

A REGIONAL APPROACH TO WHALING: HOW THE NORTH ATLANTIC MARINE MAMMAL COMMISSION IS SHIFTING THE TIDES FOR WHALE MANAGEMENT

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INTRODUCTION

In October 2006, Iceland officially rejected a twenty-year ban on whaling by killing a fin whale off its coast for commercial purposes.¹ Iceland states that it will commercially hunt up to nine fin whales and thirty minke whales during the 2006–07 season.² This announcement threatens to weaken the authority of an international moratorium on whaling that has been in place for about twenty years. In truth, however, international whale management had been struggling long before Iceland's recent action. The International Whaling Commission (IWC), the primary global organization designated to manage the hunting of large whales, is unable to achieve cooperation between its members because it has become a politically charged group, ignoring the advice of scientists and drifting away from its original mandates.³

The IWC was originally created in 1946 by a group of whaling nations interested in promoting the sustainable hunt of whales.⁴ Since the 1970s, however, preservation-minded members have pushed the

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1. *Iceland Violates Ban on Whaling: Iceland has Broken a 21-Year Old International Moratorium on Commercial Whaling by Killing a Fin Whale—an Endangered Species*, BBC NEWS, Oct. 23, 2006, <http://news.bbc.co.uk/2/hi/europe/6074230.stm>.

2. *Id.*

3. *See infra* Part I.B-E.

4. *See infra* Part I.B.

IWC away from its original governing principles.⁵ The IWC has divided into two fragments: those that completely oppose whaling (anti-whaling states) and those that support regulated, sustainable whaling (pro-whaling states).⁶ A fierce debate between pro-whaling interests and anti-whaling interests has ensued and the sides are unable to reach a resolution.⁷ Because these political groups have captured IWC management, the IWC may be losing its credibility as a scientific and regulatory body in the eyes of the international community.⁸

Still, international whale management is not completely flawed. A separate regional organization, the North Atlantic Marine Mammal Commission (NAMMCO),⁹ which is designed to manage marine mammals in the North Atlantic,¹⁰ has achieved successful cooperation among its members. As compared to the IWC, NAMMCO is a much smaller body that focuses its guidelines on North Atlantic marine mammals and their ecosystems, while the IWC is a global organization that manages whaling worldwide. Though smaller in scale than the IWC, NAMMCO has had a powerful and evolving presence in the marine mammal community since its inception.

5. See *infra* notes 49-77 and accompanying text.

6. Howard S. Schiffman, *The International Whaling Commission: Challenges from Within and Without*, 10 ILSA J. INT'L & COMP. L. 367, 367, 370-71 (2004) [hereinafter Schiffman, *IWC*].

7. Cinnamon Pinon Carlarne, *Saving the Whales in the New Millennium: International Institutions, Recent Developments, and the Future of International Whaling Policies*, 24 VA. ENVTL. L.J. 1, 3 (2005).

8. See Schiffman, *IWC*, *supra* note 6, at 375 (describing the current instability of the IWC and demonstrating that the IWC may not remain "a premier institution in international resource management" because of current conflicts).

9. David D. Caron, *The International Whaling Commission and the North Atlantic Marine Mammal Commission: The Institutional Risks of Coercion in Consensual Structures*, 89 AM. J. INT'L L. 154, 163-64 (1995).

10. See generally Howard S. Schiffman, *The Competence of Pro-Consumptive International Organizations to Regulate Cetacean Resources*, in *THE FUTURE OF CETACEANS IN A CHANGING WORLD* 159 (William C. G. Burns & Alexander Gillespie eds., 2003) [hereinafter Schiffman, *Competence*] (describing NAMMCO as the only pro-consumptive international agreement aside from the IWC). The World Council of Whalers is another pro-consumptive international organization, but it is a non-governmental organization. *Id.* at 162-64. Other regional organizations addressing marine mammals have formed, but they are conservation-minded. One example is the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas. See Robin R. Churchill, *The Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas*, in *THE FUTURE OF CETACEANS IN A CHANGING WORLD*, *supra*, at 283, 283.

When NAMMCO first emerged in 1992, many believed it would act as a replacement to the IWC.¹¹ One author, David Caron, wrote, “In developing its own data base of marine mammal populations in the North Atlantic, NAMMCO will challenge the legitimacy of the IWC’s decision making by contradicting the science and expertise that is the foundation of such legitimacy.”¹² After NAMMCO was developed, other strong whaling nations, such as Japan, threatened to withdraw from the IWC and form additional regional management groups similar to NAMMCO.¹³

However, NAMMCO has not undermined the IWC,¹⁴ and the two organizations have coexisted for fifteen years as the IWC has continued to operate as the primary international body for large whale management.¹⁵ NAMMCO has not acted as an alternative management structure for its members either. Iceland, a NAMMCO member state, which had dropped out of the IWC when NAMMCO was created, rejoined the IWC in 2002.¹⁶

Despite the fact that NAMMCO has not become an alternative to the IWC, NAMMCO can still provide lessons on how the IWC could operate. NAMMCO has been more successful at establishing cooperation in order to coordinate rational management of the North Atlantic marine mammal ecosystem.¹⁷ NAMMCO has also conducted its own scientific surveys of marine mammal populations that are well regarded in the international community.¹⁸ More importantly, NAMMCO member nations have followed the advice of scientists, structuring marine mammal hunts in order to preserve marine mammal populations.¹⁹ Finally, NAMMCO has established a working

11. See, e.g., Oran R. Young et al., *Subsistence, Sustainability, and Sea Mammals: Reconstructing the International Whaling Regime*, 23 OCEAN & COASTAL MGMT. 117, 119 (1994).

12. Caron, *supra* note 9, at 165.

13. William G. Burns, *The International Whaling Commission and the Future of Cetaceans: Problems and Prospects*, 8 COLO. J. INT’L ENVTL. L. & POL’Y 31, 51-52 n.121 (1997); Caron, *supra* note 9, at 173.

14. Schiffman, *IWC*, *supra* note 6, at 370-71.

15. Carlarne, *supra* note 7, at 2.

16. David M. Friedman, *Iceland’s Call to Extract the Harpoon from Commercial Whaling*, 28 SUFFOLK TRANSNAT’L L. REV. 303, 309 (2005).

17. See *infra* Part IV.A.

18. *Id.*

19. *Id.*

observation system that regulates whaling takes from all member nations.²⁰

NAMMCO has progressed from a potential rival to a thriving management organization. Considering the ongoing struggles of the IWC, it is high time to contemplate a new role for NAMMCO. The IWC should use NAMMCO's model to initiate more regional organizations throughout the world. Smaller, localized cooperatives, like NAMMCO, would provide like-minded nations with a forum to manage their marine environments. These groups could also provide the IWC with valuable information about interests that are important from a regional perspective.

Up until this point, scholars have used NAMMCO as a symbol of the imminent downfall of the IWC.²¹ This Note will consider NAMMCO in a new light, first, by discussing the reasons why NAMMCO has not materialized into a replacement for the IWC (examining the structure, formation, development, and present management of NAMMCO in comparison to the IWC); and second, by proposing that the IWC use insights from NAMMCO's management system to break the current stalemate between its pro-whaling and anti-whaling members. Part I will outline a brief history of whaling and chart the progression of the IWC from an international management body to a conservation-minded political group. Part II will describe the creation of NAMMCO as well as its organizational construction as compared to the IWC. Part III will explore reasons why NAMMCO has not become an alternative to the IWC. Finally, Part IV will discuss ways in which the IWC can utilize NAMMCO's structure in order to improve its regulatory process.

I. WHALING AND THE IWC

A. Early Whaling

Humans have been whaling for thousands of years. Historical records indicate that humans first started whaling in the twelfth or thirteenth century, but organized whaling may have occurred as early

20. *Id.*

21. *See, e.g., supra* notes 11-12 and accompanying text; *infra* note 163 and accompanying text.

as A.D. 800 or 1000.²² Over the ages, whaling developed into one of the major economic industries in the world, as humans made use of whales for food, oil to light lamps, tools, building, and artistic materials.²³

As early as the sixteenth century, whalers in the North Atlantic began taking so many right whales that they became threatened with extinction.²⁴ The United States issued its own whaling fleets in the eighteenth century and quickly depleted whales off both its coasts in order to collect large supplies of whale oil.²⁵ Later, in the nineteenth and early twentieth century, the Norwegians introduced new technology in the form of harpoon guns which could be used to efficiently kill large whales and factory ships which could catch and process whales while still out at sea.²⁶ These new inventions made whaling such an effective industry that the drop in whale numbers became dramatic. Approximately four million whales existed in the ocean before the advent of whaling and that number had dropped to around two million by 1975, with only 1.2 million mature enough to be taken.²⁷

B. The Advent of the IWC

The international community first reacted to the decline in whale populations in 1902 by trying to institute regulatory measures under the International Council for the Exploration of the Sea (ICES), but it was not until 1946 that a more formal management body coalesced.²⁸ Fifteen whaling nations joined together to sign the International Convention for the Regulation of Whaling (ICRW) to manage whaling.²⁹ The ICRW recognized “the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks,” and its purpose was to “establish a system of international regulation for the whale fisheries

22. Sarah Suhre, *Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to One of Preservation*, 12 GEO. INT'L ENVTL. L. REV. 305, 307 (1999).

