

from a humpback whale that was reported entangled in a fishing net in June 2002<sup>37</sup>. However, according to radio news Hagkaup halted sale shortly afterwards, presumably because the meat had not been checked by the veterinary inspection.

An unknown number of small cetaceans, mainly harbour porpoises and white-beaked dolphins, are killed in fishing nets. Regular entanglements of harbour porpoises are reported from the inshore spring fishery for lumpfish<sup>38</sup>. One single fisherman reported about 12 harbour porpoises being entangled in his nets and he considered this number to be comparatively low.

While the meat is often used for human consumption, the blubber of small cetaceans is also used as bait for shark fishing<sup>39</sup>. According to newspaper reports, small cetaceans killed intentionally are regularly declared as bycatch and the meat sold at fish auctions. Sport hunting also takes place – sometimes even before the eyes of whale watching tourists, causing understandable anger. Sport hunters recently indicated their interest in intensifying hunting of small cetaceans<sup>33</sup>.

#### 4.2. New IWC Membership – New Reporting Responsibilities

As a new IWC member Iceland is now bound by the requirement in Article IX of the ICRW to „take appropriate measures to implement the Convention, including measures for prosecuting infractions“. It will also be expected to comply with a number of IWC resolutions that seek information on sale of whale products, stockpiles, fisheries bycatch etc. (Resolutions IWC/46/7; IWC/47/6; IWC/48/3).

However, it is doubtful that Iceland can or will comply with these provisions. Despite the fact that it supported IWC Resolution IWC/42/26/Rev1 in 1990, which recommends that parties should provide information on directed and incidental takes of small cetaceans, Iceland did not contribute such data. Official data on Icelandic by-catch do not exist, although the reporting of marine mammal by-catches in logbooks of fisheries has been mandatory in Iceland for several years<sup>40</sup>. If at all, only fragmented information, mainly based on newspaper reports, are available.

It remains to be seen whether Iceland duly reports the bycatch of the humpback whale in June 2002 and other incidents from 2002 to the Infractions Sub-Committee at the IWC meeting in June 2003.

#### 4.3. Contamination of Whale Meat

The contamination of whale meat with toxic chemicals including heavy metals has drawn the attention of the public in several nations and the concern of the IWC. For example, ten years of clinical trials of almost 1,000 children in the Faroe Islands have directly associated neurobehavioral dysfunction with their mothers' consumption of pilot whale meat contaminated with high levels of mercury. Concerns have also been expressed about the health impacts of high levels of organic compounds including PCBs in whale tissue. As a consequence, the Faroese government recommended to consumers that they reduce or stop consumption of whale products<sup>41</sup>.

Furthermore, studies by Norwegian scientists and the Fisheries Directorate revealed that blubber from North Atlantic minke whales contains serious levels of PCBs and dioxin<sup>42, 43</sup>. Upon this alarming news from Norway, the Japanese government refused to import Norwegian minke whale meat and blubber in 2001, complying with warnings of Japanese consumer organisations.

Because Iceland was present and invited to participate as an observer at the 2001 IWC Meeting, it would have been fully aware of this problem, as the IWC adopted Resolution IWC/53/5, which expresses concern regarding the high level of contaminants in blubber from minke whales taken in the Norwegian hunt. In this resolution Norway is requested not to issue export permits. Nevertheless, in 2002 both Norway and Iceland gave a green light for trade in exactly this whale blubber, and at least 25 tonnes have been imported by Iceland in two separate shipments. The imported whale products were offered in the stores of the supermarket chain *Noatun* in southwest Iceland<sup>44</sup>.

The Icelandic Ministry of Environment responded to a letter of concern about this import from *WDCS* in early 2003. The official stated that “*there were some suspicions about the imported whale meat did not fulfil Icelandic regulations on the matter*” and noting that the blubber was tested. Although PCB levels were reportedly “*under allowed limitations in the Icelandic legislation*”, the letter does not mention other toxic organic compounds that would be expected to be found in the tissue.

Furthermore, the letter does not specify whether the “*hvalrengi*” (the fat rich ventral grooves) reported to have been imported<sup>27</sup> were tested. Because fat is the main tissue which stores PCBs and other organic compounds, the consumption of “*hvalrengi*” gives just as much reason for concern as blubber.

<sup>37</sup> *Morgunbladið* (2002), 13<sup>th</sup> June

<sup>38</sup> Lindquist, O. (1998): “*Whales, their environment and history*”, Reykjavik.

