

## Northwest Science Forum

*Northwest Science Forum provides an opportunity to articulate and discuss scientific issues in a less structured format than peer-reviewed articles. The Forum publishes short articles, opinion pieces, and letters with a focus on science and natural resource issues in the Pacific Northwest. Although the Forum is not peer-reviewed, it is edited for format and clarity. Articles should generally be less than 2000 words and contain minimal literature citations. Letters in response to articles are particularly encouraged; the original author will normally be given a chance to respond to the letter as well. There are no page charges or reprints associated with the Forum, and participants need not be members of the Northwest Scientific Association. Please send all submissions, including two hard copies and an electronic copy (any recent version of Word or WordPerfect) to the Editor.*

Jennifer Sepez Aradanas, Department of Anthropology, Box 353100, University of Washington, Seattle, Washington 98195-3100

### Aboriginal Whaling—Biological Diversity Meets Cultural Diversity

In 1994, the National Marine Fisheries Service (NMFS) made the long-expected announcement that the eastern Pacific population of the California gray whale (*Esrichtius robustus*) would be removed from the list of threatened and endangered species because the population had recovered to healthy levels. The gray whale is the first marine species to achieve this recovery under the Endangered Species Act. Within a year of the delisting, the Makah Indian Tribe of northwest Washington state announced their intention to resume hunting the gray whale, an important traditional resource for them.

The Makah whaling initiative has focused attention on the issue of aboriginal whaling, and on the International Whaling Commission (IWC), the group charged by multinational convention with managing the world's populations of large whales. The Tribe has always maintained that the IWC has no legal jurisdiction over their treaty right to whale, but at the behest of the United States government they agreed to engage in the international process anyway. After a year's delay, the IWC approved a 1998 subsistence quota of gray whales which included four whales for the Makah. The Tribe's initiative, and the oppo-

sition they have encountered, brings to the forefront the issue of how to manage for biological diversity in a culturally diverse world.

#### Makah Whaling

The Makah movement to resume hunting the gray whale is based on sound ecological principles and on the Tribe's history, culture, and beliefs. It poses no threat to the healthy status of the eastern north Pacific gray whale population and deserves the support of natural resource managers. The IWC issued a quota of 124 gray whales which will be shared by the Makah (four whales) and Russian Natives (120 whales). This quota is well below the estimated sustainable yield of 407 - 670 individuals per year (IWC 1990, 1996). The Tribe has a long history of whaling as a central cultural and subsistence practice, backed up by ample archaeological and ethnographic evidence (e.g., Swan 1868, Waterman 1920, Drucker 1951, Huelsbeck 1994). Whaling was important enough that treaty negotiators in 1855 insisted that the right to whale be specifically written into the treaty along with the more typical language concerning hunting and fishing rights. The Treaty of Neah Bay is unique in this regard.

The fact that the Tribe suspended whaling in the 1920's when the gray whale was critically endangered by Euroamerican commercial whale hunts has contributed to this species' remarkable recovery. Yet this hiatus in whaling has become an important issue for some opponents of the Makah plan. United States case law clearly establishes that the absence of practicing a treaty right in no way extinguishes that right. Furthermore, the practice of suspending whale hunts for an interval and then reviving them has been documented for other tribes in the Nuu-cha-nulth culture grouping:

Before these men began whaling, the art had been neglected for several generations by the Ahousat. The procedure, both practical and ritual, had been kept alive in the families of the chiefs, being passed down by word of mouth (Drucker 1951:50).

Like their Ahousat relatives, Makah men today describe being taught the necessary preparatory rituals by their fathers. In addition, a whaling curriculum has been taught in the Makah reservation schools since the 1960's (Renker 1997).

Natural resource managers and others concerned with biodiversity should reward, not punish, the Makah for their contribution to gray whale recovery now that the species is off of the endangered species list and the population has increased to healthy levels. It is worth noting that the humpback whale (*Megaptera novaeangliae*), was also an important resource for the Makah (along with other cetaceans), but the Tribe has not proposed hunting it at this time because it remains endangered. This approach exemplifies responsible ecological practices and reflects the fact that the Makah have a tremendous stake in seeing that whale populations achieve and remain at healthy levels.

### Aboriginal Whaling Policy

From the beginning of international whaling regulation, nations recognized that aboriginal whaling was different from commercial whaling and deserved special protection. The 1931 Convention for the Regulation of Whaling granted a blanket exemption to coastal aborigines for subsistence whale hunting. The 1946 International Convention for the Regulation of Whaling, which subsumed the 1931 Convention and chartered the IWC, contained a similar exemption for subsistence take of gray whales and a variety of right whales. This

was later replaced by a system of issuing aboriginal quotas by whale stock.

