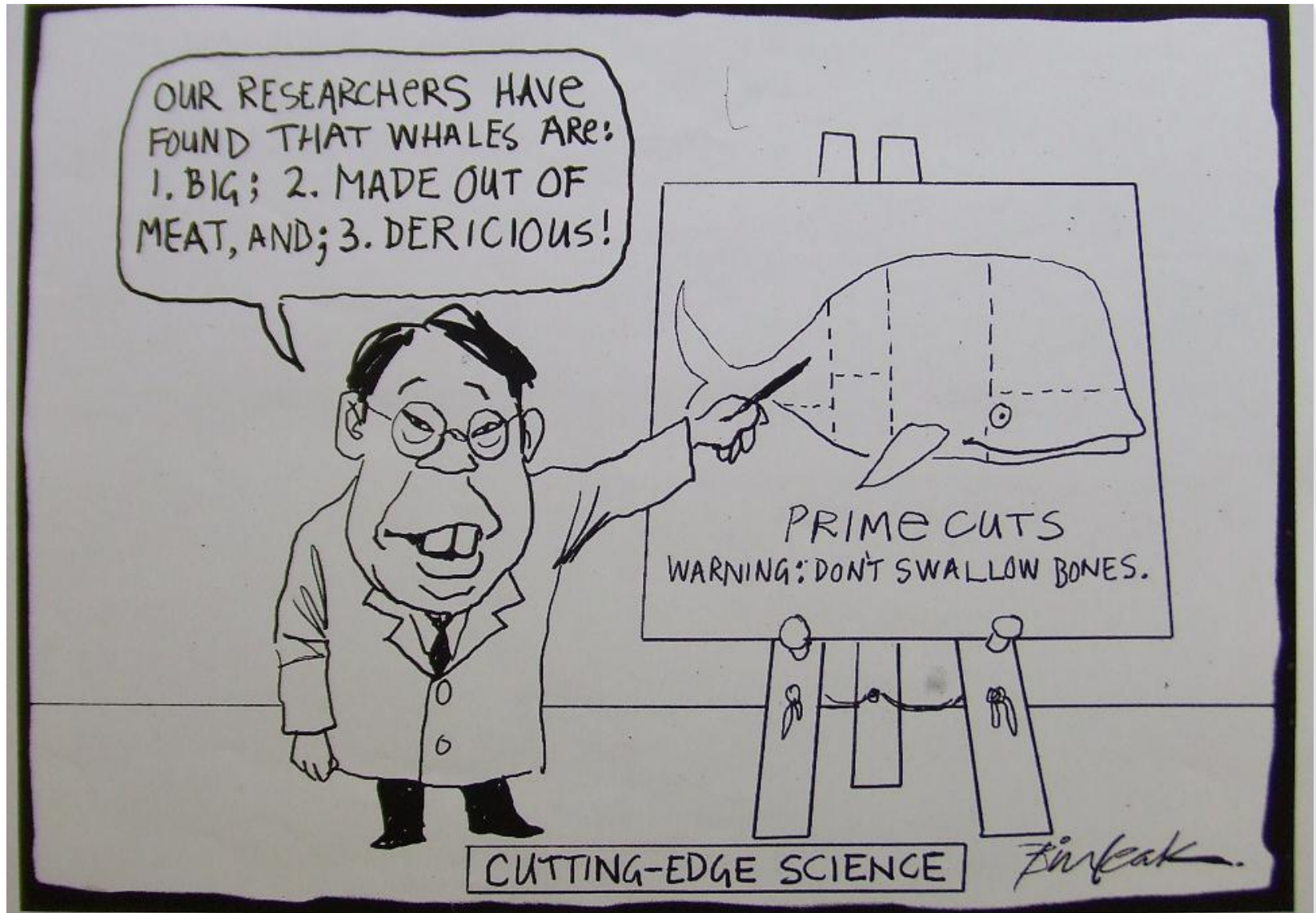


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But in Australia, the debate has become racial... and
unhelpful in Australia/Japan relations



Save the whales campaigns in the Southern Ocean

Help Wanted - Volunteers Needed!

Job Description: No pay,
Long hours, Hard work,
Dangerous conditions,
Extreme weather.

Guaranteed: Adventure,

fulfillment,
work you love.
The experience of a
lifetime.

DENIS PETERS

THE Federal Government has been accused of seeking cheap headlines and taking risks by contracting an armed Customs vessel to shadow Japanese whaling ships in the seas off Antarctica.

Anti-whaling activist group Greenpeace welcomed reports the leased Customs vessel Oceanic Viking — armed with machine guns — might be deployed to the Southern Ocean as part of beefed-up monitoring of the Japanese whale hunt.

Libs lash Customs Jap watch

But Opposition justice and border protection spokesman Chris Pyne said more caution was needed over an issue that could threaten Australia's relationship with Japan.

"So this smacks to me of Labor trying to get cheap



LEGAL ISSUES:
Chris Pyne
warns of
caution in
monitoring
fleet.

headlines and being seen to be doing something about whaling rather than anything of any substance," he said.

Environment Minister Peter Garrett would not comment on reports the ship will be sent to the Antarctic with a

crew trained for polar conditions and equipped with surveillance equipment.

A formal announcement of the Government's plans is expected later this week.