<sup>39</sup> *Morgunbladið* (1997), 14<sup>th</sup> April

<sup>40</sup> Ólafsdóttir, in NAMMCO (2001): “*Annual Report 2001*”, Tromsø, Norway.

<sup>41</sup> *Diet Recommendations concerning pilot whale meat and blubber – Faroe Islands August 1998.*

<sup>42</sup> Kleivane & Skaare (1998): “*Organochlorine contaminants in Northeast Atlantic minke whales*”, *Environm. Poll.* 101, 231-239.

<sup>43</sup> Reuters (2002): news dated 1<sup>st</sup> August, [www.planetark.org/dailynewsstory.cfm/newsid/17122/story.htm](http://www.planetark.org/dailynewsstory.cfm/newsid/17122/story.htm)

<sup>44</sup> Middleton, R. (2002): “*Whale meat on sale at Icelandic Supermarket Chain*”, *AP News* 23<sup>rd</sup> July.



Figure 7: Whale catchers Hvalur 6-9, Reykjavik

## 5. Iceland's Whaling Fleet

There are two sides to Iceland's historical whaling activities: One fleet targeted large cetaceans (such as blue, fin, sei and humpback whales) using specially-built whale catchers, equipped with large-calibre explosive harpoons and strong engines. The other used small fishing vessels, equipped only with cold harpoons (figure 1), to catch minke whales.

Since 1948 the large whaling operations have been in the hands of a single company, Hvalur H/F. (Whale Ltd.), which is owned by an influential member of the conservative Independence Party<sup>45</sup>. Thanks presumably to excellent political connections, this single enterprise secured exclusive contracts from the Government to hunt whales under the Icelandic research programme of 1986 to 1989. According to the Ministry of Fisheries<sup>9</sup>, the whaling company Hvalur H/F "has never needed governmental subsidies". This is hardly surprising in light of the considerable commercial profits it appeared to make.

Officially, the Marine Research Institute promised that "all profits made by the whaling operation will enter a research fund to cover all costs of the research activities" and announced "very drastic measures on the industry" to ensure this<sup>46, 47</sup>. In reality, however, only 10% of the total income from the 1986 "scientific whaling" season had been paid towards the research programme, while almost 90%, with a value of more than 4,6 million US Dollar, remained within Hvalur H/F<sup>48</sup>. Japanese workers controlled the processing at the Hvalur H/F whaling station and selected whale meat for exports to Japan<sup>11</sup>. Although data from other years are not available, the research whaling of 1986 to 1989 was clearly for commercial purposes.

In 1985, four Hvalur H/F owned whale catchers (Hvalur 6 to 9) and nine minke whaling vessels were

officially registered<sup>49</sup>. Only Hvalur 8 and Hvalur 9 were engaged in the research whaling from 1986 to 1989<sup>50</sup>. The other two, Hvalur 6 and Hvalur 7, were sunk by a radical conservationist group in 1986. Although refloated, they were not employed before "scientific whaling" ended 1989. All four vessels currently lie at anchor in the harbour of Reykjavik (figure 7), and are ready to resume whaling<sup>51</sup>.

Besides the four large whale catchers (figure 7), most of the small fishing vessels, which until 1985 hunted minke whales (figure 8), are probably still operational.

### 5.1. Whaling Equipment

For compelling welfare reasons, the IWC completely banned the use of the cold (non-explosive) harpoon in commercial minke whaling from the beginning of the 1982/83 pelagic and the 1983 coastal seasons (paragraph 6, section III of the Schedule). Iceland lodged a reservation to this provision, but this lapsed upon its departure from the Commission in



Figure 8: Minke whaling vessels, North Iceland

1992 and it did not lodge a new objection when it rejoined in 2002. Furthermore, IWC Resolution IWC/38/28 recommends that also under research permits "whales will be killed in a manner consistent with the provisions of Section III in the Schedule".

Iceland's smaller fishing vessels only carry cold harpoons. If Iceland uses these vessels in any future commercially motivated whaling operation, they will need to be equipped with, and their crew trained to use, explosive harpoons to avoid committing an infraction of Schedule Paragraph 6.

## 6. Whale Watching Versus Whaling

About 15 different species of cetaceans can be observed in Icelandic waters during the summer months, making it one of the best areas for whale watching in the world. Iceland's whale watching industry has developed rapidly since the first 100

<sup>45</sup> Brydon, A. (1990): "Icelandic nationalism and the Whaling Issue", Dept. of Anthropology, Mc Gill Univ., Montreal, Canada.