A 1977 crisis over aboriginal whaling became the crucible of current IWC policy on the issue. The crisis began when the IWC revoked the aboriginal exemption for bowhead whales (*Balaenoptera mysticetus*) on the advice of scientific evidence indicating a critical level of endangerment. The bowhead ban surprised and angered many in the Alaskan Eskimo communities affected. Eskimo traditional ecological knowledge indicated that the bowhead population was significantly greater than the available scientific data on which the IWC had based its decision. Additionally, the IWC had underestimated the complex and vital significance of whaling in Eskimo culture. The Alaskan Native response to the revocation of the exemption was to declare their communities outside the jurisdiction of the IWC and NMFS, and to create the Alaskan Eskimo Whaling Commission which would allocate and manage the bowhead hunt. Intensive international negotiations and domestic conflicts followed. The United States sent armed enforcement agents into Eskimo communities (Huntington 1989), which responded by declaring that if one man went to jail the whole village would go with him (Alaska Liaison Office 1978).

The conflict was resolved when the IWC issued an aboriginal quota for bowhead whales and the United States joined with Eskimo leaders to study bowhead populations. These studies supported the validity of traditional ecological knowledge when they discovered bowhead populations significantly greater than the IWC's original estimates (Alaska Liaison Office 1978). NMFS eventually delegated its management authority to the Alaskan Eskimo Whaling Commission, and the Commission was later commended by the IWC for its management practices (IWC 1982). In 1991 the IWC concluded that aboriginal bowhead harvests have been conducted at a sustainable rate and that the stock is still recovering (IWC 1992).

Out of the bowhead crisis came a series of IWC panel reports (IWC 1982) which were to consider the issues involved in aboriginal whaling. These panels considered only data from Arctic communities targeting the bowhead whale. Thus, they examined a situation of extremely isolated communities which lacked a treaty right to whale, and were targeting an endangered species. The panels

did not consider data from indigenous communities engaged in whaling practices without IWC approval, such as in Tonga, Indonesia and the Philippines, nor did they consider communities with potential future claims on aboriginal whaling such as the Maori, Makah, and Canadian Nuuchahnulth. They did not look at any group with a treaty or written charter of aboriginal rights.

The crux of IWC aboriginal whaling policy developed in these panels was a kind of needs balancing test, valuing the subsistence needs of an aboriginal community as well as the need to preserve a given species. In this way, even an endangered species could be hunted by aboriginal whalers, but a quota would be issued for no more than would allow the population to continue recovering. For healthy whale stocks, up to 90% of the sustainable yield could be made available for subsistence take. Subsistence take was defined as whaling for the purposes of local aboriginal consumption (Donovan 1982). Within those guidelines, the number of whales issued in the quota would be based on community need, to be assessed on the basis of cultural, subsistence, and nutritional factors. These policies are generally reasonable. However, the idea of community need was left vague and broad enough as to mean one thing to whaling opponents and another to supporters.

### **Whale Hunting—a Proud Tradition**

The issue of demonstrable need has become a focal point for some critics of Makah whaling. Congressman Jack Metcalf, for example, has been touting the idea that the Makah have not proved that whale meat is essential for their nutrition. The focus on nutritional need to the exclusion of other factors such as thousands of years of whaling history and a legally compelling treaty right is a red herring. It is an artifact of some particular studies done in reaction to the 1977 bowhead crisis and is not an appropriate international policy trajectory for decisions concerning aboriginal whaling. To allow whaling only for those groups who are suffering from some type of nutritional deficiency makes whaling into a kind of welfare program. It also assumes that whale hunting is an unseemly activity which should only be permitted under the most dire nutritional circumstances. This is not the kind of natural resource policy that will help foster diversity and understanding in a multicultural world.

For groups like the Makah, whale hunting is a proud tradition and an organizing principle of their cultural history, social relationships, and spiritual beliefs. It is not a disreputable practice to be resorted to only in the face of physical need. If the international community is to have an aboriginal whaling policy whose very purpose is to recognize the special protection warranted for traditional cultural practices, it does not bode well to base this policy on the idea that the protected practice is at heart opprobrious.

Even if degree of nutritional need were considered a legitimate evaluative condition for aboriginal whaling, this would not disqualify the Makah Tribe. Forty-nine percent of Makah households live below the federally designated poverty level, unemployment is 55 percent, and almost 60 percent of reservation housing is considered substandard (Makah Tribal Planning Department 1996; Shukovsky 1998; Renker 1997). Recently, the local food bank was serving 750 people of the town's population of almost 2,000 (Shukovsky 1998). If this does not constitute need, then Congressman Metcalf's criteria are unreasonable.