The Government response follows growing pressure from environmental groups and the whale-watching industry over Japan's southern hemisphere whale slaughter.

Japan is this year scheduled to take more than 1000 whales, including 50 humpbacks, but Prime Minister Kevin Rudd says no one seriously believes it is for scientific purposes, as claimed.

Mr Pyne said the Government should proceed with caution on any plan to use Customs personnel to monitor Japanese whaling.

"There are some major international legal issues with respect to exactly what they would be doing," he said.

"I'd be very concerned if we ourselves breached international law by using Australian Customs officials to intercept Japanese whaling vessels in international waters."

Mr Pyne said his understanding was that no whaling is conducted in areas subject

to Australian jurisdiction, such as the exclusive economic zones around Heard and McDonald islands or Macquarie Island.

Greenpeace, whose protest ship the Esperanza is heading towards the whaling grounds, supported the Government's reported move.

"We're certainly supporting the Australian Government's action that they're taking in sending a ship down," Greenpeace spokeswoman Karli Thomas said.

"The more scrutiny that we can have on the Japanese whaling operation the better."

Sea Shepherd to protect flock

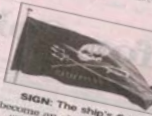


PREPARED: Crew members on Sea Shepherd's ship, the Robert Hunter, from left, Roberta Kleber, Gunter Filbo and Heather Reid are ready to take on the Japanese whaling fleet.
Picture: ROSS MARSDEN

ANGUS HOHENBOKEN

JAPANESE whalers' plans to slaughter endangered humpback whales in Australian waters this summer have forced opposition on both land and sea, says the Sea Shepherd Conservation Society.

The Institute for Cetacean Research has plans to fill 1000 whales, 10 endangered humpbacks and 100 minke whales in the Southern Ocean from December.



SIGN: The ship's flag, because an election is being held.

the Japanese Government under the International Treaty for the Law of the Sea. "But Government prefer diplomatic channels," said.

signed the Robert Hunter to further action was taken. "It was obvious that Japan was not taking any action."

MERCURY 19

...and dangerously irresponsible; condemned
by both IMO and IWC

Sea Shepherd Conservation Society vessel,
the *Steve Irwin* in the Antarctic

IMO/IWC condemnation

- International Maritime Organization, 'Assuring safety during demonstrations, protests or confrontations on the high seas', Resolution MSC.303(87), 17 May 2010
- International Whaling Commission, Resolution on Safety at Sea, Resolution 2011-2

Accompanied by *Ady Gil*



© Sea Shepherd Conservation Society

Until it fought the *Shonan Maru No. 2*



...and lost



AMSA report

- Australian Maritime Safety Authority asked to investigate because collision occurred in Australia's SAR region though not in its waters
- AMSA's primary interest is to promote compliance with international maritime safety obligations
- NB: Japan (*Shonan Maru No. 2*) and NZ (*Ady Gil*) have exclusive flag states jurisdiction
- AMSA report independent of Australian Federal Police inquiry under the SUA Convention (Suppression of Unlawful Acts)

AMSA report cont.

- International collision regulations (COLREGS) state that every vessel is required to maintain a proper look-out, to keep a safe distance from other vessels and to proceed at a safe speed so that proper and effective action can be taken to avoid a collision
- Given the operating conditions in the Southern Ocean, AMSA had previously warned skippers of *Ady Gil* and *Steve Irwin* to operate safely and to strictly observe collision avoidance regulations

AMSA report cont.

- AMSA concluded that they had been unable to determine whether either vessel took any action intended to cause a collision because:
 - Japanese Coast Guard confiscated evidence for possible later use
 - Parties did not cooperate fully with AMSA investigator
 - Australia is not a flag state therefore cannot compel either NZ or Japan to provide evidence
- Neither NZ nor Japanese investigation results are known

Bethune arrest

- Ady Gil owner/skipper, Peter Bethune (NZ) detained by *Shonan Maru 2* Master 15 Feb 2010
- Taken to Japan and arrested by Coast Guard
- Charged with 5 crimes:
 - Criminal trespass (Bethune boarded *Shonan Maru No. 2*)
 - Assault (of *Shonan Maru No. 2* crew)
 - Obstruction of business (broad definition)
 - Possession of a weapon (a 20 cm knife, concealed)
 - Criminal damage (cutting nets etc)
- Bethune “boasted” about having carried out many of these acts
- Convicted in Tokyo District Court but released with a suspended sentence and deported to New Zealand

Sea Shepherd philosophy

UN World Charter for Nature, Article 21:

- States and, to the extent they are able, other public authorities, international organizations, individuals, groups and corporations shall:
 - (c) Implement the applicable international legal provisions for the conservation of nature and the protection of the environment;
 - (e) Safeguard and conserve nature in areas beyond national jurisdiction (United Nations 1982).

Watson translates this into his right to sink vessels, harass and deliberately ram vessels and board uninvited a vessel on the high seas



Does Sea Shepherd's campaign have basis in international law if the Japanese are conducting legal scientific research under Art 8 of Whaling Convention?

