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A discussion paper on matters related to Local Consumption and Commercialism within Aboriginal Subsistence Whaling (ASW)

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INTERNATIONAL
WHALING COMMISSION

A discussion paper on matters related to ‘Local Consumption’ and ‘Commercialism’ within Aboriginal Subsistence Whaling (ASW)

Prepared by Japan and the USA¹

1. INTRODUCTION

In 2011, the Commission endorsed a recommendation (Denmark *et al.*, 2011) to form an *Ad hoc* Aboriginal Subsistence Whaling Working Group (ASWWG). The purpose of the group was to identify and consider unresolved ASW issues, including *inter alia* those identified in the 2011 report of the ASW Sub-committee (IWC, 2012a, p.16).

The 2012 Report of the Aboriginal Subsistence Whaling Working Group (IWC, 2012b) identified the issue of local consumption v. commercialism as one of seven long-term issues to be addressed by the Working Group.

Following a meeting organised by the ASWWG with a focus on receiving the views of the hunters on the issues being addressed by the ASWWG (IWC, 2014a) prior to the Biennial Commission meeting in September 2014, the Commission endorsed (IWC, 2014b) a recommendation from the ASWWG that ‘Japan, the USA and the IWC Head of Science prepare a discussion document on the issue of local consumption and commercialism’. This document has been prepared to address that recommendation.

2. HISTORICAL CONTEXT AND DEFINITIONS

2.1 Up to the additional focus on aboriginal subsistence whaling in the late 1970s

The authors of the League of Nations’ 1931 Convention for the Regulation of Whaling (which came into force in 1935) intended that its provisions should apply solely to commercial operations (International Whaling Conference, 1946) and therefore included a provision that specifically exempted from the application of its provisions ‘aborigines dwelling on the coasts of the territories of the High Contracting Parties’ subject to four conditions (Wallace, 1994a). The first two conditions proscribed the gear and vessels that might be used and the final two in effect prevented the commercial sale of the whale products (Tillman, 2008). The 1931 convention also protected right whales (which at the time included Greenland right whales, which are now known as bowhead whales) from commercial whaling. The 1937 Agreement on the Regulation of Whaling, which also applied explicitly to commercial whaling and did not mention aboriginal whaling, subsequently extended protection to gray whales (Wallace, 1997). At that time, Chukotkan hunters took both gray and bowhead whales, while Eskimo and Greenlandic hunters took bowhead whales. The 1931 Convention thus acknowledged the existence of aboriginal whaling and through a specific exemption made it possible for aboriginal hunters to take species that were protected from commercial use, thereby recognising ‘the legitimacy of meeting subsistence needs of aboriginal communities through small-scale hunts, provided that they were not driven by commercial incentives’ (Tillman, 2008).

Although the negotiated text for the 1937 International Agreement for the Regulation of Whaling had not specifically mentioned aboriginal whaling, the International Convention for the Regulation of Whaling signed in 1946 that led to the International Whaling Commission continued the international prohibitions adopted in 1931 and 1937 on the taking of all gray and right whales, except when the meat and products of such whales would be used exclusively for ‘local consumption’ by aborigines (IWC, 2012c; Wallace, 1994b). However, the term ‘local consumption’² was not defined (IWC, 2012c). In the context of aboriginal whaling, Tillman (2008) concluded that, as with the 1931 Convention, the drafters of the 1946 convention intended that such hunts upon otherwise protected species were acceptable provided there was no explicit commercial incentive, i.e. only local consumption by aborigines was permitted.

¹ With assistance from the Head of Science at the IWC Secretariat.

² In addition to ‘local consumption’ related to aboriginal/subsistence whaling (paragraph 13 of the Schedule), ‘local consumption’ is also referred to in present paragraphs 15(a) related to Bryde’s whales and 15(b) related to fin whales. The references to local consumption (for human consumption and animal food) with respect to commercial whaling applied to the taking of smaller whales from land stations incorporated into paragraph 9 of the original Schedule.

In 1964 (IWC, 1966, p. 20), the Commission amended (*italics below*) the exemption for right and gray whales to allow contracting governments to take those species on behalf of their indigenous peoples by expanding the text of paragraph 2 to read:

‘2. It is forbidden to take or kill gray whales or right whales, except *by aborigines or a Contracting Government on behalf of aborigines and only* when the meat and products of such whales are to be used exclusively for local consumption by the aborigines.’ (Tillman, 2008)

The paragraph formalised the understanding that the catches had to be made either by the hunters themselves or (as occurred in the USSR) the Contracting Government on behalf of the aborigines, and inserted the word ‘only’ to reinforce the concept of exclusively for local consumption. The Commission has since revised and moved paragraph 2.