However, the dignity of Makah whaling traditions calls for a policy that would recognize their rights even if the Tribe were not demonstrably impoverished. The IWC needs to review and clarify its policy guidelines on this issue. The only appropriate assessment of nutritional need for the purposes of issuing aboriginal subsistence quota should be an assessment of how much whale the community can consume.

### **Conclusion**

The IWC's special provisions for aboriginal whaling are commendable, although the process and guidelines need considerable fine tuning. The Makah, with the backing of the US government, were persistent and ultimately prevailed in this process. From a natural resource management perspective, going through the IWC was a responsible action on the part of the Tribe, especially when their treaty right may well have permitted them to avoid it. The issue of the Tribe's nutritional status is a diversion from legitimate criteria for deciding questions of aboriginal whaling.

Waiting until the gray whale had recovered and come off of the endangered species list was also an admirable approach. The Makah's hiatus in

whale hunting assisted in this recovery, has clear cultural precedent, and did not affect their reserved treaty right. Furthermore, natural resource managers must consider the ramifications of trying to keep once-endangered species off limits for consumptive uses even after they are recovered and delisted; the political battles to get those species that do need help on to the list will become just that much harder.

During the 1977 bowhead crisis, most environmental organizations were vehemently opposed to Eskimo whaling. Some of these same groups, such as Greenpeace USA, have not actively opposed the Makah initiative. In addition to the fact that there is no threat of stock depletion in this particular case, many in the environmental movement have come to recognize that indigenous

groups can be effective allies in the struggle to preserve the world's biological capital. One group recently lamented, "It used to be simple and clear-cut. There were pro-whaling countries and organizations, and there were anti-whaling countries and organizations" (Barstow 1997). But the issue of aboriginal whaling, and of managing biodiversity in a multicultural society, demands a more complex view of the world. The debate over the Makah whaling initiative and aboriginal whaling raises many issues that natural resource managers need to consider in creating policies that also respect cultural diversity and human rights. Ultimately, policies which account for these issues will be more successful at managing resources in a complicated world.

### Literature Cited

- Alaska Liaison Office. 1978. *Hunger Knows No Law*. Alaska Liaison Office, Anchorage, Alaska.
- Barstow, R. 1997. Turmoil at the IWC: A test of wills. *Whales Alive!* VI(4).
- Donovan, G.P. 1982. The International Whaling Commission and aboriginal subsistence whaling: April 1979 to July 1981. *Reports of the International Whaling Commission Special Issue 4:79-86*.
- Drucker, P. 1951. The Northern and Central Nootkan Tribes. Smithsonian Institution Bureau of American Ethnology Bulletin 144. United States Government Printing Office, Washington DC.
- Huelsbeck, D.R. 1994. The utilization of whales at Ozette. In S.R. Samuels (ed.) *Ozette Archaeological Research Reports*, vol. II, Fauna. Washington State University Department of Anthropology, Pullman, WA. Pp. 265-303.
- Huntington, H.P. 1989. *The Alaska Eskimo Whaling Commission: Effective Local Management of a Subsistence Resource*. Scott Polar Research Institute, University of Cambridge, Cambridge.
- International Whaling Commission. 1982. *Aboriginal/subsistence whaling (with special reference to the Alaska and Greenland fisheries)*. Reports of the International Whaling Commission Special Issue 4:1-50.
- International Whaling Commission. 1990. *Report of the Special Meeting of the Scientific Committee on the Assessment of Gray Whales*. International Whaling Commission.
- International Whaling Commission. 1992. *Report of the Scientific Committee*. Reports of the International Whaling Commission 42.
- International Whaling Commission. 1996. *Draft Report of the Scientific Committee*. International Whaling Commission IWC/48/4.
- Makah Tribal Planning Department. 1996. *Makah Marina Project—United States Department of Housing and Urban Development, Indian Community Development Block Grant Application*. Makah Tribal Council. Grant Application on file with Makah Housing Authority, Neah Bay, Washington.
- Renker, A. 1997. Whale hunting and the Makah Tribe: a needs statement. Appendix 8.2 in *Environmental Assessment of the Makah Tribe's Harvest of up to Five Gray Whales per year for Aboriginal Subsistence Use*. United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Protected Resources, Silver Spring, MD.
- Shukovsky, Paul. 1998. Bleak days for Neah Bay's Makah Tribe turns to new ventures for economic recovery. *Seattle Post-Intelligencer*, March 30, 1998.
- Swan, J.G. 1868. *The Indians of Cape Flattery, at the Entrance to the Strait of Fuca, Washington Territory*. Smithsonian Contributions to Knowledge No. 220. Smithsonian Institution, Philadelphia.
- Waterman, T.T. 1920. *The whaling equipment of the Makah Indians*. University of Washington Publications in Political and Social Science 1:1-67.