Australia's Whaling Policy

Calling for a permanent global ban on all commercial whaling

Seeking a South Pacific Whale Sanctuary (offering “support” for states wishing to promote domestic sanctuaries) and eventually global sanctuary

Strongly opposed to so-called “scientific whaling”
[Article VIII research by permit]



Australian
Government Customs
vessel, *Oceanic Viking*,
“spying” on Japanese
research fleet to
collect evidence for
“possible world court
action”... which
Australia began in
June 2010 against
Japan in International
Court of Justice

The scales...simplified

preservation of whales

conservation for rational use

Australia
anti-whaling states
intrinsic values



Japan
pro-whaling states
utilitarian values

International Court of Justice

role is to settle, in accordance with international law, legal (not ideological) disputes submitted to it by States

Whaling in the Antarctic (Australia v. Japan)

1.9 May 2011 – time-limit for Australia to file its Memorial (ie, its case, in writing)

2.9 March 2012 – time-limit for Japan's Counter-Memorial

3.Oral pleadings of Australia and Japan (public, Memorials released publicly)

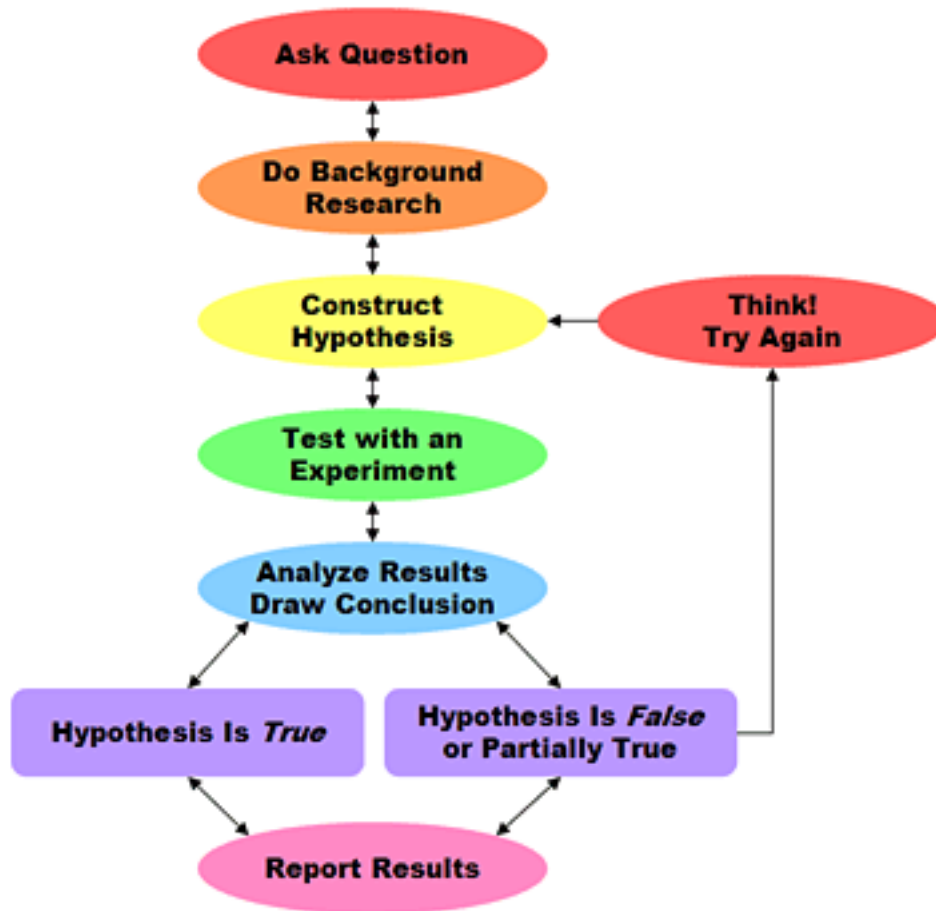
4.Court deliberations (in camera)

