



Makah Hunters Break US Law In Frustration

On 9 September, the US Coastguard halted the taking of a gray whale by five members of the Makah nation who were frustrated by delays in the legal process that prevented them from harvesting whales. Under the Treaty of Neah Bay, Makah people are exempt from the restrictions of the American Marine Mammal Protection Act (MMPA) but legal wranglings have suspended the hunts. These originate from a lawsuit filed by animal rights groups some eight years ago after the US allowed the Makah to recommence taking gray whales.



The animal could not be killed humanely due to the interference, according to one of the arrested hunters, so it sank, wasted, instead of becoming an abundant source of traditional food for the community.

Treaty rights also provide Alaskan Native people the

right to sustainable use of their marine mammal resources. So Alaskans take bowhead whales through an international treaty agreement, and with an exemption from the restrictions of the MMPA, which prohibits the taking (or even the annoying) of all marine mammals by non-Native Americans.

The gray whale is now abundant in the eastern Pacific, having recovered from the ravages of industrial whaling. It has been removed from the “endangered” listing under the US Endangered Species Act. Indeed, the grays are now twice as abundant as the bowhead whale hunted by Alaskans. Russian native people currently take some 140 gray whales from this same stock every year and have agreed that the Makah nation should have 5 per year out of that internationally agreed upon quota. ■

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Treaty Rights Must Be Treated Right

Editorial by Eugene Lapointe



Everyone, it seems, was quick to criticize the five Makah members who illegally killed a gray whale in frustration at the drawn out legal proceedings in the United States. The Makah themselves, distanced themselves from the Neah Bay Five, racing to Washington to tell the National Marine Fisheries Service (NMFS) that this criminal act should not impact the federal government's attempts to secure the exemption to the MMPA which they believe they need.

But let's back up a little. The Makah have the legal right to harvest gray whales. It was agreed by the Treaty of Neah Bay in 1855. When animal rights groups filed a lawsuit claiming that the Makah needed an NMFS exemption from the MMPA everyone laughed because everyone knows that treaty law trumps federal or state law. But the United States does not have an impartial judiciary and the 9th Circuit, famous for legislating from the bench, ruled for the activists.

Had that decision been appealed, it would surely have been overturned. But the NMFS balked at the prospect and instead chose to comply with the ruling. Several years later and the legal situation continues to be uncertain as lawyers try to decide the basis under which an exemption may lawfully be granted.

So what we have is a conflict in law. On the one hand, the law clearly allows the Makah to undertake the harvest. The treaty still exists. On the other, the 9th Circuit, in effect, re-wrote the law. And waiting patiently on the sidelines are the Makah, gently seething as one set of non-native Americans (the animal rights groups) tussles with another (the federal government) over their treaty rights.

So on what basis can we really find fault with the actions of the Neah Bay Five? Not only is their harvesting of a whale lawful under treaty law, it has also been validated by the International Whaling Commission. What the five did can only be considered illegal in so far as it goes against a ruling that was itself invalid. And, as is well documented, the gray whales along America's west coast are abundant so there is no reason for them not to be hunted.

In my view, these five brave hunters displayed great courage in taking this action. It is the US legal system, not its victims that should be under the spotlight.■

Published by IWMC World Conservation Trust, 3 Passage Montriond, 1006 Lausanne, Switzerland. Distributed free every month to supporters of IWMC and the World Conservation Trust Foundation. Editor-in-Chief, Dr. Janice Henke. Advertising enquiries, subscription requests, article submissions, letters and comments should be sent to iwmc@iwmc.org. Please include name, email address and organization in all correspondence. Copyright © 2007 IWMC World Conservation Trust.

Conservation through Independence and Courage

Editorial by Dr Janice Henke



The International Whaling Commission was a good idea, developed by those who founded and convened the original International Convention for the Regulation of Whaling, or ICRW. The rules that the

ICRW sets out for the business of the IWC are straightforward and simple, and include a very important stipulation; all management decisions are to be made on the basis of scientific advice.

Unfortunately, the forces of animal rights and environmentalist protest have become so influential in many IWC member nations that their national policies have been shaped to reflect the wishes of that segment of public opinion which is molded through the Internet. One recent tactic is to get citizens engaged in whale tourism to object to any consumptive use of these animals, regardless of the claimed and proven sustainability of any level of use.

Some modern societies have undergone a culture change of unprecedented proportion, shifting from a willingness to consider whales as legitimate prey objects concurrent with scientific oversight of their numbers, to a view that regards them as icons of “modernism”, a perspective in which they must not be considered fair game for any society, regardless of a proven biological safety of the harvest. This new perspective is intolerant of cultural diversity, disregards the legitimacy of science in decision-making about resource use, and disregards the treaty rules which all IWC member nations have signed. The intolerance for legitimate whaling under ICRW rules is now a hallmark of certain national identities and the power of those societies to control others through a system of voting blocks and a refusal to compromise to any degree. Anti-whaling forces have caused the destruction of an international convention, through these new strategies of power demonstration. What will happen as a result of this culmination of a twenty-five year process?