23. See JAMES RASBAND, JAMES SALZMAN & MARK SQUILLACE, NATURAL RESOURCES LAW AND POLICY 507 (2004).

24. Suhre, *supra* note 22.

25. *Id.*

26. *Id.* at 308.

27. Burns, *supra* note 13, at 32.

28. RASBAND ET AL., *supra* note 23, at 508.

29. Suhre, *supra* note 22, at 308.

to ensure proper and effective conservation and development of whale stocks.”³⁰

The International Whaling Commission (IWC) was created in order to implement the ICRW.³¹ The IWC was granted the power to conduct studies as necessary about whales and whaling, to amend the articles of the ICRW, and to make recommendations to member nations about whales or whaling procedures.³² The ICRW instructed the IWC that any amendments must “provide for the conservation, development, and optimum utilization of the whale resources,” must be based on scientific analysis, and must consider the “interests of the consumers of whale products and the whaling industry.”³³ Although these provisions called upon the IWC to look after the interest of the whale stocks, its primary purpose was to ensure the continuation of whaling into the future. The IWC had the ability to form committees in order to carry out its instructions.³⁴ Almost immediately, the Scientific Committee was established to make recommendations to the IWC on regulatory measures.³⁵

The ICRW provisions also allowed member nations to opt out of future amendments.³⁶ Any member nation that formally objected to an amendment of the ICRW would not be subject to its terms.³⁷ Finally, the ICRW provided member nations the ability to grant their nationals permits to take or kill whales for scientific purposes.³⁸

C. IWC Management

Since its inception, the IWC has continually failed to successfully manage both whaling and whale populations for two reasons. First, member states with special interests have captured the IWC, causing it to ignore the advice of its scientific experts. Second, the IWC has lacked the authority to enforce any regulatory measures that it does adopt.

30. International Convention for the Regulation of Whaling, Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72 [hereinafter ICRW].

31. Suhre, *supra* note 22, at 308.

32. ICRW, *supra* note 30, arts. IV-VI.

33. *Id.* art. V.

34. *Id.* art. III.

35. See Burns, *supra* note 13, at 35 n.22.

36. ICRW, *supra* note 30, art. V.

37. *Id.*

38. *Id.* art. VIII.

Initially, the IWC used strict quotas as a regulatory tool.³⁹ It first utilized a measure called blue whale units, or BWUs, to measure whale takes.⁴⁰ Each baleen whale was evaluated based on the amount of oil it yielded so that one BWU was equal to one blue whale, two fin whales, two and half humpback whales, or six sei whales.⁴¹ Unfortunately, whaling nations strongly opposed quota reductions early on, influencing the IWC to ignore advice from the Scientific Committee and set quotas much higher than recommended.⁴² As a result, whale populations continued to decline.⁴³

By the fifth meeting of the IWC, the situation was so dire that the Scientific Committee finally encouraged member states to reduce the catch quota and completely eliminate the taking of blue whales.⁴⁴ Even when the IWC attempted to implement conservation measures, however, member states refused to comply. Japan, the United States, and the Soviet Union continued to kill blue whales, and other member nations refused to reduce their quotas.⁴⁵ As blue whales dropped in numbers, whaling pressure increased on other baleen whale species, causing stocks of fin, humpback, and sei whales to diminish.⁴⁶ Through the 1950s and 1960s, infighting between whaling nations made it impossible for the IWC to reduce quotas enough to make any difference for whale populations⁴⁷: “By 1968, stocks of blue whales had been reduced to only one percent of their level thirty years earlier.”⁴⁸

During the 1970s, the international community began to speak out against IWC management.⁴⁹ In 1972, the U.N. Conference on the Human Environment in Stockholm adopted a proposal recommending a ten-year moratorium on whaling.⁵⁰ Additionally, in 1970, the United States placed eight species of commercial whales on

39. Suhre, *supra* note 22, at 309.

40. *Id.*; Burns, *supra* note 13, at 35.

41. J.A. GULLAND, FOOD & AGRIC. ORG. OF THE U.N., FISHERIES MANAGEMENT AND THE LIMITATION OF FISHING, FAO FISHERIES TECHNICAL PAPER NO. 92 ch. 6 (1969), available at <http://www.fao.org/docrep/96215E/96215e07.htm#6.%20several%20stocks>.

42. Burns, *supra* note 13, at 35-36.

43. *Id.*

44. *Id.* at 36.

45. *Id.*

46. *Id.* at 36-37.

47. *See id.* at 37-40.

48. *Id.* at 40.

49. *Id.* at 41-42.

50. *Id.* at 41.

the Endangered Species List, prohibiting the importation of those whale products. In 1971, the United States passed the Pelly Amendment, which granted the President the authority “to ban the importation of fish products” from any country that diminished the effectiveness of international conservation programs by fishing.⁵¹ Finally, a number of environmental groups around the world began protesting whaling as immoral. For example, Greenpeace, one of the most prominent environmental organizations in the world, made a name for itself by sending small vessels out to aggressively attack whaling ships, raising awareness about whaling issues.⁵² Whaling campaign slogans like “save the whales” have become some of the most famous in the history of environmentalism.⁵³

In response to political outcry, the IWC adopted a New Management Procedure (NMP) to replace the BWU quota system, which separated whales into three categories and based quotas on the maximum sustainable yield, or the amount of whales that could be removed without having a negative effect on the population.⁵⁴ Even though the NMP was a welcome change from the BWU system, stocks of the most depleted whales continued to drop.⁵⁵

D. The Moratorium

In 1979, given the inadequacies of IWC management, Australia and the United States proposed a complete moratorium for whaling.⁵⁶ Although the moratorium was rejected at first, it eventually passed in 1982 after a large number of non-whaling nations who wanted to see an end to whaling joined the IWC.⁵⁷ The moratorium set whale catches at zero beginning in 1986, and mandated that the effects be reexamined in 1990.⁵⁸ It was adopted in order to give scientists a

51. *Id.* at 41-42.

52. Cliff M. Stein, *Whales Swim for Their Lives as Captain Ahab Returns in a Norwegian Uniform: An Analysis of Norway's Decision to Resume Commercial Whaling*, 8 TEMP. INT'L & COMP. L.J. 155, 180-83 (1994); *see also* REX WEYLER, GREENPEACE: HOW A GROUP OF ECOLOGISTS, JOURNALISTS AND VISIONARIES CHANGED THE WORLD (2004).

53. Stein, *supra* note 52, at 155 n.3.

54. Burns, *supra* note 13, at 42-43.

55. *Id.* at 44.

56. *Id.*

57. *Id.*

58. When the moratorium began, the IWC stated:

[T]hat the provision would be kept under review and 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.

chance to confront uncertainties and develop a Revised Management Procedure (RMP) for the sustainable harvest of whales, not to signal a permanent halt for whaling.⁵⁹

Even though the moratorium took effect in 1986, commercial whaling was not altogether arrested. Norway, Japan, Peru, and the Soviet Union lodged formal objections to the moratorium, allowing them to continue hunts “for scientific purposes.”⁶⁰ Although Japan withdrew its objection in 1987, it has since used the scientific whaling permit exception in the ICRW to continue its take of minke and sperm whales.⁶¹ Iceland and South Korea also utilized the scientific exception to continue their whaling operations on a reduced scale for a short time after the moratorium.⁶² Furthermore, the IWC granted aboriginal communities the right to take a limited number of whales for subsistence purposes.⁶³

After the moratorium started, the Scientific Committee completely reevaluated whaling data and designed a brand new management plan. After developing a RMP, the Scientific Committee declared whaling could be resumed on a limited scale.⁶⁴ In 1991, Japan, Iceland, and Norway requested that the IWC follow advice from the Scientific Committee and overturn the moratorium, but the IWC rejected the proposal.⁶⁵ Despite the Scientific Committee’s statements that the population of minke whales was large enough to sustain a catch of two thousand animals and even though the Scientific Committee had created a RMP that would enable the IWC to determine a reasonable amount of catches, the IWC member states rejected all whaling proposals.⁶⁶ It was clear that the IWC favored political pressure to protect whales rather than the scientific evidence supporting the sustainable harvest of whales.⁶⁷ The

Ray Gambell, *I Am Here, Where Should I Be?*, in *THE FUTURE OF CETACEANS IN A CHANGING WORLD*, *supra* note 10, at 70 (citing IWC, *Chairman’s Report of the Thirty-Fourth Annual Meeting*, 33 REP. INT’L WHALING COMM’N 20, 21 (1983)).