5.Decision final, binding and without appeal

Australia's case

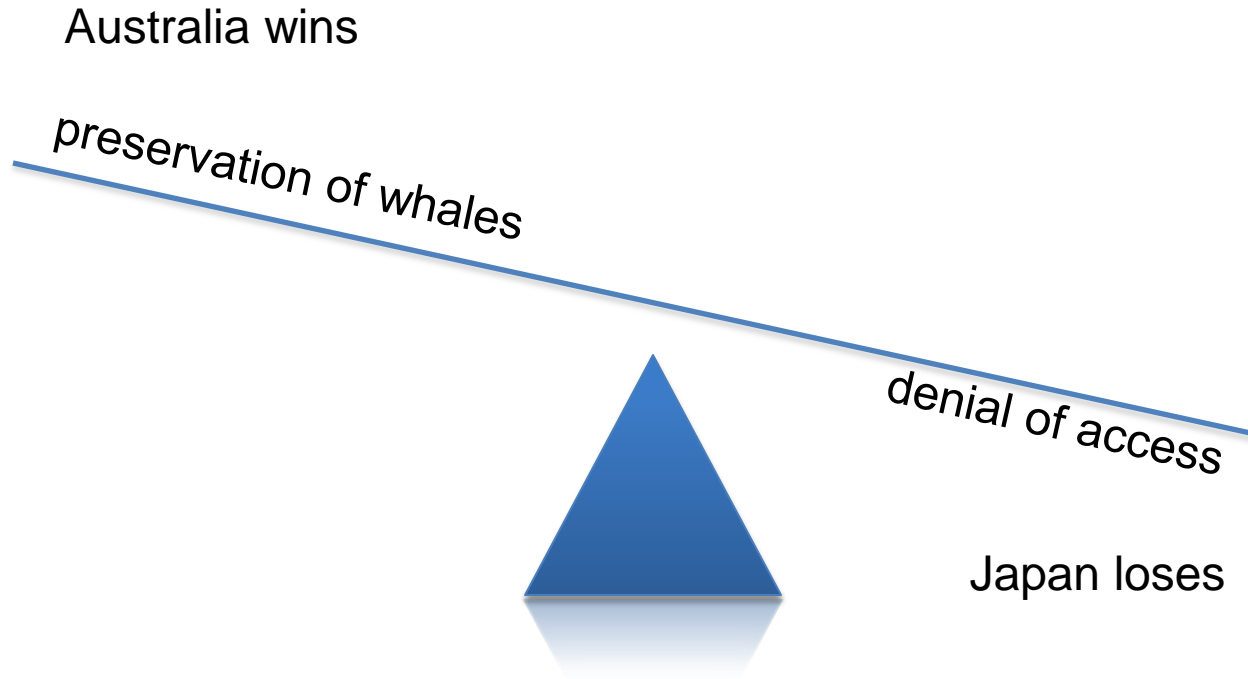
- Breach of good faith (ie, not performing its obligations under the Convention);
- JARPA II is jeopardising the sustainability of vulnerable stocks;
- Japan refuses to comply with IWC Resolutions to cease scientific research by lethal means;
- If it is proven that special permit whaling is illegal, Japan breached Schedule para 10e (regarding zero commercial quotas); and finally,
- Japan breached Schedule para 7b (by selling Antarctic-derived humpback or fin whale meat on the domestic market when its reservation to the 1994 Southern Ocean Whale Sanctuary related only to Minke whales)

What is the scientific method?

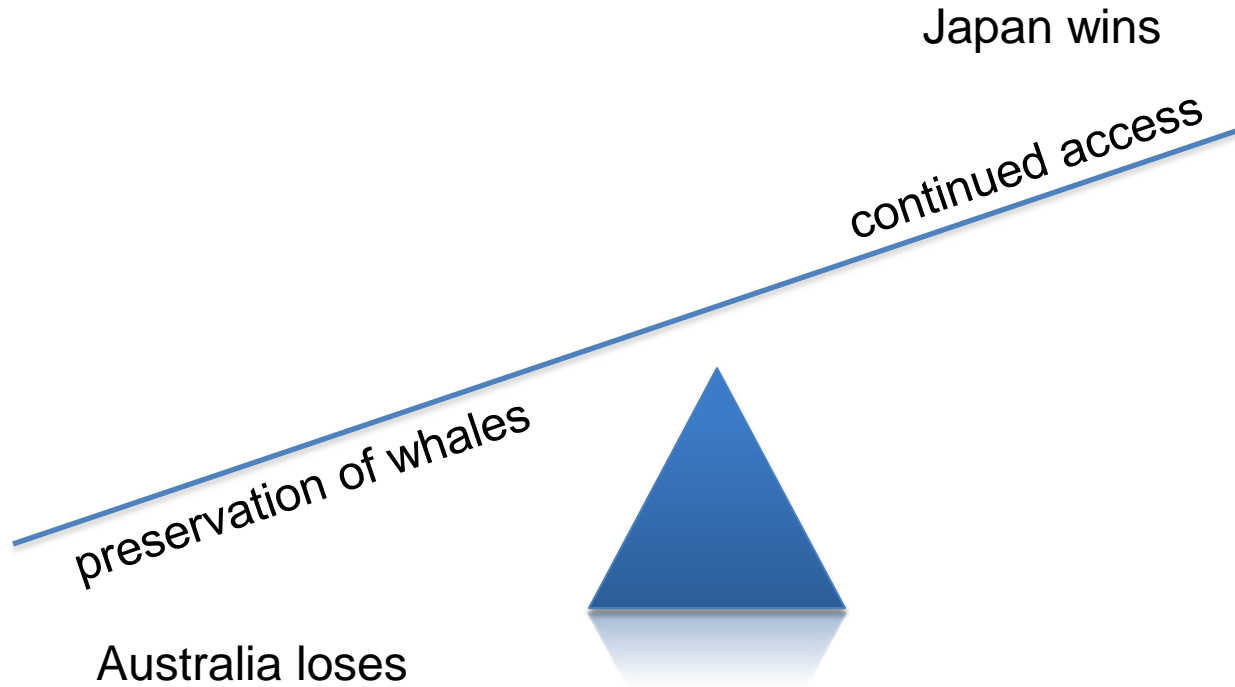


“Research has found no woodpeckers in Antarctica.”

In a zero-sum game either...



...or



= a poor diplomatic result

What if...

Australia wins

Australia looks good at home (and internationally)
Japan is denied access to whale meat through
Article VIII

But Japan could

- withdraw from the whaling convention and harvest with little or no direct regulation
- take its followers and adopt a new whaling convention excluding preservationists
- stop whaling altogether and exit the industry

What if...

Australia loses

It might be criticised at home for giving up on the diplomatic process in favour of an ill-advised case in the ICJ

Japan will retain access to whale meat through Article VIII provisions

But

-Japan will not have universal social licence to whale (either in Aus or ? even at home)

-The dilemma will remain unresolved in the minds of anti-whalers

The ICJ decision

Can it hurt bilateral relations?