2.2 A new focus on aboriginal subsistence whaling and the development of definitions of terms

At the 1977 Annual Meeting, on the advice of the Scientific Committee with respect to the catching of bowhead whales in Alaska, the Commission removed the words ‘or right’ from the exemption, essentially setting a zero catch limit for that hunt. That decision was revised at a Special Meeting later that year and a catch/strike limit was approved for the Alaska bowhead whale hunt (IWC, 1979a, p. 3). At the 1978 Annual Meeting, as a result of the many problems involved in this matter, the Commission agreed that a special working group of the Technical Committee should examine the

‘entire aboriginal whaling problem and develop proposals for a regime for the aboriginal bowhead hunt in Alaska and if appropriate a regime or regimes for other aboriginal hunts to be submitted to the Commission for consideration at the next [1979] Annual Meeting’ (IWC, 1979b, p. 26).

To assist in this process, it established a special ‘Panel Meeting of Experts on Aboriginal/Subsistence Whaling’ that met in Seattle from 5-9 February 1979. Three expert panels were established: on Wildlife; Nutritional Needs; and Cultural Anthropology (*In: Donovan, ed., 1982*).

It was at this time that efforts were made to develop definitions of relevant terms.

For the purposes of discussions in the Panel on Cultural Anthropology, subsistence use of whale products was defined as:

- ‘(1) The personal consumption of whale products for food, fuel, shelter, clothing, tools, or transportation by participants in the whale harvest.
- (2) The barter, trade, or sharing of whale products in their harvested form with relatives of the participants in the harvest, with others in the local community or with persons in locations other than the local community with whom local residents share familial, social, cultural, or economic ties. A generalized currency is involved in this barter and trade, but the predominant portion of the products from each whale are ordinarily directly consumed or utilized in their harvested form within the local community.
- (3) The making and selling of handicraft articles from whale products, when the whale is harvested for the purposes defined in (1) and (2) above’.

On the basis of the report of the Cultural Anthropology panel, the following definitions relevant to ASW were put forward to the Commission by an *Ad Hoc* Technical Committee working group on development of management principles and guidelines for subsistence catches of whales by indigenous (aboriginal) peoples (IWC 1981; 1982).

Aboriginal subsistence whaling means whaling for purposes of local aboriginal consumption carried out by or on behalf of aboriginal, indigenous, or native peoples who share strong community, familial, social, and cultural ties related to a continuing traditional dependence on whaling and on the use of whales.

Local consumption means the traditional uses of whale products by local aboriginal, indigenous, or native communities in meeting their nutritional, subsistence, and cultural requirements. The term includes trade in items that are by-products of subsistence catches.

Subsistence catches are catches of whales by aboriginal subsistence whaling operations.

The report of the *Ad Hoc* group (and thus the definitions) was accepted by the Commission as part of a broader resolution on aboriginal subsistence whaling (IWC, 1983, p.38). Another *Ad Hoc* group on definitions formed in 1988 to consider the situation of small-type coastal whaling proposed no changes to the definitions for aboriginal subsistence whaling (IWC/40/3; Annex 4).

Concurrently with the adoption of the ‘moratorium’ on commercial whaling, the Commission formalised arrangements for aboriginal subsistence whaling at the 1982 Annual Meeting (IWC, 1983, pp. 28-29, 40) by adding considerable introductory text to the existing Schedule paragraph 13 that introduced the management principles for aboriginal subsistence whaling in order to satisfy aboriginal subsistence need. This was the first time the term ‘aboriginal subsistence whaling’ was incorporated into the Schedule.

2.3 Recent discussions of definitions

The most recent formal discussions that incorporated some consideration of definitions arose from the report of a small working group (Russian Federation, Australia, Denmark, USA and the Secretariat), whose primary charge was to review paragraph 13 of the Schedule to achieve consistency (IWC, 2004, p. 15).

The report of the group clarified the understanding that the phrase ‘when the meat and products of such whales are to be used exclusively for local consumption’ means that some transaction beyond the aboriginal whaling communities under the current Schedule language are acceptable. The report of the working group, including the definition of ‘subsistence use’, was formally adopted by the Commission by consensus in 2004 (IWC, 2005, pp. 15-17). The definitions provided for:

‘(1) The personal consumption of whale products for food, fuel, shelter, clothing, tools or transportation by participants in the whale harvest.

(2) The barter, trade or sharing of whale products in their harvested form with relatives of the participants in the harvest, with others in the local community or with persons in locations other than the local community with whom local residents share familial, social, cultural or economic ties. A generalised currency is involved in this barter and trade, but the predominant portion of the products from such whales are ordinarily directly consumed or utilised in their harvested form within the local community.

(3) The making and selling of handicraft articles from whale products, when the whale is harvested for the purposes defined in (1) and (2) above.’ (IWC, 2005, pp. 16).

They accept involvement of ‘generalised currency’ but require ‘the predominant portion’ of whale products is ‘ordinarily’ consumed within the local community. No definitions are provided for these words/phrases.

In agreeing the report of the small group, the Commission also noted that:

(a) nothing in the Russian Federation’s proposals to amend Schedule paragraph 13 was intended to allow for the commercialisation of aboriginal subsistence whaling; and

(b) the phrase ‘when the meat and products of such whales are to be used exclusively for local consumption’ means that some transaction beyond the aboriginal whaling communities under the current Schedule language is acceptable.