59. *See id.* at 72.

60. Burns, *supra* note 13, at 45.

61. *Id.*

62. *Id.*

63. *See* Elizabeth M. Bakalar, *Subsistence Whaling in the Native Village of Barrow: Bringing Autonomy to Native Alaskans Outside the International Whaling Commission*, 30 BROOK. J. INT’L L. 601, 625 (2005).

64. Caron, *supra* note 9, at 160.

65. *See* Burns, *supra* note 13, at 49-52.

66. *Id.* at 160.

67. *See* Suhre, *supra* note 22, at 311-13.

IWC's persistent disregard for science prompted Iceland to withdraw from the IWC in 1992, impelled Japan and Norway to threaten leaving, and provoked Norway to announce it would resume the commercial hunting of minke whales under its formal objection.⁶⁸ The friction between science and politics peaked in 1993, when the head of the scientific committee resigned, accusing "the IWC of treating the [Scientific] [C]ommittee's unanimous recommendations with contempt."⁶⁹

E. The IWC Today

Although the moratorium was originally intended to be a temporary measure to better analyze whale stocks, it has since turned into a long-term ban on whaling. After the moratorium was instituted, the Scientific Committee spent over eight years conducting a comprehensive assessment of whale stock sizes.⁷⁰ Even though the RMP has been called a "scientifically robust method of setting safe catch limits for certain stocks,"⁷¹ the IWC has declined to adopt the formal RMP by arguing that an observation and inspection scheme, or revised management scheme (RMS), must first be finalized before the RMP can be implemented.⁷² Debates about whether to implement the RMP have continued for over ten years.⁷³ At each annual meeting, the RMS is revised, presented, and rejected.⁷⁴ Currently, the IWC is ruled by nations that oppose the consumption of whales based on a perspective of resource management, but also because of ethical considerations.⁷⁵ In recent years, pro-whaling nations have started to gain a lead in votes. At the most recent meeting of the IWC, pro-whaling nations gained their first slight

68. Alexander Gillespie, *Iceland's Reservation at the International Whaling Commission*, 14 *EURO. J. INT'L L.* 977, 978-79; Caron, *supra* note 9, at 160-61.

69. Caron, *supra* note 9, at 162.

70. See Gambell, *supra* note 58, at 70-72 (outlining the Scientific Committee's comprehensive assessment from 1982 to 1990).

71. IWC, Revised Management Scheme, <http://www.iwcoffice.org/conservation/rms.htm> (last visited May 7, 2006).

72. Gambell, *supra* note 58, at 73.

73. At one of its most recent annual meetings in 2005, the IWC again voted not to implement the RMP, even though IWC's head of science stressed that "the RMP was probably the most rigorously tested management procedure in the world." IWC, CHAIR'S SUMMARY REPORT FOR THE 57TH ANNUAL MEETING (REVISED) 2 (2005), available at http://www.iwcoffice.org/_documents/meetings/ChairSummaryReportIWC57.pdf.

74. See generally *id.* (noting how this process occurred in 2005).

75. See Carlarne, *supra* note 7, at 12-13.

majority and passed the St. Kitts Declaration.⁷⁶ Even so, it is unlikely that an RMS will be adopted any time soon. Both pro-whaling and anti-whaling states refuse to budge their positions, throwing the IWC into a stalemate with no end in sight.⁷⁷

II. NAMMCO ARRIVES

After the IWC instituted a moratorium on whaling in the 1980s, Norway, Iceland, and other pro-whaling states sponsored a series of meetings to discuss the rational management of whale stocks “in contrast . . . to the approach taken in recent years with respect to whales in the International Whaling Commission.”⁷⁸ Pro-whaling states were disgruntled that the IWC was favoring whale protection measures rather than working towards the sustainable harvest of whales.⁷⁹ Once the IWC began to systematically ignore scientific findings that minke whale stocks could support a sustained hunt, pro-whaling states decided something needed to be done.⁸⁰ In 1992, Iceland, Norway, Greenland, and the Faroe Islands officially signed the Agreement on the Cooperation in Research, Conservation, and Management of Marine Mammals in the North Atlantic and created NAMMCO as the governing body of the Agreement.⁸¹

A representative from Iceland stated that NAMMCO “was born out of dissatisfaction with the IWC’s zero-catch quota, lack of IWC competence to deal with small cetaceans, and the need for an

76. The St. Kitts Declaration recognizes that the IWC “can be saved from collapse only by implementing conservation and management measures which allow controlled and sustainable whaling.” It expresses concern about current management and declares a commitment to returning to science-based management. Although the Declaration contains strong words, it does not necessarily herald major changes for the IWC. The IWC continues to be swayed by anti-whaling interests. St. Kitts and Nevis Declaration: 58th Annual Meeting of the International Whaling Commission, IWC/58/16 Rev. (June 2006), available at http://www.ifaw.org/ifaw/dfiles/file_666.pdf; see also *Smaller Nations Aiding Effort to Overturn Whaling Ban*, FOXNEWS.COM, June 18, 2006, <http://www.foxnews.com/story/0,2933,199988,00.html>; Richard Black, *Compromise Talk After Whaling Win*, BBCNEWS, June 21, 2006, <http://news.bbc.co.uk/2/hi/science/nature/5100936.stm>.

77. Telephone Interview with Christina Lockyer, Gen. Sec’y to NAMMCO, in Beaufort, North Carolina (Apr. 19, 2006).

78. Caron, *supra* note 9, at 163.

79. *See id.*

80. RASBAND ET AL., *supra* note 23, at 512. It is important to note that pro-whaling nations explored other ways of skirting the IWC. Japan tried to use the Convention on International Trade in Endangered Species (CITES) as an alternative international forum. However, its proposal to have CITES “establish its own policies on whaling in place of the IWC was defeated.” *Id.* at 517.

81. Caron, *supra* note 9, at 163-64.

organization to deal with other marine mammals such as seals.”⁸² In order to better address marine mammal management, the agreement stated member nations would cooperate to ensure “the conservation and optimum utilization of the living resources of the sea” and to enhance “research on marine mammals and their role in the ecosystem.”⁸³ NAMMCO was founded on the idea that regional instruments are much more effective at achieving cooperation, sustainable use, and considering the needs of coastal communities and indigenous people.⁸⁴ NAMMCO was also designed to be a forum for members to gather and discuss common issues related to management, such as hunting techniques.⁸⁵

In part, NAMMCO was created out of frustration with the IWC. It was originally meant to be a way for pro-whaling states to leave the IWC behind and begin to manage whales on their own, but NAMMCO has not acted as a true alternative to the IWC. NAMMCO has been successfully operating for over fifteen years without causing substantial changes to IWC management. The IWC continues to be led by anti-whaling nations who are politically opposed to whaling.⁸⁶ For example, the IWC has not lifted the moratorium on whaling or implemented an RMP to manage whaling for over ten years, even though the IWC Scientific Committee has emphatically endorsed the RMP over that same period.⁸⁷ Furthermore, IWC amendments to the ICRW in recent years (such as the creation of the Antarctic Sanctuary⁸⁸ and the Berlin Initiative⁸⁹) are more concerned with the protection of whales than the

82. *Id.* at 164.

83. Agreement on Cooperation in Research, Conservation and Management of Marine Mammals in the North Atlantic, Apr. 9, 1992, available at <http://www.nammco.no/webcronize/images/Nammco/659.pdf> [hereinafter Agreement].

84. *See id.* pmb1.