...no, not if they don't permit it

But

-the media know a good story and are too entrenched in their view to be influenced otherwise;

-the anti-whaling crusaders are powerful and will never give up; and

-the public, generally distanced from the means of production of food, is impressionable

The future

The ICJ decision will not help resolve the dilemma because there will be a winner and a loser but no ideological change

The debate was a first world problem, but perhaps now Japan needs access to those resources more than ever

The market is likely to be the greatest influence

Threats to whales

- Commercial harvesting
- By-catch (from fishing lines/nets)
- Ship strike
- Stranding
- Changes in environment
- Lethal research

Commercial harvest quota = 0

Humpbacks are good viewing instead of good food



By-catch

A photograph showing a humpback whale's head and upper body entangled in a large, dark fishing net. The whale is in the water, and the net is draped over its back and head. The water is dark blue, and there is some white foam or bubbles near the whale's head.

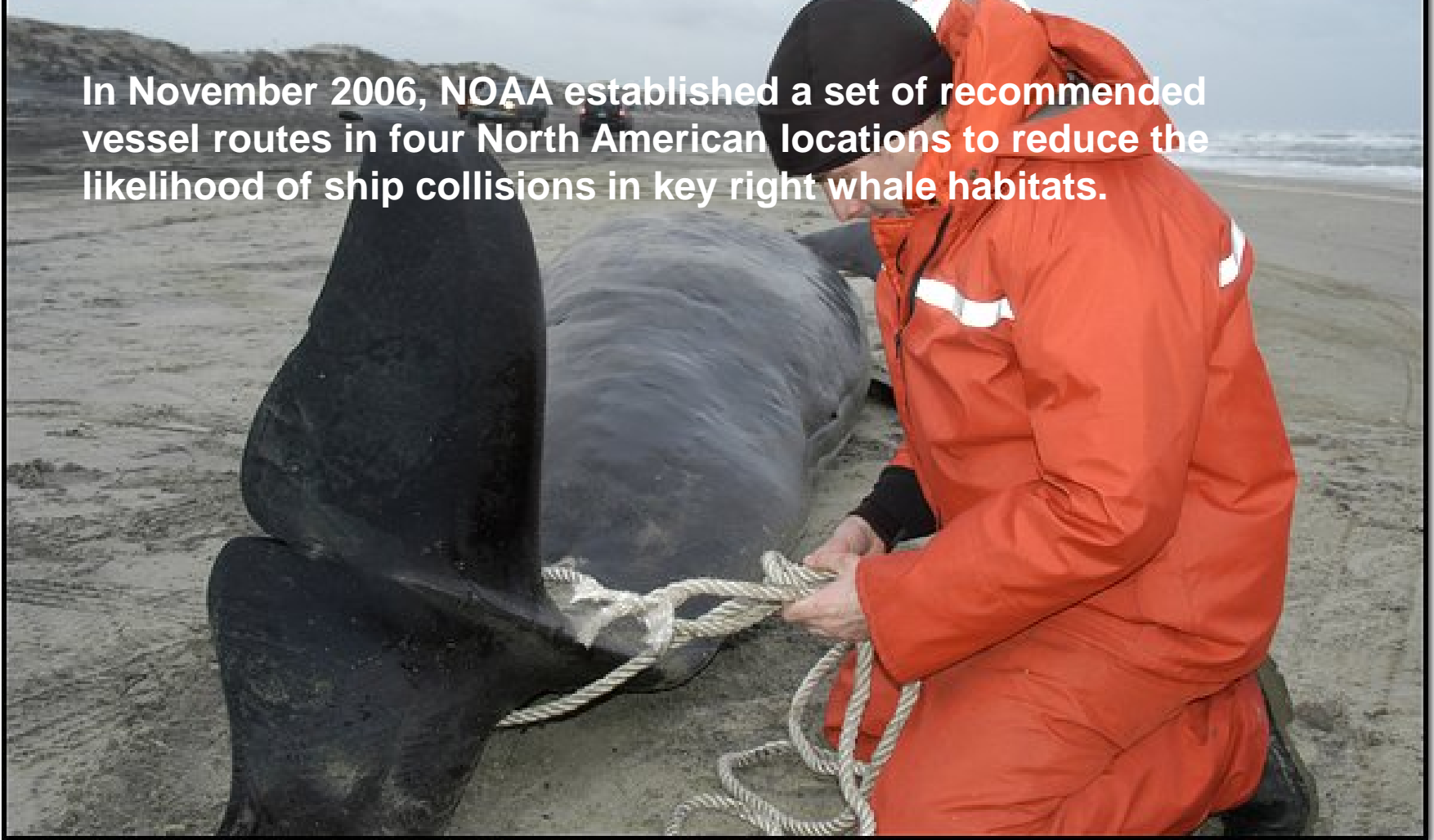
One report put the figure at 300,000 cetaceans dying from entanglement in man-made fishing devices every year

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Humpback caught in fishing net

Ship strike or other injury

In November 2006, NOAA established a set of recommended vessel routes in four North American locations to reduce the likelihood of ship collisions in key right whale habitats.



