

Balancing Conservation and Cultural Rights: How the International Whaling
Commission's Policies Shape Indigenous and Commercial Whaling Practices

Honors Thesis

Presented in Partial Fulfillment of the Requirements for the
University Honors Program
Colorado State University

By

Emma Tomlinson

Department of Agricultural and Resource Economics

Marni Berg, Department of Political Science

Andy Seidl, Department of Agricultural and Resource Economics

Fall 2025

Abstract

The International Whaling Commission (IWC), established by the 1946 International Convention for the Regulation of Whaling, creates international rules that distinguish among commercial, scientific, and aboriginal subsistence whaling. Since the 1982 moratorium on commercial whaling, which entered into force in 1986, the IWC has continued to recognize and manage Indigenous subsistence hunts with the explicit objectives of maintaining whale populations at healthy levels while enabling Indigenous peoples to continue culturally and nutritionally necessary hunts. Each form of whaling has its own unique regulations and enforcement mechanisms, binding states and communities under international law. These regulatory arrangements establish a legal and management framework that must strike a balance between species conservation and Indigenous rights and cultural survival. This paper explores the complicated relationship between Indigenous self-determination, the limitations of international law, and conservation challenges.

Contextualization of the Relationship between Whaling and the IWC

For thousands of years, traditional whaling has been critical to the survival of Indigenous communities globally. There is evidence that the practice has been around since at least 6000-5000 BCE, and the practice is assumed to have taken place even earlier among the Japanese during the Jōmon period, 13000-300 BCE. The oldest known depiction of whaling comes from the Bangudae petroglyphs found in southern Korea, which feature carvings showing whales tied to boats and harpoons, giving insight into the early form of whaling.



Figure 1. Bangudae Petroglyphs depicting early whaling activities in Ulsan, South Korea, 6000-5000 BCE.

Historically, whaling focused primarily on subsistence¹ reasons. The entirety of the whale was utilized to fulfill nutritional and cultural needs. The whale's blubber and meat are used as nourishment, and whale bones are still used to create tools and artwork. Not only do whale bones play a critical role in a community's spiritual and cultural life, but the diet also plays a role in

¹ Subsistence whaling does not focus on the practice of hunting whales for the purpose of maximization of catch or profit, rather it is concerned with the nutritional and cultural needs of Indigenous communities

establishing a cultural identity. According to anthropologists, "... customary diet is even more important in establishing and maintaining an individual's cultural identity than is any other distinctive cultural attribute, including even language (Freeman)."

Historically, most Indigenous whaling was small-scale, conducted from open boats using hand-thrown harpoons or simpler gear, and focused on local consumption. These hunts were embedded within complex seasonal gathering systems and social practices, sharing, ritual, craft use. By contrast, commercial whaling, which expanded dramatically with 18th–19th century industrial technologies, ship-borne tryworks, explosive harpoons, steam and later factory ships, targeted large commercial catches and global markets for oil, baleen, and later other products. In the 20th century, modern “special permit” or scientific whaling used industrial techniques that greatly increased mortality and drove many whale populations to dangerously low levels, prompting international regulation.

Economic roles for whales vary significantly depending on the context. In Indigenous communities, whales provide subsistence goods, materials, and cultural capital rather than commercial revenue. In contrast, historical commercial whaling created entire regional economies. This began in the mid-17th century, when European whalers sailed around Iceland, Greenland, North America, and even as far as the South Pacific and Antarctica in the following century (Daily Herald Archive). In 18th–and 19th–century New England, there was an entire regional economy centered on whaling products, including whale oil, spermaceti, and baleen. Baleen, also known as whalebone, was widely used in 18th–and 19th–century manufactured goods, such as corsets. Whale oils were essential as lamp fuel, lubricants, and industrial inputs until they were displaced by petroleum and synthetics (Smithsonian Ocean). Today, the direct

monetary dependence on whaling is limited in many regions, but in some places, whale-related hunting or whale-derived products still play an economic role. Moreover, subsistence hunts reduce food costs and provide vital nutrition where other sources are expensive or seasonal (Freeman).