<sup>46</sup> Marine Research Institute (1985): "Introductory meeting on whale research in Iceland and plans for intensified re-search in the period 1986 - 1989", 16<sup>th</sup> August, Reykjavik.

<sup>47</sup> Sigurjónsson, J. (1988): "The intensified programme of whale research in Iceland", *Modern Iceland*, No. 4, 29-33.

<sup>48</sup> Reeve, R. (1991): "Icelandic Pirate Whaling 1991 - Illegal whale meat exports and history of Iceland's pirate whaling record", Environmental Investigation Agency, London.

<sup>49</sup> IWC (1985): "International register of whaling vessels", Sixth Edition, La Carter, Washington.

<sup>50</sup> Ministry of Fisheries, Iceland (1990): "A report to the technical Committee's working group on socio-economic implications and small-type whaling", tabled as document TC/42/SEST6

<sup>51</sup> Hagalin, S. (2002): "Icelanders upset over lifting of whaling ban", Reuters news release dated 11<sup>th</sup> December.

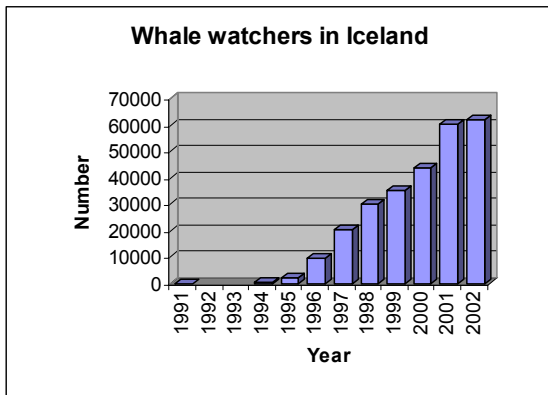


Figure 9: Increase of whale watching tourists in Iceland, data based on [52], [53], and SC/50/WW7 of the IWC

people went whale watching in 1991 and, since 1995, Iceland has had one of the highest growth rates for whale watching in the world. In 2002, 62,050 people – 30% of all visitors to the country – went whale watching (figure 9), contributing an estimated US\$14 million in 2002<sup>52</sup>. Whaling, by contrast, yielded a maximum revenue of US\$3.5 million in 1989.

Not surprisingly, since whale watching is one of the most popular tourist activities in Iceland, preparations for the resumption of whaling have created a conflict between Iceland's pro-whaling interests and its tourism sector, which has worked hard to establish the image of the perfect green island to enjoy wildlife and wilderness.

Almost 80% of tourists to Iceland, most of whom come from whale-loving European countries, oppose whaling and almost 70% oppose Iceland resuming whaling<sup>53</sup>. Whale watching companies legitimately fear that Iceland's reputation as an attractive wildlife destination could be severely damaged by the recent decision to resume whaling. Not only would there be a direct impact on the whales, as the whaling grounds would probably overlap with the areas where whale watching is regularly conducted, but the economic consequences of adverse consumer reaction could be devastating for Iceland's tourism-reliant economy. Misgivings about the economic implications of resuming whaling have been expressed by some Icelandic politicians, including a former Minister of Transportation, who was responsible for tourism<sup>54</sup>.

The fishing village Husavik is called the "whale-watching capital" of Europe. Many of the 2,500 citizens' livelihoods are dependent upon tourism. In 2000, over 20,000 tourists came here. Other tours are conducted from Grindavik, Reykjavik, Olafsvik, Arnarstapi, Dalvik, and Djúpavik. Several of these places were previously whaling villages.

In March 2003, the Icelandic whale watching operators formed the *Whale Watching Association of Iceland*. Shortly afterwards, on 3<sup>rd</sup> April the *Icelandic Tourist Industry Association* (ITIA), which includes the country's main airline, Icelandair, and represents probably 80-90% of Iceland's turnover from tourism, passed a resolution which stated that "to resume whaling in opposition to the agreements of the IWC would immediately be interpreted as an act of pirate whaling and would cause a great damage to the Icelandic tourist industry"<sup>55</sup>.

Experts assess an outstanding potential for future expansion of whale watching in Iceland – if whaling activities do not interfere. A speaker of Icelandair stated that only three Icelandic families have become rich from whaling, but many more do profit from whale watching<sup>56</sup>.