22 m Blue whale on a Victorian beach – victim of possible ship strike



Image © David Donnelly (Dolphin Research Institute, Victoria)

Strandings

Reported strandings in England, Scotland and Wales 2005–2009 = 3,026 (~600/year) (239 discounted for one reason or another) mostly dead but a few alive



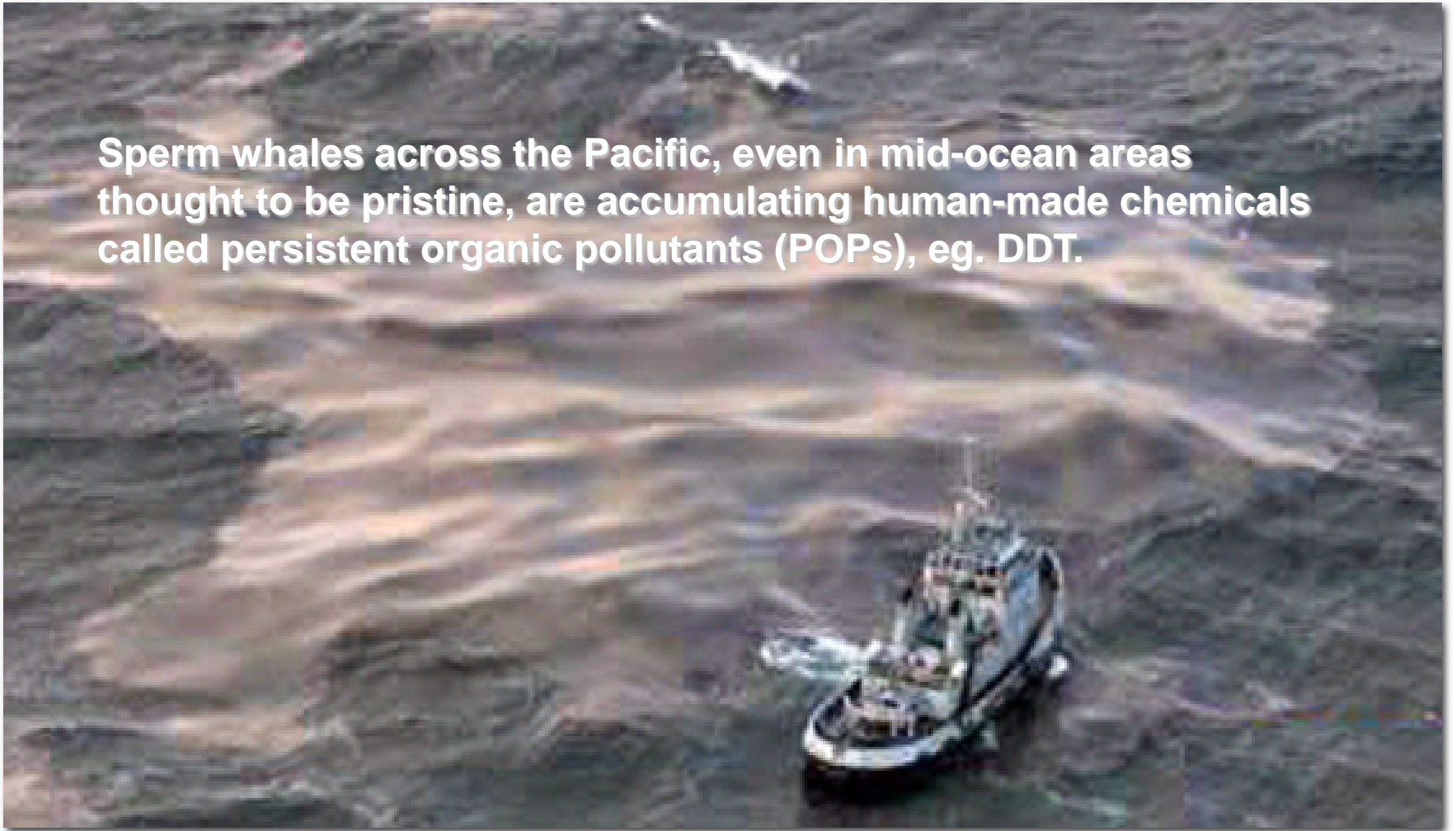
Country	Total	Indeterminate species	Known species
England	1,386	160	1,226
Scotland	818	77	741
Wales	583	87	496
Total	2,787	324	2,463