The forces of anti-use and protectionism have won a number of battles, but they have surrendered the opportunity to participate in international whale conservation in the future. It is now likely that Japan will leave the IWC, as negotiations and rational proposals for modest resumption of strictly regulated coastal whaling have fallen on closed minds. Japan’s alternate commissioner to the IWC, Mr. Akira Nakamae, also Deputy Director General of the Fisheries Agency of Japan, stated that, “We have exhausted all means we could offer. Now we have to consider all the options to face this situation, including the possibility of withdrawing from the IWC”.

One option for Japan may be a regional management organization, perhaps functionally similar to the North Atlantic Marine Mammal Commission (NAMMCO), which excludes outside nations from voting rights as it considers the biological status and sustainable use of marine mammals within the waters of its members. Such an organization would simultaneously conduct on-going scientific research on the marine ecosystem(s) in its area, while allowing safe harvest levels through a process of rational agreement among members.

This option would remove the ability of outside nations to exert their cultural preferences and political power against it. Human rights would once again be asserted, rational, science based resource management would be effected, and the anti-use members of the IWC would have to content themselves with addressing issues other than the subjugation of Japan, which has occupied much of their effort in recent years.

It is a matter of regret that it was not possible to return the organization to its original treaty purposes. We wish Japan all good speed in finding that path towards the conservation and rational use of cetaceans which has eluded everybody despite great efforts of diplomacy and scientific demonstration. ■

United States Stands by as Sea Shepherd Claims a Hit

A Norwegian whaling vessel, the *Willassen Senior*, was scuttled at dockside on August 30, allegedly by a member of Sea Shepherd, who sneaked into the country and made his way north to Svolvær, in the Lofoten Islands. Although it is not clear who was actually responsible, Sea Shepherd leader Paul Watson claims his group deserves recognition for yet another criminal act.

Despite its fight against global terrorism, the United States government has taken no action against Sea Shepherd, which is based in Washington State. Not only have US authorities failed to freeze the organization's bank accounts, they continue to allow the organization to maintain the charity status that allows its backers to deduct donations from their income taxes.

Ironically, Sea Shepherd also gets significant financial support from corporations and individuals in Australia

– a key US ally in the war against terror.

The donations of cash and merchandise provide Sea Shepherd with the financial freedom to travel the globe and clandestinely or openly destroy property and endanger the lives of people who are conducting lawful research and business at sea.

Supporters of the sustainable use of wildlife argue that American and Australian ports should be off-limits to all Sea Shepherd vessels and that the US should finally put an end to the tax loophole for Watson since his organization has a history of committing criminal acts.

The United States and Australia, meanwhile, appear hypocritical because they are continuing to turn a blind eye to blatant terrorist acts against foreigners, orchestrated from their shores and funded by their nationals.




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Obituaries

The Passing of a Friend

Stephen S. Boynton
13 June 1937 – 24 August 2007

The conservation community has lost a good friend and enthusiastic supporter in Steve Boynton, who shall be vividly remembered for his everlasting good humor, his gracious manner, and his skill in communicating the moral worth and intricacies of national and international wildlife law. In his long career as an attorney, Steve received many awards for excellence in trial practice, and for his election to the posts of Executive Council membership, Treasurer, Vice Chairman and Delegate of the American Bar Association. He was a member of the Bar Association of the District of Columbia, and was elected to be included in the First Edition of Who's Who in American Law.

His international associates remember Steve Boynton as one who tirelessly championed sport hunting as a conservation and management strategy, and for his insistence on ensuring careful scientific justification for any use of marine or land resources, whether that use be for subsistence or commercial purposes.

Our sincere condolences are hereby extended to his wife Ingrid and their entire family. Steve was honored in a memorial service on September 25, at Meadowlark Botanical Gardens in Vienna, Virginia, where all his friends and loved ones gathered to pay tribute to this man, so fondly remembered.

The tenacious little shark

Brendan Chapman, 14, got more than he bargained for Thursday when he went snorkeling at Anglin's Fishing Pier in Lauderdale-by-the-Sea. He came out of the water with a 3-foot nurse shark latched onto his abdomen. Onlookers poked at the shark to get him to let go, but nothing worked until Broward Fire-Rescue Lt. Rob Melendez socked the creature with a well-aimed punch to its nose, a technique he saw in a movie, the Miami Herald reported. The shark was tossed back into the ocean. (Source: St. Petersburg Times, 15 Sept. 07)



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