85. Grete Hovelsrud-Broda, *NAMMCO-Regional Cooperation, Sustainable Use, Sustainable Communities*, in *THE FUTURE OF CETACEANS IN A CHANGING WORLD*, *supra* note 10, at 143, 145-46.

86. *See Schiffman, IWC*, *supra* note 6, at 370-71.

87. *See supra* notes 70-77, and accompanying text.

88. The Antarctic Sanctuary is an area in the Antarctic designated by the IWC for the conservation of whales. Whaling is banned in the Sanctuary “whether there is a moratorium or not.” Suhre, *supra* note 22, at 312.

89. The Berlin Initiative created a conservation committee that advises the IWC on environmental threats to whales. Ramsey Henderson, *The Future of Whaling: Should the International Whaling Commission Create a Broadened Cultural Exemption to the Whaling Moratorium for Iceland?*, 33 GA. J. INT’L & COMP. L. 655, 681 (2005).

management of whaling.⁹⁰ In addition, members of NAMMCO still recognize the IWC as a valid authority over the regulation of whaling. Iceland, who dropped out of the IWC to form NAMMCO,⁹¹ has since rejoined the IWC.⁹² Finally, no other pro-whaling nations have joined forces to create additional regional management organizations similar to NAMMCO.

At the same time, even though NAMMCO has not replaced the IWC, it has established itself as a legitimate international research and management organization for marine mammals in the North Atlantic. It has arguably been much more successful at conserving and regulating marine ecosystems than the IWC. Two questions remain: why has NAMMCO failed to become an alternative to the IWC; and what can the IWC learn from NAMMCO in order to improve its own organizational structure? In order to answer these questions, it is first necessary to identify the players involved in NAMMCO and the basic structure of the organization.

A. NAMMCO Players

NAMMCO is a body of like-minded members who support the hunting and consumption of marine mammals. The four members of NAMMCO (Iceland, Norway, Greenland, and the Faroe Islands) are very similar in their geography, their whaling history, and in several of the methods they employ to hunt. With the exception of Norway, all members are island states, and even Norway is mostly surrounded by water. As a result, a significant amount of NAMMCO member resources come from the ocean. Furthermore, all four nations share a long tradition of whaling that has primarily occurred in small coastal communities.

1. Iceland. Whales have been central to Icelandic culture since the island was first settled. Early colonists allowed Basque explorers to whale in Icelandic waters and would often trade with them for whale meat.⁹³ At times, locals would take advantage of whales trapped in fjords by drift ice, or force whales into fjords to kill them; nearby residents would then hold a special event to kill the whale and

90. See *supra* notes 88-89, and accompanying text.

91. Caron, *supra* note 9, at 160, 163.

92. Friedman, *supra* note 16, at 309.

93. The Husavik Whale Centre in Iceland, Whaling History, <http://www.icewhale.is/default.asp?Id=567> (last visited Sept. 11, 2006).

distribute the meat among the participants.⁹⁴ Whales have even influenced the language of Icelandic people. The word *hvalreki* translates to “beached whale” but means “lucky find” and is often used when someone wins the lottery.⁹⁵

Commercial whaling operations began in 1883 when Iceland granted Norway permission to build whaling stations on its coast.⁹⁶ In 1935, Iceland founded its own Icelandic whaling station,⁹⁷ and “[w]haling has since become a symbol of Icelandic identity, a foundation of economic stability, and a source of traditional Icelandic cuisine.”⁹⁸ Iceland has also continually recognized the importance of conservation by stopping whaling operations when it was clear that whale numbers were beginning to drop significantly.⁹⁹ Although Iceland adhered to the original IWC moratorium on whaling when it was passed, it has subsequently resumed the take of a small number of minke whales starting in 2003 under the scientific permit exemption.¹⁰⁰ Most recently, Iceland has also begun to hunt whales for commercial purposes.

2. *Norway.* Like Iceland, Norway has a long tradition of whaling; Norwegians have hunted minke whales for over fifteen hundred years.¹⁰¹ Early Norwegians made use of the meat, blubber, and skins of minke whales for subsistence.¹⁰² Whaling traditions were memorialized in rock carvings and written accounts date back to the ninth century.¹⁰³ Early laws in Norway included regulations on how to divide whales among the people who took part in a hunt.¹⁰⁴ Like Icelanders, Norwegians also drove whales into fjords and killed them with arrows or harpoons.¹⁰⁵

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. Friedman, *supra* note 16, at 308-09.

99. *Id.* at 309.

100. *Id.* at 309-10.

101. Brian Trevor Hodges, *The Cracking Façade of the International Whaling Commission as an Institution of International Law: Norwegian Small-Type Whaling and the Aboriginal Subsistence Exemption*, 15 J. ENVTL. L. & LITIG. 295, 313 (2000).

102. *Id.*

103. The High North Alliance, *Whaling in the Old Days*, in LIVING OFF THE SEA: MINKE WHALING IN THE NORTH ATLANTIC (1994), available at <http://www.highnorth.no/Library/Hunts/Norway/wh-in-th.htm>.

104. *Id.*

105. *Id.*

After whaling became a large industry in Europe, Norway took the lead in developing modern technological advancements, like the harpoon gun and the factory ship, which made the Norwegian whaling fleet one of the most efficient in the world.¹⁰⁶ Currently, however, Norway's whaling operations are limited to small, coastal communities.¹⁰⁷ In 2006, Norway increased its quota of minke whales to 1,052 whales.¹⁰⁸

3. *Greenland.* Greenland is under the sovereignty of Denmark, but has been named a distinct community of home rule with the power to make its own legislative and executive decisions.¹⁰⁹ Whaling has been central to the lives of indigenous people in Greenland since prehistoric times.¹¹⁰ Evidence dating back to 4500 B.C. demonstrates Greenlandic ancestors depended on whales and seals for their survival.¹¹¹

Currently, Greenlandic hunters take minke whales and a small number of fin whales under the aboriginal exemption of the ICRW¹¹² using small vessels and harpoon guns.¹¹³ The hunt for minke and fin whales is largely opportunistic, as the fishers devote most of their time to catching fish or smaller marine mammals.¹¹⁴ Hunters also capture narwhal, beluga, and other small cetaceans using skiffs or kayaks, as well as by harpooning small cetaceans from the ice edge or catching them in nets at shore.¹¹⁵

106. Hodges, *supra* note 101.

107. *Id.*

108. Press Release, Norwegian Ministry of Fisheries and Coastal Affairs, Quota for the Norwegian Minke Whale Hunt in 2006 (Dec. 21, 2005), *available at* <http://odin.dep.no/fkd/english/news/news/047041-70094/dok-bn.html>.

109. The Home Rule Act, 1978, ch. 1, § 1, ch. 2, § 4 (Green.), *translated in* http://www.nanoq.gl/English/The_Home_Rule/The_Home_Rule_Act.aspx.

110. High North Alliance, *Marine Hunters: Inuit Whaling and Sealing*, in MARINE HUNTERS: WHALING AND SEALING IN THE NORTH ATLANTIC (1997), *available at* <http://www.highnorth.no/Library/Publications/M-hunter/ma-hu-in.htm> [hereinafter High North Alliance, Marine Hunters].

111. *Id.*

112. *See* note 63 and accompanying text; *see also* Hodges, *supra* note 101, at 303-04 (describing the aboriginal exemption to the IWRC); IWC, Catch Limits & Catches Taken: Information on Recent Catches Taken by Commercial, Aboriginal and Scientific Permit Whaling, <http://www.iwcoffice.org/conservation/catches.htm> (last visited Dec. 3, 2006); IWC, Aboriginal Subsistence Whaling Catches Since 1985, http://www.iwcoffice.org/_documents/table_aboriginal.htm (last visited Dec. 3, 2006) (listing aboriginal catches since 1985).