The IWC differentiates types of whaling because objectives and impacts differ. Aboriginal subsistence whaling is intended to meet Indigenous communities' cultural and nutritional needs. It is managed via scientifically informed catch limits and reviews, and the IWC typically reviews aboriginal catch limits on a multi-year cycle. Commercial whaling, which is subject to the 1982 moratorium, was designed to be constrained due to historic overexploitation. Some states, such as Norway, Iceland, and Japan, have pursued objections, reservations, or “special permit” practices that allow national commercial or scientific hunts outside the moratorium, leading to tension between conservationists, Indigenous representatives, and whaling states. The policy challenge, and what the IWC must continuously negotiate, is to conserve cetacean populations while respecting legitimate Indigenous subsistence needs and the cultural rights of native peoples.

IWC's Institutional Responsibilities and Policy Impacts

The IWC is an intergovernmental organization established in 1946 by governments concerned with regulating whaling and conserving whale stocks. Any state with an interest in whaling, regardless of whether it participates in the practice, is welcome to the organization. For example, the landlocked country of Mali, located in Western Africa and a state that does not participate in the practice of whaling, is one of the 88 member states of the organization (IWC). Since its establishment, the IWC's mission has evolved from supporting the whaling industry to

managing whale stocks and promoting conservation. Despite this change in the organization's mandate, it continues to regulate certain types of whaling, including: commercial whaling, scientific whaling, and aboriginal subsistence whaling².

In 1982, member states came together and decided to enact a pause, or moratorium, on commercial whaling of all species from the 1986 season onwards. It is widely known as the 1986 Moratorium on Commercial Whaling, and it is binding for almost all member states to this day, with a few notable exceptions. In response to the moratorium, the member state of Iceland left the organization in 1992. Still, it rejoined in 2002, on the condition that it objects to the terms of the moratorium and establishes its own catch limits, reporting catch data to the Commission. Today, Iceland whales North Atlantic common minke whales and North Atlantic fin whales within its EEZ³. At the establishment of the moratorium, Norway also lodged a formal objection; however, unlike Iceland, it remained in the organization and continued to whale commercially. Similar to Norway, Iceland also established its own catch limits and is obligated to report catch and other scientific data to the Commission. More recently, Japan withdrew from the IWC in 2019 and resumed high-volume commercial whaling, no longer being bound by the moratorium. According to the IWC, Japan's catches are reported to the organization. Still, as this paper will explore later, activists and scientists believe that Japan is underreporting and misrepresenting its catch data (IWC).

² The IWC uses the language "aboriginal" in their definition of the practice, however when not explicitly referencing the regulation this paper will use the word "Indigenous" as it is preferred in international law, refers to first peoples on a global scale, is widely considered more respectful, and the word "aboriginal" is considered offensive in certain contexts, particularly in Australia.

³ EEZ: refers to a country's exclusive economic zone, which is an area of up to 200 nautical miles from a sovereign state's coast in which it has ultimate authority regarding use of its marine resources

Scientific, or special permit, whaling is another type of whaling overseen by the IWC; however, in this case, the organization's role differs from its typical regulation practices of commercial and aboriginal subsistence whaling. The IWC's intervention is hindered by international law on whaling, which distinguishes between scientific whaling and IWC-regulated whaling, as individual states' governments regulate the latter. This was laid out specifically in Article VIII of the International Convention for the Regulation of Whaling (ICRW)⁴ that gives individual states' governments the authority to issue special permits for scientific whaling. The role of the organization is limited to an advisory capacity and does not enable the IWC to regulate these hunts. The IWC requests that governments submit research proposals for special permits, as well as findings from scientific hunts; however, this is essentially a formality, as the organization lacks the authority to impose penalties on states whose research does not withstand scientific scrutiny (IWC).