## 7. The "Whales eat Fish" Debate

For many years, Iceland has tried to fabricate a connection between whales and dwindling fish stocks in the North Atlantic. As long ago as the 1980s, the whaling lobbyists asserted that a competition between whales and commercial fisheries would exist and that "whales ... probably consume far more food than the total harvest of the fishing fleet". In its press release on the occasion of the withdrawal from the IWC the Ministry of Fisheries made similar arguments<sup>57</sup>.

Orcas were accused of interfering with herring fisheries, minke whales of eating, e.g. cod, herring and capelin; and humpback whales of competing on capelin<sup>9, 47</sup>. The hypothesis of an alleged competition between orcas and commercial fisheries is not new and, in the past, Icelandic authorities in their search for simplistic solutions have resorted to drastic but, predictably, unsuccessful measures: Back in 1955, Iceland claimed that killer whales were devouring all the commercial fish. The Icelandic Government enlisted the US Navy Airforce stationed in the country to kill orcas along the Icelandic shores using bombers, machine guns, rockets and depths charges<sup>58</sup>. Although both countries reported that the orcas had been bombed out of existence, the fish stocks in Icelandic waters did not increase as a result<sup>59</sup>. Nevertheless, the simplistic view of the relationship between cetacean population and fish stocks is continuously promoted by whaling lobbyists from Japan, Norway and of course by Iceland. And this view is far from limited to orcas.

<sup>55</sup> ITIA(2003): "Resolution on Whaling", 3<sup>rd</sup> April, Reykjavik

<sup>56</sup> pers. comm. to Pro Wildlife August 2001

<sup>57</sup> press release 27<sup>th</sup> December 1991

<sup>58</sup> Mitchell, E. (1975): "Porpoise, dolphin and small whale fisheries of the world – Status and problems", IUCN Monograph No. 3, Morges, Switzerland.

<sup>59</sup> Jeune, P. (1979): "The whale who wouldn't die", cited by the Senior Master of the Dept. of Social Sciences, High School of Akureyri in litt. to the Marine Mammal Commission, 7<sup>th</sup> September.

<sup>52</sup> Björgvinsson, Á. (2003): in litt. To PRO WILDLIFE, 7th April.

<sup>53</sup> IFAW (2001): "Whale Watching 2001: Worldwide tourism numbers expenditures and expanding socio-economic benefits", USA.

<sup>54</sup> Daily News Iceland (1999): "Jitters over whaling", article dated 17<sup>th</sup> February.



"Whaling is necessary ... to maintain the balance within the marine ecosystem" is the conclusion of several publications and statements of the Ministry of Fisheries in Iceland. Furthermore, at a meeting of the World Council of Whalers in 1999<sup>60</sup> the Foreign Minister of Iceland stated: "... whales are our competitors. It has been estimated that the whales and dolphins in our waters annually consume more than 5 millions tons of fish and other prey species. This compares with 1.0 – 1.5 million tons of fish taken annually by Icelandic fishermen...".

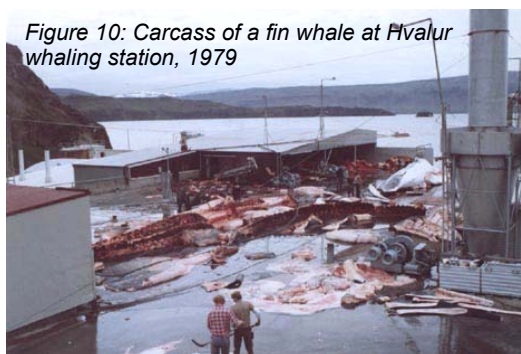
However, these calculations are based on a wrong assumption and the "results" are misleading. Firstly, the diet of whales – besides commercial fish – also includes species that prey on commercial fish species. Secondly, whales are in "Icelandic waters" for only a part of each year. Therefore, a direct comparison of consumption of whales and the landing of Icelandic fisheries is not appropriate. A projection like this defies the complexity and dynamics of the marine food web and ecosystem, its natural changes as well as the synchronous and asynchronous fluctuations of its many components. Moreover, one might wonder how the removal of some 200 to 300 whales from the ecosystem of the Icelandic EEZ (ca. 758,000 km<sup>2</sup>) would be able to re-establish an "equilibrium in the sea", which has never existed.

Despite their dubious scientific premise, claims of competition between whales and commercial fisheries continue to be made by pro-whaling interests, including NAMMCO<sup>61</sup>. These accounts have been criticised by many authors, and a review of this debate was published in 2002<sup>62</sup>. For example, the collapse of herring in the North Atlantic occurred in the late 1960s<sup>63</sup> – the same time that Norwegian minke whaling was at a historically high level<sup>64</sup>. Far more large whales inhabited the oceans in the past

than today; and yet during that time, stocks of fish and other marine resources were healthy.