3. SUMMARY OF SOME RELEVANT ISSUES RAISED BY HUNTER REPRESENTATIVES (2014a)

One common point raised in the presentations by native hunter representatives at the 2014 *Ad Hoc* ASWWG meeting (IWC, 2014a) related to the issue of ‘ensuring local consumption versus commercialism’ was the fact that whaling is expensive and includes costs associated with acquiring/developing equipment to ensure humane³ kills and hunter safety, maintenance of the equipment, fuel, support for whaling crew members and training. They highlighted the fact that clarification is needed as to the meaning and context of some of the long-term issues, including how local consumption and commercialism are defined and the extent to which definitions are/should be applicable to individual hunts (e.g. Greenland) or to all, recognising the different traditions and approaches.

In terms of different approaches and traditions it had been noted that in some ASW countries the sale of whale meat and other edible products is not permitted but the making and selling of handicrafts from non-edible parts of a whale is. In other countries, sale of some of the edible products locally is allowed. Each ASW country has legislation and/or directives they believe are consistent with IWC regulations including prohibiting the export of whale meat. Several ASW countries indicated that this is an important issue that should be given priority with some linkage to the issue of politics in ASW discussions (IWC, 2014a). It was noted that the scale of the use of money and how it was incorporated into the activities surrounding the hunt and distribution of edible and other products varied amongst the ASW countries. A number of relevant issues were raised (e.g. the percentage of products for which money was used and guidance on what might be considered ‘acceptable’; potential use of non-edible products for other uses e.g. medical research). It was suggested that a survey be developed and distributed to individual ASW communities to obtain their input on this question. Ultimately, such issues directly relate to the sustainable use of whales (IWC, 2014a).

4. ‘COMMERCIALISM’

The IWC has not formally defined ‘commercial whaling’ (or indeed ‘commercialism’⁴).

However, it has recognised the difference between the two types of whaling in its management approaches to these and in particular in the agreed objectives for these (Table 1). In particular, the user objective of commercial whaling is to maximise profit whereas the user objective for ASW is to satisfy the needs of the hunting communities. The Commission has historically acknowledged some selling of products within the ASW system

³ In this context they noted the value of improved hunting methods (e.g. modern weapons and vessels).

⁴ E.g. see discussion in Reeves (2002) on discussions of various types of material transactions in small-scale economies.

and thus that use of money in some of aspects of ASW does not render it ‘commercial’ in the context of the commercial whaling moratorium. In the context of ASW, the issue is perhaps rather one of the acceptable scale of the use of money.

Table 1

Summary of agreed objectives for commercial whaling and ASW

Commercial	Aboriginal subsistence
USER	USER
The highest possible continuing yield should be obtained from the stock	Allow harvests (in long-term) at levels appropriate to cultural and nutritional needs
Stability in catch limits	Stability implicit
CONSERVATION	CONSERVATION
Zero catches for stocks estimated at <54% of <i>K</i>	Risk of extinction not seriously increased
	Maintain at highest net recruitment level; if below must move towards it

5. POSSIBLE ISSUES FOR DISCUSSION

The issue of ‘local consumption v. commercialism’ related to ASW has been divisive within the IWC, particularly in the case of Greenland (where reference has been made, *inter alia*, to the availability of meat in markets and some restaurants), where it was one of the main components of discussions at the 2012 Commission meeting when the Commission was not able to take a decision on its catch limits for the six year period 2013-2018 (IWC 2012a, pp. 22-23)⁵. In previous years, some countries have referred to the sale of handicrafts in Alaska made from non-edible parts of whales (e.g. IWC, 2007).

From the information provided above, including the recognition of the different objectives for ASW and commercial whaling, any successful resolution of the issue of ‘local consumption v. commercialism’ will probably require addressing a number of factors including *whether*:

- (a) the dichotomy of local consumption versus commercialism represents a constructive approach;
- (b) the agreed IWC definitions of aboriginal subsistence whaling, local consumption and subsistence catches (i) are consistent with similar aboriginal subsistence hunting definitions/concepts elsewhere⁶, (ii) still appropriate and pragmatic for *all* present hunts and/or (iii) require modification or additional definitions or guidelines;
- (c) the use of money and its extent in ASW implies ‘commercialism’ in an IWC context (*inter alia* taking into account the use to which any money is put e.g. defraying the cost of acquiring and maintaining whaling equipment, distributing traditional food outside the immediate area of an individual hunt, obtaining and providing scientific information necessary for management etc);
- (d) distinctions between the use of money related to the sale of (i) whale meat, (ii) handicrafts made from inedible parts and/or (iii) products for other purposes (e.g. the potential use of glands or blood for medical research purposes) are helpful.

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⁵ Catch limits were established at the 2014 meeting.

⁶ See, e.g., provisions pertaining to indigenous communities in the European Union "seal regime."

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