Although the IWC recognized aboriginal subsistence whaling since its inception, as reflected in the signing of the ICRW, it was not formally established as a separate regulatory category until 1981, despite having been formally regulated by the Commission since the 1970s. The IWC did not formally establish special permits for aboriginal subsistence whaling until 1986, when the organization created an exception to the 1986 moratorium. The IWC's mandate concerning aboriginal subsistence whaling is to "ensure that hunted whale populations are maintained at (or brought back to) healthy levels, and to enable native people to hunt whales at levels that are appropriate to cultural and nutritional requirements in the long term." The Commission does this by adhering to the three objectives set in 1981:

⁴ ICRW: the founding document of the IWC, signed in 1946

1. To ensure that the risks of extinction to individual stocks are not seriously increased by subsistence whaling
2. To enable aboriginal people to harvest whales in perpetuity at levels appropriate to their cultural and nutritional requirements, subject to other objectives
3. To maintain the status of whale stocks at or above the level giving the highest net recruitment and to ensure that stocks below that level are moved towards it so far as the environment permits

Aboriginal subsistence whaling (ASW) is regulated through the implementation of quotas that are set in six-year blocks. The IWC refers to these quotas as "strike limits" because they incorporate the use of a precautionary principle, which includes whales that are "struck" but not necessarily killed in the quotas to protect whale stocks. Every six years, the strike limits are reviewed and possibly revised based on scientific data on whale stocks and the sustainability of proposed hunts. The strike limits are informed by data collected and managed by the scientific arm of the IWC, known as the Scientific Committee. Currently, there are four states whose Indigenous peoples conduct ASW: Denmark, in the form of the autonomous territory of Greenland; Russia; St. Vincent and the Grenadines; and the United States.

Conflict Between Conservation and Cultural Interests

One of the most pressing questions regarding ASW concerns the ethicality: Is it ethical to regulate a traditional Indigenous practice? The IWC has been making efforts to encourage more "humane" whaling practices, which often clash with Indigenous traditions. One example is the introduction of penthrite grenades, which are used to reduce the time between a whale's strike and its death. According to Cleo Abramian, a contributor to the World Policy Journal, the

introduction of new technology is "sometimes believed to mar aboriginal authenticity." There is also considerable debate within international law as to whether the ASW strike limits infringe on the rights of Indigenous peoples to self-determination. The United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) is the international community's leading instrument governing the individual and collective rights of Indigenous Peoples. Although it is a legally non-binding instrument, it establishes a framework of standards for the treatment of Indigenous Peoples that is widely recognized by the international community. Its four key principles include:

1. Self-determination
2. Participation in decision-making
3. Respect for and protection of culture
4. Equality and non-discrimination

Although UNDRIP is not considered customary international law, elements of the declaration reflect provisions that align with existing customary law regarding the right to self-determination. Within international law, the legal status of Indigenous people's right to self-determination is unclear. Some scholars maintain that it has become incorporated into customary international law, however, the majority of scholars maintain that it has not and the International Law Association's Committee on the Rights of Indigenous Peoples has not made any statement on the fact, while proclaiming other rights to be a part of customary international law. Within ASW discussions at the IWC, Indigenous voices sometimes claim insufficient participation in key decision-making processes, for example, "needs statements" must be submitted by the national governments rather than the Indigenous communities themselves, and this violates a key element of self-determination in which Indigenous voices must be

incorporated into the decision-making process (Sellheim, 2021). The balance of conservation protocols and Indigenous self-determination continuously poses ethical and legal challenges.

There are also numerous cases where conservation ethics and Indigenous cultural interests clash. The first of those concerns stock sustainability and strike limits. Some communities argue that the strike limits do not fully meet cultural needs, but regulators at the IWC stress the precautionary principle in place regarding strike limits in order to protect stocks. There are also concerns surrounding the welfare of whales, and activists argue that traditional hunts that use less efficient methods lead to more suffering (Animal Welfare Institute). Tools such as hand-thrown harpoons and under-powered rifles extend the time between strike and death, possibly exacerbating the suffering of the whale. The need for balance between Indigenous cultural integrity and animal welfare is a highly contentious topic, with strong supporters on both sides of the aisle. Critics also argue that certain hunts blur the line between subsistence and commercial whaling, exploiting subsistence permits. For example, in the island of Bequia, located in St. Vincent and the Grenadines, there are allegations that local whalers do not meet a strict "Indigenous" definition and that the use of speedboats and non-traditional hunting methods redefine ASW as commercial whaling (Animal Welfare Institute).