The real background for the "whales eat fish" debate has been acknowledged by the Icelandic Ministry of Fisheries<sup>9</sup>: "The difficult situation in the fishing sector makes whaling relatively more important. The potential export earnings in whaling can thus not be substituted by further exploitation of other marine resources". In other words, revenue from whaling should compensate for financial losses resulting from over-fishing by Iceland. Although fisheries quotas have in many cases been adjusted downwards, questions such as the wastefulness of, and even eco-destruction by, certain fisheries, especially trawling, have not been addressed. Furthermore, catch quotas are traded, increasingly ending up in the hands of trawling companies, thereby creating serious problems for many small fishing companies and townships around the coast. They are, understandably enough, susceptible to the "whales eat fish" idea as a "solution" to their problems.

The competition idea is clearly based more on politics than on science. There is no scientific evidence that the culling of large marine predators has ever benefited a commercial fishery<sup>65</sup>. And there is no need for scientific research on cetaceans, which is based on lethal methods and conducted within the same pattern as commercial whaling.



## 8. Iceland's Road Back to Whaling

Since the end of whaling in 1989 and the last exports of whale products in 1992, the Icelandic Parliament usually twice a year, spring and autumn, discussed the resumption of whaling. As a list of such discussions, statements, and activities would fill pages, only some relevant recent steps are summarized in the box and in the following:

### 8.1. Promotion to Resume Whaling

On 10<sup>th</sup> March 1999, the Parliament urged the Government that whaling "should be commenced at the first opportunity". In the following year, the Icelandic Government launched a promotional campaign to prepare Iceland's business partners abroad for the country's resumption of whaling, with a budget of US\$ 445,000 for a two-years-campaign. A further

<sup>60</sup> Ásgrímsson (1999): *Welcoming Address, World Council of Whalers, General Assembly, March 27<sup>th</sup>-30<sup>th</sup>, Reykjavik.*

<sup>61</sup> NAMMCO (2000): "Minke whales, harp and hooded seals: Major predators in the North Atlantic ecosystem", G. Víkingsson & F. Kapel (eds.), Scientific Committee of NAMMCO, Tromsø, Norway.

<sup>62</sup> Atherr, S. (2002): "Running out of fish – who is responsible for the plundering of the oceans?", *Pro Wildlife* (Munich, Germany), ECCEA (Fort de France, Martinique), Third Millenium Foundation (Paciano, Italy).

<sup>63</sup> Icelandic Ministry of Fisheries (2002): "Herring – *Clupea harengus*", [www.fisheries.is](http://www.fisheries.is), viewed 27<sup>th</sup> March 2002.

<sup>64</sup> High North Alliance (2002): "Whales caught in Norwegian waters by Norwegians 1939-2000", [www.highnorth.no](http://www.highnorth.no)

US\$ 600,000 were granted in February 2002<sup>44</sup>. In 2001, Japan and Iceland officially agreed to continue their cooperation in the fishery trade and to support each other's stance in whaling activities<sup>65</sup>.

In 2002, Iceland imported about 25 tonnes of whale meat and blubber from Norway and at the same time indicated, that it favours a resumption of its own minke whaling. The import was viewed as a first step towards granting permission for individuals to engage in such whaling.

## 8.2. "Open for Scientific Whaling"

Immediately after Iceland had rejoined the IWC in October 2002 under its reservation<sup>66</sup>, the Minister of Fisheries, Árni Mathiesen, stated in a radio interview that the way was now clear for Iceland to begin scientific whaling, which could start as early as summer of 2003<sup>27</sup>. The Fisheries Minister referred to the catch quotas, which have been proposed by the *Marine Research Institute* (MRI). In a report of this institute, which is a Government institution sharing facilities with the Ministry of Fisheries, the "Total Allowable Catch" (TAC) of 200 fin and 250 minke whales was recommended. It was furthermore stated that "limited" harvesting of 68 sei whales per year in the 1980s "is unlikely to have had any adverse effect on the stock", implying that catches on the same scale would also be possible. The MRI-report promises "that a revised management advice on fin and minke whales will be available in spring 2003"<sup>67</sup>.