Echolocating cetaceans such as sperm and pilot whales often mass strand

Pollution

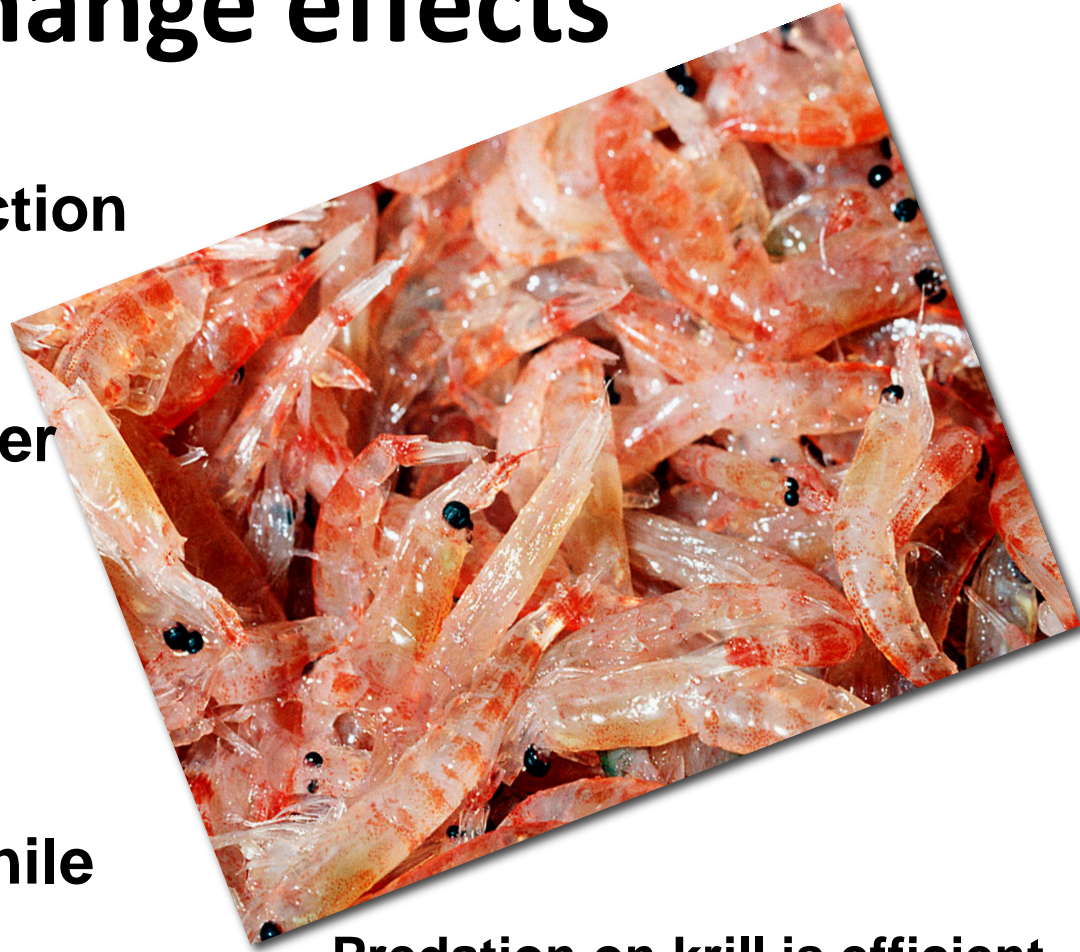
Sperm whales across the Pacific, even in mid-ocean areas thought to be pristine, are accumulating human-made chemicals called persistent organic pollutants (POPs), eg. DDT.



Climate change effects

Researchers are investigating the interaction between winter sea ice extent and juvenile krill, which survive over winter by eating the algae underneath the sea ice

Less sea ice
= less ice algae
= ? survivability of juvenile krill



Predation on krill is efficient because krill swarm



Blue Whales are endangered



Humpback whale numbers are recovering



Orca often interact with fishing but are not endangered



But Orca are clever and playful and may end up in an aquarium instead of on a plate!





Minke whales are numerous, especially in Southern Ocean and may be harvested sustainably

Aboriginal Subsistence Whaling

Annual quotas allocated by IWC to:

Denmark for East / West Greenland

St. Vincent & The Grenadines

Russia

USA: Alaska / Oregon (Makah)

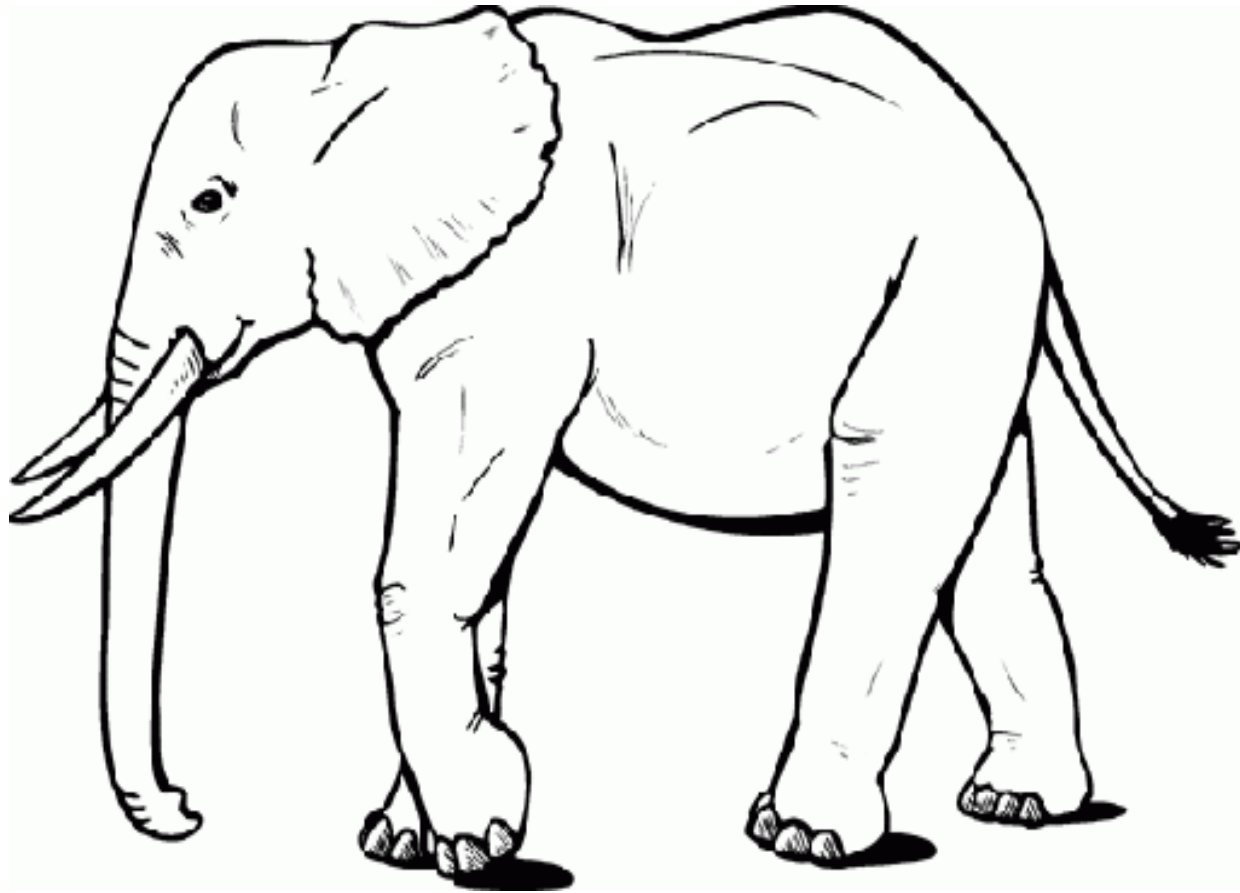
Japan applies but is traditionally rejected.