Conflict Between Conservation and Economic Interests

In *Commercial Whaling, Tourism, and Boycotts*, an article in the *Marine Policy Journal*, economists Herrera and Hoagland examine how the economic rents from whaling fuel a fundamental conflict between conservation goals and national interests among whaling states. Whaling nations resist stricter protections by arguing that whaling continues to yield significant financial benefits, not just through the direct sale of whale products, but also by preserving

livelihoods in coastal communities and maintaining a culturally embedded industry. Their decision to engage in whaling depends on a delicate balance: the ecological sustainability of whale populations, the market demand for whale-derived goods, and the political risk that conservationist activism could translate into consumer boycotts. For these countries, the potential loss of economic rent from whaling represents a threat to their socio-economic structures, making conservation measures appear not only as environmental regulation but as risks to employment, income stability, and traditional economic systems (Herrera & Hoagland, 2006).

"Many rural people, including most aboriginal peoples, combine both commercial and subsistence uses of wildlife in order to sustain their cultures and communities, and furthermore it is now recognized that such mixed (subsistence and market) economies have existed for centuries and as a general rule (and contrary to widespread popular belief) have not caused any significant environmental damage or loss of biodiversity in the north (Freeman, 1995)."

The Role of Scientific Whaling and Loopholes in IWC Policies

The International Convention for the Regulation of Whaling (ICRW) contains a specific provision, Article VIII, that permits a member state to grant "special permits" to its nationals to kill, take and treat whales for purposes of scientific research. Those permits may authorize lethal sampling and, under national law, the sale or commercial use of whale products derived from permitted takes (*Australia v. Japan: New Zealand intervening, Judgement*). Critics long argued that Article VIII created a legal loophole that allowed governments to continue whale hunts under the cover of "research", while also enabling the distribution or sale of whale meat and other products. The country most often accused of exploiting this loophole is Japan.

Starting in the late 1980s, Japan conducted organized research whaling programs under the banner of JARPA in the Antarctic, and later JARPA II. These programs used ICRW Article VIII special permits to take large numbers of whales for research purposes. Whale meat and byproducts from those takes were subsequently processed and sold domestically, which opponents characterised as commercialization under the guise of science. The practice fed sustained international criticism that the Article VIII mechanism was being used as a de-facto route to continue commercial whaling (The Institute of Cetacean Research). On May 31, 2010 Australia decided to challenge Japan's research whaling programs by bringing forth a case to the International Court of Justice (ICJ) challenging whether Japan's JARPA II programme was genuinely "for purposes of scientific research" as required by Article VIII. On 31 March 2014 the ICJ found that, as implemented, JARPA II was not for the purposes of scientific research within the meaning of Article VIII. The Court concluded Japan had failed to justify the numbers of whales taken and the scientific outputs claimed; it ordered Japan to revoke any existing special permits issued under JARPA II and to refrain from granting further permits under the program as it then stood. That ruling was a landmark because it constrained states' margin for labeling broad lethal programs as "scientific" when the evidence did not support the scientific necessity or methodology (Australia v. Japan: New Zealand intervening, Overview of the Case). This judgment consisted of two inter-related topics: legal permissiveness, as Article VIII technically permits lethal research and the subsequent use of whale products if national law allows and accountability gaps. Until Australia's ICJ action there had been limited external judicial review of whether a particular special permit program truly qualified as "scientific." The ICJ decision narrowed that gap by applying judicial review to how Article VIII is used, but it left open

broader questions about how to police or define “research” in multilateral practice and about enforcement beyond the specific program adjudicated (American Society of International Law).

Following the ICJ judgment, Japan ended its Antarctic JARPA II program, but the political controversy persisted. In December 2018, Japan announced it would withdraw from the IWC and resume commercial whaling in its territorial waters and exclusive economic zone starting July, 2019. Japan therefore stepped out of the IWC regulatory framework for commercial whaling and began issuing domestic commercial quotas for species such as minke, Bryde’s and sei whales. Critics argued this move exploited the procedural limits of the IWC and revived concerns about national-level control over whaling absent the IWC’s collective regime. Since leaving the IWC Japan has also sought to expand permitted species and adjust regulations under national fisheries law, raising renewed international law and conservation questions.