After these statements of Icelandic Government representatives were internationally published<sup>68</sup>, and media as well as governments in other countries asked for a confirmation of the plans for the resumption of whaling, the Icelandic government stated that it is not joining the IWC in order to resume commercial whaling before 2006<sup>69</sup>. This statement of the Icelandic Government again only referred to commercial whaling, but not to any plans for scientific whaling. Recently, Iceland's Minister of Fisheries stated that "there is no other way to do research on whales apart from by hunting them for scientific purposes"<sup>70</sup>.

During his visit to Japan in February 2003, Iceland's Prime Minister David Odsson stated that his country would not begin commercial whaling until 2006 at the earliest, but scientific whaling could start earlier<sup>71</sup>. In this context he also stressed: "As ever,

<sup>65</sup> *The Japan Times* (2001): "Iceland vows whaling cooperation", 23<sup>rd</sup> October.

<sup>66</sup> Wording of the reservation only excludes commercial whaling before 2006, but can be read as an introduction of scientific whaling (for detailed wording see section 2)

<sup>67</sup> *Marine Research Institute* (2002): "State of marine stocks at Iceland 2001/2002 – prospects for 2002/2003", [www.hafro.is/Astand/2002/engl-sum.htm](http://www.hafro.is/Astand/2002/engl-sum.htm).

<sup>68</sup> *Pro Wildlife* (2002): "Walschutz: Island bricht alle Tabus" press release, dated 18<sup>th</sup> October, Munich.

<sup>69</sup> *Ministry of Fisheries, Iceland* (2002): "Iceland, a member of the International Whaling Commission", News Oct. 25<sup>th</sup>.

<sup>70</sup> Hagalin, S. (2002): "Icelanders upset over lifting of whaling ban", *Reuters news release* dated 11<sup>th</sup> December.

<sup>71</sup> *ENS* (2003): "Australia acts to stop Iceland from whaling", press article 12<sup>th</sup> February.

## Iceland's Preparation for Future Whaling

- 03/1994: Representatives of the Ministry of Foreign Affairs openly discuss a re-entry in the IWC under a reservation against the moratorium
- 04/1997: The Prime Minister states that the withdrawal from the IWC in 1992 was not "very well thought through", and a re-entry under reservation is again discussed
- 05/1997: The Icelandic Fishery Minister confirms that Japan will only import whale products under the precondition that Iceland is a IWC party
- 02/1998: Iceland gives permits for the import of Norwegian whale products, Norway refuses export permits to Iceland as a non-member of CITES and IWC
- 02/1999: The Minister for Foreign Affairs recommends that Iceland should become a CITES party
- 03/1999: The Parliament calls on the Government to resume whaling as soon as possible.
- 04/2000: Iceland becomes a CITES member with reservations on the trade ban for whales
- 12/2000: The Government launches a promotional campaign for the resumption of whaling.
- 01/2001: Icelandic whaling-lobbyists announce the take of 250 minkes and 200 fin whales and export of 4,000 tonnes of whale products to Japan, but after joining the IWC with an objection to the moratorium
- 07/2001: Iceland's application for a membership under reservation against the moratorium fails
- 10/2001: Japan and Iceland agree to continue cooperating in the fishery trade and to support each other's stance in whaling activities.
- ?/2002: The Icelandic Marine Research Institute recommends a quota of 200 fin and 250 minke whales. Even a quota on sei whales is not excluded.
- 05/2002: Iceland's second application for a membership under reservation against the moratorium fails
- 07/2002: Iceland imports about 8 tonnes of whale meat and blubber from Norway.
- 10/2002: Iceland imports at least 17 tonnes more whale meat and blubber from Norway.
- 10/2002: Iceland's membership proposal, modified by a time-limit, is accepted at a special IWC-meeting
- 10/2002: The Fisheries Minister speaks about a possible start of scientific whaling as soon as summer 2003. After queries from foreign countries, the government states that no decision on scientific whaling has been made yet.
- 02/2003: In Japan, Iceland's Prime Minister states that his country would not begin commercial whaling until 2006 at the earliest, but scientific whaling could start earlier. He underlines his country's interest in exports of whale products to Japan.
- 03/2003: Iceland submits a programme for scientific whaling to the IWC Secretariat for review by the IWC Scientific Committee**

because of the small size of our home market it is a precondition for whaling off Iceland that it must be able to export the products, and in this respect we naturally look to Japan as our traditional market for them." Also in February 2003, the Icelandic Commissioner to the IWC, Stefan Ásmundsson, confirmed at a press conference in Tokyo, that Iceland is considering a programme for scientific whaling, without having made a decision yet<sup>72</sup>. However, insiders fear that a political decision by the Icelandic government may follow directly after the IWC meeting in June.