Total ASW take 1985 moratorium – 2009 = 7,543 =
~300/year (less than number
of strandings off just three
small countries' coastlines)



the
elephant
in the
room...



Given the place of whales in the Antarctic ecosystem, can the Treaty Parties continue to ignore them?

Australia and Antarctica

Claimant

primarily through Mawson's discoveries and explorations

Antarctic Treaty original signatory

Antarctic Treaty consultative party

Influential player in ATCMs, CCAMLR,
CEP

eg, Vice-Chair of Committee for Environmental Protection, head
of Legal & Institutional Working Group

Japan and Antarctica

Non-Claimant

Japanese explorer, Shirase, made many sightings and undertook considerable exploratory work in 1910 around Ross Dependency but no claim made

Unhappy that British never acknowledged this work, but claimed it as theirs

Post World War II, were not allowed to make claims to territory

Antarctic Treaty original signatory

Antarctic Treaty consultative party

Whaling and the Antarctic Treaty

1959 Antarctic Treaty

Aus, Japan, Norway, USA all mentioned whales in opening speeches to ATCM I, 1961; UK proclamation of FID and Ross Dependency made to protect whaling industry fees

Chile urged parties to avoid all matters they were divided on so that close co-operation could be established and an atmosphere of the utmost harmony could prevail

Preamble

RECOGNISING that it is in the interest of all mankind that Antarctica shall continue forever to be used for peaceful purposes and shall not become the scene or object of international discord

Art VI

Preserves high seas rights

Whaling and the ATS

1964 Agreed Measures

provided no special protection

whales excluded from “native mammal” definition, obviously for political reasons (ie. ICRW already in force)

1972 Seals Convention

provided no special protection

deals only with seals (pelagic)

1991 Madrid Protocol

Nothing in this Annex shall derogate from the rights and obligations of parties under the International Convention for the Regulation of Whaling. (Annex II, Article 7)

Whaling and CCAMLR

Whales fit CCAMLR definition of “Antarctic marine living resources”

the populations of fin-fish, molluscs, crustaceans and all other species of living organisms, including birds, found south of the Antarctic Convergence

(Article I.2)

but Article VI expressly excludes whales

Nothing in this Convention shall derogate from the rights and obligations of Contracting Parties under the International Convention for the Regulation of Whaling and the Convention for the Conservation of Antarctic Seals.

Benefit of ATCM discussions?

None – legal position is that ICRW and IWC have primacy

Nowhere to go, in any case:

consensus decision-making in ATCM and CCAMLR requires both Australia and Japan to support (or at least to not object to) any decision on whaling – unlikely

any attempt to invoke environmental evaluation of whale research will be futile as Japan is ultimately responsible for both the evaluation and granting permission for an activity to proceed

fishing in CCAMLR is exempt from EIA

Danger of ATCM discussions?

Destabilising ATS forums

problems could arise over Australia's choice to bring ICJ action and possibly bring Antarctica into disrepute

Contaminating ATS forums

IWC very poor record of performance because of competing philosophies and no common ground:

- to eat whale meat or
- not to eat whale meat?

No desire to infect Antarctic forums with the same dysfunction

What if...

there is a new whaling convention?

? conflict of interest between ATCPs as a whole and those (eg, Japan, Norway) which might become signatories to a new convention?

The reason censorship has worked in the ATS is because consensus protects the position of every Party

? overlap only if/when new convention applies to, and whaling is conducted in, the Southern Ocean?

How would CCAMLR deal with one of its keystone species being regulated by a convention other than the ICRW?

Tutorial Topic

In 200 words, discuss the Australian case against Japan in the International Court of Justice. What is the cornerstone of Australia's case? Can Australia win?