113. Hovelsrud-Broda, *supra* note 85, at 152.

114. High North Alliance, Marine Hunters, *supra* note 110.

115. *Id.*

4. *The Faroe Islands.* Like Greenland, the Faroe Islands are a self-governing body under the sovereignty of Denmark.¹¹⁶ Whaling operations in the Faroe Islands are mostly centered on a pilot whale hunt in which locals work together to drive groups of pilot whales that migrate past the Faroes close to shore.¹¹⁷ The hunters then pull the pilot whales on shore and kill them using a sharp knife to sever their spinal cord. Pilot whale meat and blubber is divided among the participants.¹¹⁸

It is believed that pilot whaling has been going on since Faroese people first inhabited the islands over a thousand years ago.¹¹⁹ Complete records of pilot whaling date back to 1584 and provide the longest statistical catch records of any wild animal.¹²⁰ Whalers have also used the same pilot whaling methods to catch other small cetaceans, like white-sided dolphins, bottlenose dolphins, and bottlenose whales.¹²¹ In more recent history, Faroe Islanders have participated in commercial catches of minke and fin whales, but those operations were halted after the implementation of the IWC moratorium.¹²²

B. Structure and Function of NAMMCO

NAMMCO is divided into four main sectors, consisting of a Plenary Council, Management Committees, a Scientific Committee, and a Secretariat.¹²³ Currently the members of NAMMCO are still the original signatory nations: Iceland, Norway, Greenland, and the

116. Faroe Islands Dep't of Foreign Affairs, Whales and Whaling in the Faroe Islands: The Faroe Islands, <http://www.whaling.fo/thefaroeislands.htm> (last visited Dec. 3, 2006).

117. See Hovelsrud-Broda, *supra* note 85, at 151-52.

118. High North Alliance, Fact Sheet: Pilot Whaling in the Faroe Islands (1995), *available at* http://www.highnorth.no/Library/Hunts/Faroe_Islands/pi-wh-in.htm.

119. *Id.*

120. *Id.*

121. See FAROE ISLAND FOREIGN DEP'T OF THE PRIME MINISTER'S OFFICE, WHALES AND WHALING IN THE FAROE ISLANDS: UPDATE ON CATCHES, RESEARCH AND OTHER ACTIVITIES 2002-03 (2003), *available at* <http://www.tinganes.fo/ew/media/Til%20enskan%20tekst/Update%20June%202003.doc>.

122. See FAROE ISLAND FOREIGN DEP'T OF THE PRIME MINISTER'S OFFICE, IMPORTS TO THE FAROE ISLANDS OF MINKE WHALE MEAT FROM NORWAY (2003), *available at* <http://www.tinganes.fo/ew/media/Til%20enskan%20tekst/Faroese%20whale%20meat%20imports%20from%20Norway.doc>.

123. Agreement, *supra* note 83, art. 3.

Faroe Islands.¹²⁴ Russia, Canada, Denmark, Japan, and St. Lucia often attend meetings as observers.¹²⁵

The Plenary Council is comprised of one councilor from each member state.¹²⁶ It meets annually to review findings of the Scientific Committee and make recommendations to members through the Management Committees.¹²⁷ Decisions are reached by unanimous vote.¹²⁸

The Management Committees make proposals about the conservation and utilization of marine mammals based on the findings of the Scientific Committee.¹²⁹ Members are not required to follow the advice of the Management Committees, but substantially consider their recommendations.¹³⁰ The Management Committees also make requests to the Scientific Committee for information about stock sizes, catch history, ecosystem interactions, and other information necessary for making management decisions.¹³¹ In addition, the Management Committees have the power to form ad hoc working groups. Recent working groups have focused on such topics as enhancing ecosystem-based management, by-catch, and user knowledge in management.¹³²

The Scientific Committee is comprised of up to three representatives from each member state in addition to members of the Secretariat.¹³³ It is required to meet at least once a year,¹³⁴ and it has the power to organize specialized working groups to assist in

124. NAMMCO, Member Government Organizations, <http://www.nammco.no/Nammco/Mainpage/Links/MemberGovernmentOrganisations/> (last visited Dec. 20, 2006); *see also* 2005 NAMMCO ANN. REP., 7 (2006), *available at* <http://www.nammco.no/webcronize/images/Nammco/806.pdf> (listing Norway, Iceland, Greenland, and the Faroe Islands as the current members at the most recent NAMMCO annual meeting).

125. Telephone Interview with Christina Lockyer, *supra* note 77.

126. *See* NAMMCO, Rules of Procedure for the NAMMCO Council, ¶ 1, *available at* <http://www.nammco.no/webcronize/images/Nammco/660.pdf> (last visited Dec. 3, 2006).

127. *See id.* ¶ 8.

128. *Id.* ¶ 4.

129. Agreement, *supra* note 83, arts. 5-6.

130. *See* Caron, *supra* note 9, at 164-65.

131. *See generally* NAMMCO, Management Committees, http://www.nammco.no/Nammco/Mainpage/DocumentsAndInformation/management_committees.html (last visited Dec. 20, 2006) [hereinafter Management Committees].

132. *Id.*

133. *See* NAMMCO, Rules of Procedure for the NAMMCO Scientific Committee Part II, ¶¶ 1, 4, *available at* <http://www.nammco.no/webcronize/images/Nammco/674.pdf> (last visited Dec. 3, 2006) [hereinafter Scientific Committee Rules of Procedure].

134. *Id.* Part V, ¶ 1.

scientific investigations.¹³⁵ Such working groups may sometimes solicit advice from external experts.¹³⁶ The Scientific Committee cooperates with other scientific organizations in order to avoid the duplication of work already being carried out.¹³⁷ Specifically, the scientific committee often holds joint sessions with the Joint Commission on Narwhal and Beluga, works closely in cooperation with ICES, and has most recently initiated a joint working group on fin whales with the IWC.¹³⁸ In the past, the Scientific Committee has presented research on various marine animals, including ringed seals, minke whales, harp seals, hooded seals, belugas, and harbor porpoises.¹³⁹

Since NAMMCO was formed, two new committees have been created: a Committee on Hunting Methods and a Sub-Committee on Inspection and Observation that monitors the implementation of an observer scheme. The Committee on Hunting Methods was formed in 1999 to give advice to members on the efficiency and safety of hunting techniques.¹⁴⁰ It has held three workshops on topics ranging from rifle guns used to hunt minke whales in Greenland to nets used to catch seals throughout the North Atlantic.¹⁴¹ Though the committee does not have the power to stop a member from using one hunting method over another, it does serve as an important forum for discussion.¹⁴²

135. *See id.* Part IV, ¶ 2.

136. *See* NAMMCO, Scientific Committee, http://www.nammco.no/Nammco/Mainpage/DocumentsAndInformation/scientific_committee.html (last visited Dec. 3, 2006).

137. *See* Scientific Committee Rules of Procedure, *supra* note 133, at Part IV, ¶ 1.

138. *Joint NAMMCO-IWC Workshop on Fin Whales*, NAMMCO, Mar. 23, 2006, http://www.nammco.no/Nammco/Mainpage/News/joint_nammcoiwc_workshop_on_fin_whales.html; Telephone Interview with Christina Lockyer, *supra* note 77.

139. NAMMCO, NAMMCO Scientific Publication Series, <http://www.nammco.no/Nammco/Mainpage/Publications/NammcoScientificPublicationSeries/> (last visited Dec. 3, 2006).

140. *See* NAMMCO, Committee on Hunting Methods, http://www.nammco.no/Nammco/Mainpage/DocumentsAndInformation/committee_on_hunting_methods_.html (last visited May 7, 2006).

141. *See generally* NAMMCO, REPORT OF THE NAMMCO WORKSHOP ON HUNTING METHODS (1999), available at <http://www.nammco.no/webcronize/images/Nammco/733.pdf>; NAMMCO, REPORT FROM THE WORKSHOP ON MARINE MAMMALS: WEAPONS, AMMUNITION, AND BALLISTICS (2001), available at <http://www.nammco.no/webcronize/images/Nammco/734.pdf>; NAMMCO, REPORT OF THE NAMMCO WORKSHOP ON HUNTING METHODS FOR SEALS AND WALRUS (2004), available at <http://www.nammco.no/webcronize/images/Nammco/735.pdf>.

142. NAMMCO, Rules of Procedure for the Committee on Hunting Methods, available at <http://www.nammco.no/webcronize/images/Nammco/749.pdf> (last visited Dec. 3, 2006).