## 8.2. Iceland's New Proposal for Lethal Research on 500 Whales

In March 2003, fears of conservationists became reality, when Iceland submitted a proposal to the IWC's Scientific Committee. According to press reports its proposed programme for a two-year study involves the kill of a total of 500 whales within the Icelandic EEZ: 200 fin, 100 sei and 200 minke whales. The Fisheries Minister stated that the aim was to collect data on "the impact of whales on the ocean ecosystem"<sup>73</sup>. On 29<sup>th</sup> March 2003, the Congress of the Icelandic Conservative Party passed a resolution, claiming that the IWC membership would establish the basis for resuming whaling and recommending that the Minister of Fisheries should issue permits for scientific whaling already in summer 2003<sup>74</sup>.

With these statements and activities in mind the precise wording of Iceland's reservation (see grey box in section 2) can be read as an announcement to resume whaling by beginning with scientific whaling. This not only abuses the ICRW Article VIII again, but also, because the whaling is clearly for 'commercial purposes' (i.e. export), it violates Iceland's own reservation which says that whaling for commercial purposes will not start before 2006.

Member states now are confronted with a new research proposal that will be discussed at the IWC meeting in June. With this proposal Iceland is repeating its procedure of 1985 and is demonstrating that its only aim of rejoining the IWC was and is to undermine the convention from inside. This indicates that the concessions and compromises offered to the whaling countries, including in negotiations of a Revised Management Scheme, have failed to bring whaling "under control".

Already, critics have referred to an obvious logical discrepancy in Iceland's scientific arguments: On one hand, it argues that the taking of a distinct number of minke and fin whales under scientific permits would not have a negative effect on the stocks concerned but, on the other hand, Iceland apparently intends to study whether changes in abundance (i.e. a reduction) of those whale stocks would significantly influence the yield of commercial fisheries<sup>52</sup>.

## 9. Conclusions and Recommendations for IWC 55

The 55<sup>th</sup> Annual meeting of the IWC in Berlin, 16<sup>th</sup> – 19<sup>th</sup> June 2003, will be the first meeting in ten years where Iceland will participate as a Contracting Government. Considering both the cloud under which Iceland has rejoined the IWC and its scientific whaling proposal, Iceland is certain to distract from the important business of the shorter than usual meeting.

The legal status of Iceland's reservation is very controversial. It is against IWC practices, violates international law and undermines the ICRW. Furthermore, critics emphasize that its reservation violates the Vienna Convention on the Law of Treaties, as a reservation must be compatible with the "object and purpose of the treaty" in order to be valid. Iceland's reservation also seeks to avoid compliance with a core obligation and decision of the IWC<sup>18</sup>.

Moreover, it has also been argued that the reservation was never validly accepted by the IWC, the competent body to accept or reject reservations. When the Convention was adopted in 1946, the general rule applicable to reservations was the unanimity rule. Under this rule, a reservation would require the consent of all the parties to the Convention. However, Iceland's accession in 2002 would have only attained a simple majority. Further, Iceland's reservation is an impermissible attempt to circumvent the 'opting out' procedure provided for by Art. V (3) of the Convention and the time allotted for objecting to amendments to the Schedule. A state must not be able to extend the time for opting out by simply quitting and rejoining with a reservation<sup>75</sup>. Iceland's accession with a reservation was procedurally flawed, against IWC practice and international law. The Commission has the competence and should sever Iceland's disputed reservation from its membership of the IWC. Otherwise Iceland will be rewarded for undermining the Convention. If however, its membership status is not revisited at the meeting in Berlin, Iceland must now honour the commitments and regulations of the IWC.

### Recommendations to IWC Parties

Noting the recent steps by Iceland to resume whaling under a "scientific" flag, as well as its stated plans to resume international commercial trade in whale products, conservation-minded IWC parties have many reasons to raise concerns at IWC 55:

The **IWC Scientific Committee** should reject the Icelandic Proposal for the resumption of scientific whaling and in this context should refer to the absence of relevant results from the Icelandic research whaling in 1986 to 1989.

The **IWC Infraction Sub-Committee** should demand reports and details from Iceland on

<sup>72</sup> Green, S. (2003): "Iceland say it might resume catching whales", *Sydney Morning Herald*, 13<sup>th</sup> February.

<sup>73</sup> BBC News (2003): "Iceland bids to resume whaling", 3<sup>rd</sup> April.