The Role of Activism and International Pressure in Influencing Anti-whaling Policies

International activism has played a central role in shaping global anti-whaling norms and pressuring states to comply with IWC restrictions. Beginning in the 1970s and 1980s, environmental NGOs such as Greenpeace, Sea Shepherd, the World Wide Fund for Nature (WWF), and the International Fund for Animal Welfare (IFAW) mobilized large-scale public campaigns against commercial whaling. Their tactics ranged from scientific reports and lobbying at IWC meetings to dramatic direct-action interventions at sea. These activities generated unprecedented media attention, reframing whaling as a moral issue rather than a purely resource-management problem. As public sentiment shifted, democratic governments, particularly in the U.S., U.K., and Australia, faced growing domestic pressure to adopt stronger anti-whaling positions at the IWC and in diplomatic negotiations. In several cases, states cited

“public concern” or “international reputation” as motivating factors behind their opposition to commercial whaling, illustrating how activism influenced national postures within international law. While they lack enforcement authority, their interventions often bring global attention to illegal activities and pressure states or organizations to act. Many NGOs work alongside governments and international bodies by contributing research, sharing surveillance data, and supporting policy development. They submit amicus curiae briefs, lobby states to initiate legal actions, and shape public discourse that may guide judicial reasoning. Their legal influence also manifests through shadow reporting to treaty bodies and participation in advisory proceedings.

Environmental activism also contributed to the rise of what scholars describe as “green ethics” in policymaking. This ethical framework, centered on biodiversity protection, animal welfare, and the intrinsic value of non-human species, reshaped how global institutions conceptualize marine conservation (Purdy). As “green” values became embedded in Western political culture, support for strong animal-protection measures grew, even among individuals with limited personal environmental engagement. This phenomenon reflects the increasing prevalence of “inexpensive green identity”: the adoption of environmentalist positions as low-cost markers of ethical or political virtue (Lin & Nayga, 2022).

“... it has become a climate where emotions, economic self-interest and political expediency are the means and the ends being pursued. There is no domestic political advantage for non-whaling countries such as Australia, Britain, France or the United States for example, to allow Iceland, Japan or Norway to catch a few hundred whales. Without any conceivable domestic benefit, no politician in the non-whaling countries would risk the anger of a public that sincerely believes that “whales are an endangered species” or that “whalers want to exterminate

every whale in the world's oceans" repeated by individual politicians and governments seeking an inexpensive "green" identity (Freeman, 1995)."

Politicians, particularly in environmentally conscious democracies, tapped into this identity by adopting rhetorically strong anti-whaling positions that resonated with voters, even when such positions had limited material consequences. In turn, these political incentives amplified international criticism of whaling states like Japan and Norway, strengthening the anti-whaling coalition within the IWC (Takahashi, 2024).

More broadly, the late-20th- and early-21st-century surge in environmentalism created a global political climate increasingly favorable to conservation-oriented policies (Pew Research). The environmental movement expanded through social media, international education campaigns, and transnational environmental law, all of which framed whales as “charismatic megafauna⁵” deserving heightened protection (Earth.org). This cultural shift affected not only public opinion but also the behavior of international institutions, which became more responsive to environmental NGO participation and more skeptical of states invoking scientific or cultural justifications for lethal whaling. As a result, activism did not merely supplement anti-whaling policy, it helped shape the normative environment in which the IWC operates, strengthening the political and ethical foundations for maintaining the moratorium on commercial whaling and for scrutinizing state claims under ASW and scientific-whaling exemptions.

Potential Alternative Economic Models to Whaling

⁵ Large, popular animals often used by conservationists to encourage environmental protection policy due to the species' popularity

Environmental NGOs and some local whaling communities have begun to explore and advocate for ecotourism as an economic alternative to whaling. According to the International Fund for Animal Welfare, the first recorded instance of a commercial alternative to whaling was in 1955 when a Californian fisherman recognized that whale migration occurred during limited fishing season times. He took advantage of this opportunity and began charging passengers to go whale watching on his fishing vessel. Today, whale watching is a multi-billion dollar industry, globally, and provides employment to over 13,000 people (IWC). Not only does whale watching provide an alternative economic model to whaling, it can also develop a sense of stewardship and pride within a community and help locals feel more connected to whales (IWC). Responsibly conducted whale watching provides an avenue for education and advocacy on the fragility of the species and can raise awareness for conservation needs. Proponents of this practice, generally, believe that this should be implemented as an alternative for commercial whaling, not ASW. However, there are some more radical environmental groups, such as the Sea Shepherd Conservation Society, who have stated that "Sea Shepherd opposes the intentional killing of cetaceans, no matter the circumstances. From the Faroe Islands to Iceland, from Japan to Norway, Sea Shepherd's opposition to whaling is categorical and uncompromising. (Sea Shepherd)."