In 1998, NAMMCO initiated an observation plan called the Joint NAMMCO Control Scheme for the Hunting of Marine Mammals.¹⁴³ The Sub-Committee on Inspection and Observation monitors the progress and implementation of this program.¹⁴⁴ Under this plan, members must enforce common elements within their own inspection schemes, including inspectors who remain permanently on hunting vessels or make random visits, and a requirement that hunting vessels electronically transmit information, such as the time and location of each catch.¹⁴⁵ The Joint Control Scheme also establishes an international observer program, which uses neutral observers to monitor whether NAMMCO recommendations are being followed as well as to observe member inspection activities.¹⁴⁶ Observers are appointed for one year at a time and member nations have the opportunity to nominate as well as oppose the nomination of observer candidates.¹⁴⁷ Each year, NAMMCO focuses its observer scheme on a particular marine mammal hunting operation. In 2005, observation centered on Norwegian sealing and in 2006, the focus has been on whaling in Norway and Greenland.¹⁴⁸

C. Differences between NAMMCO and the IWC

NAMMCO and the IWC are both governing bodies for voluntary international agreements developed to improve the management of marine mammal hunting. The structure of the two organizations is very similar. Both groups are divided into a Secretariat, governing council, and separate specialized committees that make recommendations for member states.¹⁴⁹ There is little to no authority for enforcement in either of their charters. Under the ICRW, member states are able to list formal objections to any IWC decision.¹⁵⁰ Since the implementation of GATT and other free trade agreements, the IWC has only limited abilities to enforce regulations

143. NAMMCO, Provisions of the Joint NAMMCO Control Scheme for the Hunting of Marine Mammals, *available at* <http://www.nammco.no/webcronize/images/Nammco/750.pdf> (last visited Dec. 3, 2006) [hereinafter *Hunting Control Scheme Provisions*].

144. Management Committees, *supra* note 131.

145. Hunting Control Scheme Provisions, *supra* note 143, § A.2.2.

146. *Id.* § B.1.

147. *Id.* § B.3.1.

148. *Id.* § B.5.1; 2005 ANN. REP., *supra* note 124, at 13; Telephone Interview with Christina Lockyer, *supra* note 77.

149. *See* ICRW, *supra* note 30; Agreement, *supra* note 83.

150. *See* ICRW, *supra* note 30, art. V.

even if a member does not raise a formal objection.¹⁵¹ Likewise, management decisions from NAMMCO are recommendations only.¹⁵² Members can voluntarily decide not to follow NAMMCO guidance.¹⁵³

Although NAMMCO and the IWC are alike in structure and in their ability to enforce management decisions, there are also some distinct differences between the two bodies. NAMMCO operates on a much smaller scale than the IWC. It only has four member nations,¹⁵⁴ while the IWC currently has seventy-one member nations.¹⁵⁵ The Scientific Committee of NAMMCO is also significantly smaller, currently holding up to fourteen participants as compared to the up to two hundred whale biologists within the IWC's Scientific Committee.¹⁵⁶ Even though NAMMCO is smaller than the IWC, it is much more specialized. NAMMCO only addresses marine mammal management issues for the North Atlantic.¹⁵⁷ The IWC, on the other hand, makes decisions about the collective management of all whales based on regulatory proposals from member states.¹⁵⁸ Additionally, NAMMCO is designed to limit membership in order to avoid membership shifts that have taken place within the IWC over the years. All members to NAMMCO must be countries that border the North Atlantic and a new member can only join pending the approval of the other signatory members.¹⁵⁹

Finally, although NAMMCO and the IWC are unable to bind members to their recommendations, NAMMCO has successfully implemented an observer scheme in recent years that allows NAMMCO to monitor whether its recommendations are being followed and adjust its guidance accordingly.¹⁶⁰ The IWC has

151. See Sonja Marta Halverson, *Small State with a Big Tradition: Norway Continues Whaling at the Expense of Integration and Nordic Cooperation*, 31 SYRACUSE J. INT'L L. & COM. 121, 128-31 (2004).

152. Caron, *supra* note 9, at 164-65.

153. See *id.*

154. See NAMMCO, Welcome to North Atlantic Marine Mammal Commission, <http://www.nammco.no/index.aspx?menuid=7> (last visited Oct. 31, 2006).

155. NAMMCO, About NAMMCO, <http://www.nammco.no/Nammco/Mainpage/AboutNammco/> (last visited Dec. 3, 2006) [hereinafter About NAMMCO]; IWC, IWC Members and Commissioners, <http://www.iwcoffice.org/commission/members.htm> (last visited Dec. 20, 2006).

156. See Scientific Committee Rules of Procedure, *supra* note 133; IWC, IWC Information, The Scientific Committee, <http://www.iwcoffice.org/commission/iwcmain.htm> (last visited May 7, 2006) [hereinafter IWC Information].

157. See Management Committees, *supra* note 131.

158. See IWC Information, *supra* note 156.

159. Caron, *supra* note 9, at 165.

160. Telephone Interview with Christina Lockyer, *supra* note 77.

unsuccessfully attempted to develop an inspection operation for a number of years. After it was revealed that the former Soviet Union substantially falsified catch data to the IWC, inspection efforts within the IWC have been met with skepticism.¹⁶¹ One of the main reasons the RMS has not been implemented is that the IWC has failed to develop a comprehensive observer program to monitor catches.¹⁶²

III. WHY NAMMCO IS NOT AN ALTERNATIVE TO THE IWC

When NAMMCO first appeared on the international scene, it was thought that NAMMCO would create a dangerous challenge to IWC authority. As one scholar noted, “the creation of NAMMCO is an unprecedented showing of opposition to the IWC, posing a serious threat to its existence.”¹⁶³ NAMMCO was viewed as an alternative to the IWC, allowing pro-whaling nations to leave the IWC behind because other strong whaling countries like Japan intimated they might follow NAMMCO’s lead and form their own regional management organizations.¹⁶⁴

Then, why has NAMMCO failed to become a rival to the IWC? There are a number of reasons to explain this outcome. First, NAMMCO was not created to manage large whales alone. Members to NAMMCO were concerned with regulating the hunt of small cetaceans (dolphins and porpoises), and pinnipeds (seals and walruses), in addition to large whales.¹⁶⁵ Although the IWC has formed a sub-committee to address small cetaceans, it does not actively manage the hunt of small cetaceans.¹⁶⁶ As for pinnipeds, the IWC does not address the take of those animals at all.¹⁶⁷ As a result, NAMMCO’s coverage is much broader, so it is not necessarily a direct alternative to the IWC.

Second, NAMMCO has a mission to develop research on the ecosystem interactions between marine mammals and the ocean environment before developing management schemes.¹⁶⁸ As a burgeoning international organization, NAMMCO has wisely decided

161. Gambell, *supra* note 58, at 73-74.

162. *Id.*

163. Kaye Anable, *NAMMCO Defies the International Whaling Commission’s Ban on Commercial Whaling: Are Whales in Danger Once Again?*, 6 *TRANSNAT’L LAW.* 637, 638 (1993).

164. Caron, *supra* note 9, at 173-74.

165. Hovelsrud-Broda, *supra* note 85, at 145-46.

166. Telephone Interview with Christina Lockyer, *supra* note 77.

167. *Id.*

168. Hovelsrud-Broda, *supra* note 85, at 146.

to focus its efforts for the last fifteen years on establishing a valid scientific base to describe marine mammal communities in the North Atlantic in order to become a credible research body.¹⁶⁹ To that end, it has developed working relationships with other large international associations, such as ICES, the Arctic Council, and the Northwest Atlantic Fisheries Organization.¹⁷⁰ Next year, NAMMCO plans to conduct the first Trans-North Atlantic Ship Survey (T-NASS) of the distribution and abundance of large and small whales, the first of its kind. This survey will mesh with surveys conducted by the United States in the western North Atlantic and Europe off the west coast of the British Isles.¹⁷¹

Third, NAMMCO has not developed a binding regulatory scheme for the commercial consumption of large whales that would include quotas or other management tools.¹⁷² As a result, they do not represent a true alternative or threat to the IWC. In fact, NAMMCO might not even have the authority to implement such a scheme. The articles of the Agreement only allow management committees to propose recommendations in terms of management, not to submit binding regulations.¹⁷³ Alternatively, NAMMCO may be hesitating to address commercial whale hunting because under international law, NAMMCO may not have the authority to designate a binding management scheme for large whales. Article 65 of the United Nations Convention on the Law of the Sea (UNCLOS) says, “states shall co-operate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management, and study.”¹⁷⁴ Although Article 65 does not designate which international organizations are competent to manage cetaceans, it could be argued that the IWC has historical precedence.¹⁷⁵ As a result, if NAMMCO were to initiate a regulatory

169. Telephone Interview with Christina Lockyer, *supra* note 77.

170. See NAMMCO, International Government Organizations, <http://www.nammco.no/Nammco/Mainpage/Links/InternationalGovernmentOrganisations/> (last visited May 7, 2006).