<sup>74</sup> www.xd.is/forsida/grein/109, March 2003

<sup>75</sup> Saxer, U. (2002): "A legal opinion on a reservation made by Iceland", Zurich, Switzerland, 7<sup>th</sup> February.

## The Current Legal Situation

### Reservation on the Moratorium

Iceland's reservation to the commercial whaling moratorium at IWC and its reservations to the prohibition of international trade in whales at CITES, technically allows it to avoid core conservation measures established by these Agreements. However, an underlying international principle of treaty law, is that contracting governments must act in good faith. This requirement is the basis for all negotiations and interactions between governments. Iceland by opting out of core conservation measures is clearly not acting in good faith.

### Scientific Whaling & Local Consumption

If Iceland resumes commercial whaling under the guise of "science", a case could be made that they will have violated the "abuse of rights" doctrine. Abuse of rights provides that one can abuse a right granted to it if the possessor of that right exercises the right for a purpose other than that for which it was intended. In other words, if Iceland resumes commercial whaling in 2003 or 2004 by exploiting the scientific exemption provided in the Convention, Iceland will have abused its right to scientific whaling. Furthermore, Resolution IWC/46/61 considers that products from research whaling "*should be utilised entirely for domestic consumption*". Exports of whale products from Iceland's research whaling would not be acceptable.

### Commercial Whaling

Despite its reservation to the moratorium (paragraph 10e), Iceland is bound to the rest of paragraph 10, including the ban on factory ship whaling in 10(d) and the NMP (section 1). Under the NMP, the East-Greenland-Iceland Stock of fin whales is classified as "SMS" (Sustained Management Stock), whereby any catch quota for this stock should be based on the advice of the IWC Scientific Committee. Sei whales and the Central Atlantic minke stock are both "unclassified" and a classification should precede any scientific advice for possible catch quotas.

### Whaling Equipment

The use of the cold harpoon in "scientific" whaling does not satisfy the IWC requirement of being the best available killing method. Furthermore, the IWC completely banned the cold harpoon for any commercial whaling (Article III (6) of the Schedule; for details see section 5.1.).

### Reports on Domestic Situation

The IWC's Infractions Sub-Committee expects annual reports of member parties on stockpiles of whale product, bycatch statistics, domestic laws etc. (for details see section 4.2.) All these aim at curtailing illegal takes of cetaceans and illegal trade in cetacean products. Following its return to the IWC, Iceland in the future will certainly face detailed and critical questions on many data regarding its domestic situation regarding whale products.

products (based on Resolutions IWC/47/6 and IWC/48/3).

- 2) Bycatch statistics for large whales as well as small cetaceans (based on Res. IWC/46/7) and in particular;
  - a. the bycatch of a humpback whale in June 2002<sup>37</sup> and the sale of humpback whale meat in supermarkets in autumn 2002 (section 4);
  - b. the case of a minke whale, reported as bycatch in September 2002<sup>35</sup> (section 4).
- 3) Status of any stockpiles of whale meat – including the recently imported shipments from Norway (based on Resolutions IWC/47/6 and IWC/48/3).
- 4) Its efforts to establish a DNA register for all whales that enter into commerce (based on Resolution IWC/49/2)

The **IWC Commission** should adopt a resolution, which should

- Recall that the Commission has expressed serious concern at the possibility of whaling for scientific purposes assuming the characteristics of commercial whaling;
- Recall that the Commission has stated that the meat and products of special permit whaling should be utilised entirely for domestic consumption and that any commercial international trade in whale products obtained from research whaling undermines the effectiveness of the IWC's conservation programme;
- Declare that the primary motivation for Iceland's scientific whaling is commercial sale to Japan and avoidance of the IWC's moratorium on commercial whaling;
- State that Article VIII is not intended, and should not be used to provide whale meat for commercial purposes;
- Direct Iceland not to resume any export of whale products before the affected whale species are removed from CITES Appendix I;
- Direct Iceland to report data annually to the IWC Infractions Subcommittee on fisheries bycatch of whales and small cetaceans, on the sale of bycatch products, on stockpiles of whale products, and on domestic law regarding possession and sale of whale products;
- Urge other Contracting Governments not to import whale products from species that are listed in CITES Appendix I, referring to CITES' sole competence to regulate international trade in endangered species.

Furthermore, as many IWC member states are important partners for Iceland in political and economic terms, they should use all their diplomatic and economic influence to underline their strong opposition against any resumption of Icelandic whaling activities.

- 1) Present domestic laws and regulations governing the possession and sale of whale meat and

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© **Figures**

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