Future Outlook and Policy Recommendations

Looking forward, the IWC has a challenging task. With the ever-expanding presence of Indigenous self-determination and governance, the IWC must navigate striking a balance between honoring cultural rights and conservation goals (American Society of International Law). It could be argued that with the increasing media coverage and discussion of Indigenous

rights in popular culture that perhaps the international lawmaking community may see fit to grant Indigenous peoples and tribal governments a greater role in the decision making process of quota setting and gear regulations. However, globalization is a double-edged sword and along with the increasing presence of Indigenous rights in discussion comes the ever-growing environmentalist movement. Some conservationists are concerned, rightfully so, with some metrics concerning self-reported ASW data. Wildlife biologist D.J. Schubert recognizes the cultural importance of ASW hunts, but he, and many others, have expressed concerns regarding transparency of the hunts. He has gone on record saying,

"Some ASW programs are operated more efficiently and transparently, while others are not. For the well-managed hunts, there is currently little evidence that they are harming populations, though in some cases we don't know enough about the individual stocks to really understand what the impacts are or the level of impact."

While these interest groups can be divided on the subject of ASW, they are generally in agreement against the commercial whaling practices still occurring in Iceland, Norway, and Japan. The IWC's primary concern when it comes to commercial whaling is the weakness of international law. There is no clear, strong enforcement mechanism to keep member states of IGOs accountable for violations, and as seen by Japan's exit from the IWC, if at any time a state decides it does not want to follow an institution's guidelines then it has the ability to leave. The entire structure of the Commission is based on strictly voluntary compliance, and member states can remain a part of the organization while still violating the moratorium, as exemplified by Iceland and Norway. Conservationists often refer to scientific, or special permit, whaling as the "scientific whaling loophole," for it generally allows member states to get away with the strike

and sale of whale meat under the guise of research purposes. If the IWC wants to truly commit to conservation of whale stocks, then the Commission should seriously reevaluate their regulations regarding scientific whaling and recommit to the organization's mandate.

The IWC has a number of potential policy reforms that could be implemented in order to address economic and cultural concerns while promoting sustainable whale stock conservation. One reform, first proposed in 2012 by researchers, is a whale conservation market⁶ (Costello, Gaines & Gerber, 2012). This proposed market-based system would set whaling quotas where permits can be bought and sold, which would allow whalers and conservation groups to compete for permits. Conservation groups could potentially buy up quotas in order to prevent whale strikes, or whalers could purchase quotas for a regulated harvest. Under this system, whalers could still profit, even if they are not hunting because they could sell their quotas to conservation groups. This system follows the idea that by creating a market, economic principles can be used to achieve conservation goals. Although this proposal is supported by some researchers, it is highly contentious among environmentalists who do not believe that there should be a monetary status assigned to the lives of whales, further underscoring the divide between conservation and economic interests in whale stock management. Another policy reform, heavily supported by Indigenous communities and many scientists, is the reorganization and redefinition of ASW. Although the IWC already distinguishes ASW as a distinct category of whaling with its own special regulations, it can be argued that further reforms are needed in order to ensure transparency and authenticity of hunts. Changes to IWC policy could include differentiation from commercial considerations through long-term agreements in order to provide certainty for Indigenous communities and reassurance for scientists. This would address concerns regarding

⁶ Also known as whale shares

the authenticity of hunts, such as the allegations against hunts conducted in Bequia that whalers do not meet the strict "Indigenous" definition (Animal Welfare Institute). Despite the ongoing debate surrounding the regulations of the IWC, it is clear that increased collaboration between the Commission, Indigenous communities, and conservation groups is necessary in order to set an effective regulatory framework that works to promote clarity and inclusivity within the decision-making process and protection of whale stocks.

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