171. See *First Planning Meeting for the Trans North Atlantic Sightings Survey Held*, NAMMCO, Mar. 22, 2006, http://www.nammco.no/Nammco/Mainpage/News/first_planning_meeting_for_the_trans_north_atlantic_sightings_survey_held.html; Telephone Interview with Christina Lockyer, *supra* note 77.

172. Telephone Interview with Christina Lockyer, *supra* note 77.

173. Caron, *supra* note 9, at 164-65.

174. United Nations Convention on the Law of the Sea art. 65, Dec. 10, 1982, 1833 U.N.T.S. 397.

175. Schiffman, *Competence*, *supra* note 10, at 180.

scheme that directly conflicted with the IWC, such a scheme may not be valid as it could be seen to undermine the “co-operation” necessitated by Article 65.¹⁷⁶ If the IWC continues to reject the RMS in the future, however, NAMMCO may be forced to consider commercial whaling more formally.

Fourth, NAMMCO probably has not caused other pro-whaling nations to leave the IWC and form regional management organizations of their own because other countries do not have the resources to cooperate as effectively as NAMMCO members.¹⁷⁷ Nations in the Pacific, such as Japan, China, and South Korea have expressed a desire to form their own regional administrative body, but have not acted upon that desire.¹⁷⁸ Similarly, nations in the Caribbean have expressed a desire to organize marine mammal management structures, but have not done so.¹⁷⁹ Although Japan is relatively wealthy, the developing nations of China, South Korea, and islands in the Caribbean, who do not have a long history of devoting money to research, would likely have a tough time finding the resources to initiate a regional organization.¹⁸⁰ Additionally, these nations may not all be like-minded in their approaches to whaling or to management policy in general, so they may have a difficult time finding common ground.¹⁸¹ In comparison, NAMMCO members are all rich, like-minded nations that are realistically set up to collect a large amount of research.¹⁸²

Finally, the IWC has benefits to the international community that NAMMCO could never offer. As an organization that represents countries worldwide, the IWC is appropriate for the broad oversight of cetacean consumption because whales are a global resource. Furthermore, there may be trade advantages for pro-whaling nations if they continue to participate in the IWC.¹⁸³ As members, they can build relations with countries from around the world and create a more extensive trading scheme for whaling resources.¹⁸⁴ Being a member to the IWC may also boost a nation’s

176. *See id.*

177. Telephone Interview with Christina Lockyer, *supra* note 77.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

reputation in the international community. Even though trade sanctions are not as powerful in today's world, states are still economically dependent on each other.¹⁸⁵ Iceland probably decided to rejoin the IWC for these reasons, in addition to the fact that its reentry could potentially sway the votes for the IWC to finally implement the RMS.¹⁸⁶

IV. NAMMCO IS A BETTER MODEL FOR INTERNATIONAL WHALE MANAGEMENT

A. NAMMCO Has Been Successful

Although NAMMCO has not caused the IWC to redirect its efforts away from whale preservation, NAMMCO's efforts to manage whaling in the North Atlantic have been successful.¹⁸⁷ Because NAMMCO members are nations with common interests, they act as neighbors to each other, respecting NAMMCO recommendations and actions.¹⁸⁸

For example, one of the first research projects NAMMCO initiated was an investigation into the population structure of pilot whales off the coast of the Faroe Islands and the effects of pilot whaling in that area.¹⁸⁹ Specifically, Management Committees asked the Scientific Committee to investigate whether the pilot whale hunt in the Faroe Islands was sustainable.¹⁹⁰ The Scientific Committee gathered experts in the field to form a special group, who reviewed a previous study conducted by ICES, and also used three separate surveys from the area to conclude that the current hunts had a negligible impact on pilot whale populations and were sustainable.¹⁹¹

185. Hodges, *supra* note 101, at 323-34.

186. Henderson, *supra* note 89, at 666.

187. See Hovelsrud-Broda, *supra* note 85, at 158 ("Sustainable use programs must foster the objectives of local communities, while also being solidly grounded in objective scientific principles, embrace an ecosystem approach and allow for integration into more far-reaching management systems. This is a delicate balancing act that NAMMCO has been able to maintain to this point."); Steinar Andresen, *NAMMCO, IWC, and the Nordic Countries*, in *WHALING IN THE NORTH ATLANTIC—ECONOMIC AND POLITICAL PERSPECTIVES* (Gundrun Petursdottir ed., 1997), available at <http://www.highnorth.no/Library/Publications/iceland/na-iw-an.htm>; Telephone Interview with Christina Lockyer, *supra* note 77.

188. Telephone Interview with Christina Lockyer, *supra* note 77.

189. See Section 3: *Scientific Committee*, in 1997 NAMMCO ANN. REP. ¶ 8.1.2 (1998), available at <http://www.nammco.no/webcronize/images/Nammco/739.pdf>.

190. Hovelsrud-Broda, *supra* note 85, at 153.

191. Section 2: *Management Committee*, in 1997 ANN. REP., *supra* note 189, at 4-5, available at <http://www.nammco.no/webcronize/images/Nammco/738.pdf>.

As a result, the Faroe Island government has continued pilot whaling and now cites the NAMMCO recommendations as evidence to support its management plan.¹⁹²

Members have also modified their regulatory programs based on the advice of NAMMCO. After the scientific committee conducted a comprehensive assessment of beluga and narwhal stocks off of Greenland in cooperation with the Joint Commission on the Conservation and Management of Narwhals and Belugas, they found the stocks to be significantly depleted.¹⁹³ As a result, the management committee recommended that Greenland take action to reduce its take of belugas and narwhals.¹⁹⁴ In response, Greenland adopted a regulatory framework to set quotas for belugas and narwhals and limit the hunt.¹⁹⁵ This was the first time the government of Greenland had ever set quotas for belugas and narwhals.¹⁹⁶ More recently, NAMMCO has encouraged Greenland to reduce its current quotas.¹⁹⁷ Although Greenland has not yet responded, it is expected to reduce quotas in the near future.¹⁹⁸

Additionally, the Scientific Committee has been attempting to gather data about fin whale and humpback whale populations in the North Atlantic. It has divided fin whales in the North Atlantic into three separate stocks.¹⁹⁹ Based on those separations, the scientific committee has determined that small takes of fin whales from the East Greenland - Iceland stock is sustainable, but has not been able to collect enough information to determine whether the take of fin whales from the Faroe Island stock would be sustainable.²⁰⁰ Under these circumstances, members have opted to keep fin whale catches small. Iceland plans to only take a maximum of nine whales during

192. Faroe Islands Dep't of Foreign Affairs, *The Pilot Whale Hunt—A Sustainable Catch*, <http://www.whaling.fo/thepilot.htm> (last visited May 7, 2006).

193. 2001 NAMMCO ANN. REP., 113-14 (2002), available at <http://www.nammco.no/webcronize/images/Nammco/731.pdf>.

194. Hovelsrud-Broda, *supra* note 85, at 154-55.

195. See Press Release, NAMMCO, 15th Annual Meeting of NAMMCO (Mar. 16, 2006), available at <http://www.nammco.no/webcronize/images/Nammco/709.pdf> [hereinafter 15th Annual Meeting].

196. Telephone Interview with Christina Lockyer, *supra* note 77.

197. See 15th Annual Meeting, *supra* note 195.

198. Telephone Interview with Christina Lockyer, *supra* note 77.

199. NAMMCO, STATUS OF MARINE MAMMAL STOCKS IN THE NORTH ATLANTIC: THE FIN WHALE 2, available at <http://www.nammco.no/webcronize/images/Nammco/651.pdf>.

200. 2005 ANN. REP., *supra* note 124, at 94.

this season.²⁰¹ Greenland takes less than five fin whales per year off its coast, and has decided not to increase its take because the scientific committee is not able to provide adequate information about the effect of an increase in takes at this time.²⁰² NAMMCO held a joint scientific meeting with the IWC on fin whale populations this year, which may yield more information on stock structure in the near future.²⁰³

In addition to providing effective management recommendations, NAMMCO has also been able to successfully implement an inspection and observation scheme for marine mammal hunting in the North Atlantic, something the IWC has yet to accomplish.²⁰⁴ Because NAMMCO is such a small organization and members work closely together, it has probably been easier for members to cooperate with each other productively than it is for those of the IWC to do so. As a result of its observation program, NAMMCO can now monitor the hunting activities of all members in order to make more accurate management proposals.²⁰⁵

B. How the IWC Can Use NAMMCO

In comparison to the IWC, NAMMCO has been much more effective at promoting cooperation between members in order to conduct valid scientific research and initiate the ecosystem-based management of marine mammals. In the early years of its administration, the IWC rejected scientific recommendations to significantly decrease whaling quotas. Member nations to the IWC also frequently ignored harvest targets even after they were set. As a result, whale populations declined under IWC direction.²⁰⁶ Since the moratorium has been passed, the IWC has continued to rebuff its Scientific Committee advisors. Even though scientists have completed a comprehensive assessment of whale stocks and developed a solid RMP, the IWC has refused to implement it until it can agree upon a completed RMS. After more than ten years of discussion, the IWC has been unable to formulate a finalized RMS. Divisiveness between IWC member states has existed throughout its history and only continues to get worse. Even now, the IWC cannot

201. *Iceland Violates Ban on Whaling*, *supra* note 1.

202. *Id.*

203. *Joint NAMMCO-IWC Workshop on Fin Whales*, *supra* note 138.

204. Telephone Interview with Christina Lockyer, *supra* note 77.

205. *Id.*

206. *See supra* text accompanying notes 39-48.

formally decide whether it wants to develop sustainable management or completely eliminate whaling.²⁰⁷ As a result, the scientific integrity of the IWC has been compromised as it remains in a holding pattern.

Admittedly, NAMMCO has an easier task than the IWC: it has a much smaller number of member states who all have like-minded values in terms of marine mammal consumption. Still, there may be ways that the IWC can utilize NAMMCO's accomplishments to make its own organization more effective. Regional management has proven to be a successful strategy for the management of many marine resources. The IWC should take steps to encourage the development of more regional marine mammal management organizations based on NAMMCO's structure. It could spend money consulting with groups of like-minded nations, who share in the consumption of discrete stocks of marine mammals, or who are located in similar geographic areas, helping them build a foundation for cooperative management. The IWC could also incorporate recommendations from regional bodies into its own decision-making process, acting more as a central authority. Such efforts would benefit the IWC in a number of ways.

First, regional management organizations would allow the IWC to gather data from all parts of the world effectively. Currently, the IWC must either request permission to conduct scientific research in the waters of a member state²⁰⁸ or request whaling statistics and other data from member states in order to get valuable information about stock sizes.²⁰⁹ Oftentimes, member states are uncooperative and sometimes even purposefully provide inaccurate data in order to frustrate IWC efforts.²¹⁰ Once regional cooperatives are in place, those organizations could conduct and monitor local studies on marine mammal populations independently and transfer that information to the IWC, as NAMMCO currently does. In time, the IWC would be able to save a significant amount of its resources once regional organizations developed into competent research groups.

Second, regional organizations would be better able to incorporate information about other marine resources, such as small

207. See *supra* Part I.E.

208. See, e.g., The International Whaling Committee's 57th Annual Meeting, Ulsan, Rep. of Korea, June 20-24, 2005, *Resolution 2005-2*, available at <http://www.iwcoffice.org/meetings/resolutions/resolution2005.htm#2> (outlining a resolution to encourage cooperation among states bordering the Korean peninsula in order to make surveys in the area possible).

209. Burns, *supra* note 13, at 73-74.

210. *Id.*

cetaceans, pinnipeds, and fish, species that the IWC does not currently manage. As a result, management decisions would be more ecosystem-based, rather than orientated toward a single species or group of species. Ecosystem management allows organizations to better conserve resources by considering the effect management decisions will have on the whole environment. Focusing efforts on one animal can produce unintended consequences for other animals. For example, the presence or absence of whales has the potential to cause other predators to change their diet, a change that can ripple through the rest of the marine environment.²¹¹ Taking into consideration all the links in an ecosystem allows resource managers to protect the entire eco-structure: whales, seals, sea otters, fish, and marine invertebrates alike.

Third, regional organizations would allow the IWC to better monitor whaling that is already taking place under the aboriginal and scientific permit exceptions to the ICRW or otherwise. As it stands now, the IWC is unable to adequately ensure whether aboriginal populations are meeting quotas for marine mammal takes or that countries utilizing scientific research permits are collecting the amounts of marine mammals they are actually reporting.²¹² Furthermore, it is difficult for the IWC to comprehensively measure the effect those takes are having on the local marine environment. NAMMCO has demonstrated that regional management organizations can better assist aboriginal communities, like those in Greenland, to assess and manage their marine mammal takes. NAMMCO has also provided valuable advice to Iceland and Norway, who both continue to whale despite the IWC moratorium.

Finally, regional management organizations are effective tools for ocean resources. Regional structures have been used to effectively coordinate the management of other marine organisms. For example, the United States uses eight regional management

211. See, e.g., A. M. Springer et al., *Sequential Megafaunal Collapse in the North Pacific Ocean: An Ongoing Legacy of Industrial Whaling?*, 100 PROCEEDINGS OF THE NAT'L ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA 12223 (2003), available at <http://www.pnas.org/cgi/reprint/100/21/12223> (describing how killer whales started preying on Stellar sea lions and sea otters after whaling caused numbers of great whales to decline. This change may have precipitated a collapse of sea otters and pinnipeds in the North Pacific, which subsequently affected populations of sea urchins and the prevalence of kelp).

212. Bakalar, *supra* note 63, at 623-24, 638-39. The IWC has failed to implement an adequate monitoring program. In fact, aboriginal nations in Alaska and other areas have formed their own non-governmental organizations because IWC management of their hunts has been so ineffective. *Id.* at 623-24; 632-35.

councils under the direction of the National Marine Fisheries Service to manage fishing at a local level.²¹³ Recently, the United States Commission on Ocean Policy recommended that the regional structure be extended to cover the management of entire ocean ecosystems through the use of regional ocean councils.²¹⁴

It is difficult for the IWC to remain aware of issues that affect whales in all parts of the world and it should not be asked to complete such a difficult task. Rather, the IWC should act as an umbrella organization making broad regulations, while at the same time supervising the detailed management systems of more localized bodies. In that way, regional communities will have the opportunity to institute sustainable use in a way that specifically fits the needs of their culture and environment. The progression to a regional management structure would not force the IWC to dissolve. Instead, the IWC could act as a central governing body to coordinate research and recommendations internationally. Large whales are inherently global in nature: some species migrate thousands of miles each year. It is important for the IWC to remain in control of whaling globally.²¹⁵

Of course, new regional organizations may not all be as successful as NAMMCO. There is still the potential that localized politics could capture regional management. Furthermore, nations that are geographically close might not all share similar values in the way that NAMMCO members do. It would be important for the IWC and member states to remain aware of these issues throughout the evolution of regional structures.

In addition, the formation of regional organizations might not solve the larger problems within the IWC, namely the decade-long deadlock between anti-whaling and pro-whaling nations. Iceland's recent actions demonstrate, however, that whaling is going to continue into the near future, whether in the form of subsistence whaling, scientific whaling, or under the supervision of alternative management organizations like NAMMCO. In light of the notion that it will be nearly impossible to completely eliminate whaling in the near future, it would behoove the IWC to recognize the value of

213. Carolyn F. Creed & Bonnie J. McCay, *Property Rights, Conservation, and Institutional Authority*, 9 TUL. ENVTL. L.J. 245, 246-47 (1996).

214. Susan Steele Hanna, *Implementing Effective Regional Ocean Governance: Perspectives from Economics*, 16 DUKE ENV. L. & POL'Y F. 205, 205-06 (2006).

215. Anable, *supra* note 163, at 650. Anable argues the IWC is necessary as a centralized body for the management of large whales. *See id.* By supporting regional initiatives, however, IWC can still remain in control. *See id.* at 650-51.

supporting regional management. Under the direction of regional structures, the consumption of all marine mammals could be better understood and controlled. Furthermore, regional bodies may be the only way for the IWC to successfully implement an observer program throughout the world.

CONCLUSION

Whaling remains one of the most controversial issues in the environmental community. Marine resources are difficult to manage because of their transitory and elusive nature. NAMMCO, however, is one regulatory body that has been able to direct the sustainable use of marine resources. NAMMCO has not bullied the IWC into dissolution, as many scholars originally believed it would. Even so, NAMMCO has blossomed into a successful management organization that rivals the IWC in terms of scientific credibility and effective cooperation. The IWC should use NAMMCO as an example to encourage the development of more regional agreements. A localized approach to the management of marine mammal consumption would increase the amount of information on discrete populations, promote an ecosystem understanding of marine mammal communities, and allow for the successful operation of inspection schemes to monitor and ensure sustainable use.