



Essential Readings in Environmental Law
IUCN Academy of Environmental Law (www.iucnael.org)

WHALING AND LAW

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Overview of Key Scholarships

Monographs and collections of essays on history and on contemporary issues

1. Frost, S. (1978), *Report of the Independent Inquiry into Whales and Whaling conducted by the Hon. Sir Sydney Frost: Volume I and Volume II*, Canberra: Australian Government Publishing Service.
2. Birnie, P. (1985), *International Regulation of Whaling: From Conservation of Whaling to Conservation of Whales and Regulation of Whale-Watching: Volume I and Volume II*, New York: Oceana Publications, Inc.
3. Freeman M. & Kreuter U. (eds) (1994), *Elephants and Whales: Resources for Whom*, Basel: Gordon and Breach Science Publishers.
4. Stoett, P. (1997), *The International Politics of Whaling*, Vancouver: UBC Press.
5. Friedheim, R. (ed.) (2001), *Toward a Sustainable Whaling Regime*, Seattle: University of Washington Press.
6. Burns W. & A. Gillespie (eds) (2003), *The Future of Cetaceans in a Changing World*, Transnational Publishers, Ardsley.
7. Komatsu M., & S. Misaki (2003), *Whales and the Japanese: How we have come to live in harmony with the bounty of the sea*, Tokyo: Institute of Cetacean Research.
8. Gillespie, A. (2005), *Whaling Diplomacy: Defining Issues in International Environmental Law*, Cheltenham: Edward Elgar UK.
9. Heazle, M. (2006), *Scientific Uncertainty and the Politics of Whaling*, Seattle/London: University of Washington Press.
10. Darby, A. (2007), *Harpoon: Into the Heart of Whaling*, Crow's Nest, NSW: Allen & Unwin.
11. Burnett, D. (2012), *The Sounding of the Whale: Science and Cetaceans in the Twentieth Century*, Chicago: University of Chicago Press.
12. Couzens, E. (2014), *Whales and Elephants in International Conservation Law and Politics: A comparative study*, London/New York: Earthscan/Routledge.

Background

In 1946 fifteen active whaling states (Argentina, Australia, Brazil, Canada, Chile, Denmark, France, the Netherlands, New Zealand, Norway, Peru, South Africa, the United Kingdom, the United States and the Soviet Union) adopted the International Convention for the Regulation of Whaling. This Convention created a management body (the International Whaling Commission or IWC, which met annually from 1949 until 2012, and now meets biannually) which makes management decisions, including quotas for various lethal takes, for approximately 15 species of cetacean. Over time, many of the original Contracting Governments changed their views on whaling and took an anti-whaling stance (such as most of the Antipodean, European and Latin American states) and many more joined with this view. On the other hand, some original members (like Norway) remain essentially pro-whaling, and this view is reinforced by later joining states like Iceland and Japan, and many states from Africa, Asia, the Caribbean and the South Pacific. There are currently 88 Contracting Governments. The views within the body are polarised in many ways, and the IWC has become – to many commentators – so riven with conflict that it is an example of a convention that is dysfunctional. It remains, however, an important convention for many reasons – it engages in important research into cetacean species, their relationships and the hazards they face; it provides an important precedent for other conservation-related conventions; and the management decisions which it makes have important repercussions for marine ecosystems worldwide.

There are many issues which arise and which researchers consider, including aboriginal subsistence whaling; commercial whaling; environmental health and threats; humane killing; membership; scientific permit whaling; small cetaceans; small type coastal whaling; whale sanctuaries; voting patterns; and so forth.

The whaling issue area is a peculiar one for which to draw up a list of readings – there is so much conflict and division in the field that one almost needs to draw up two lists: one of pro-whaling readings, and one of anti-whaling. There is little material that falls *between* the two.

The readings suggested above should give any scholar a good understanding of the history of, the background to, and the major debates within, the field. Further research can then concentrate on particular issues, and many journal articles may be found on sub-issues – far too many to present here. A useful approach when considering a particular issue is to try to locate articles which present arguments for different sides and then to compare them. (Articles which within themselves present more than one perspective without betraying bias are as common as vaquitas!)

For instance, on the subject of scientific permit whaling, one should not read either the article by **Peter Sand** on research whaling and infringements of CITES, titled *Japan's "Research Whaling" in the Antarctic Southern Ocean and in the North Pacific Ocean in the Face of the Endangered Species Convention (CITES)* or **Dan Goodman's** argument that research whaling does not infringe CITES in *Japan's Research Whaling is not Unlawful and does not Violate CITES Trade Rules'* without also reading the other. (These have been given below to illustrate the comparative approach suggested.)

- Sand, P. (2008), 'Japan's "Research Whaling" in the Antarctic Southern Ocean and in the North Pacific Ocean in the Face of the Endangered Species Convention (CITES)', *Review of European Community and International Environmental Law*, Vol 17:1.
- Goodman, D. (2010), 'Japan's Research Whaling is not Unlawful and does not Violate CITES Trade Rules', *Journal of International Wildlife Law and Policy*, Vol 13:2.

One of the best sources of information is the *Chair's Report* from each year of the IWC's annual meetings – these are available open access (at <https://iwc.int/chairs-reports>). Much other material is available on the IWC's site too, such as Scientific Committee and Workshop Reports.

It is a little early to assess comment on the 2014 judgment of the International Court of Justice in the *Whaling in the Antarctic* case (Australia v Japan, New Zealand intervening). Articles are currently beginning to find their way into the literature. A collection of essays is due in 2016 and will be included in this review once published.

Monographs and collections of essays on history and contemporary issues

1. An important historical work is the *Report of the Independent Inquiry into Whales and Whaling*, 1978, conducted by the Hon. Sir **S. Frost**. This Inquiry Report led to Australia becoming, in 1979, the last country officially to abandon commercial whaling.
2. For readers who wish to understand the earlier history, a classic work is **Patricia Birnie's** ground-breaking *International Regulation of Whaling*, which was published in 1985 – this work was Birnie's Doctoral thesis. It is so large a work it was published in two volumes. She describes the events of each meeting of the International Whaling Commission and locates the significance of each meeting within the broader context – and within the themes she outlines. Although slightly dated, having been written at a time when 'conservation' effectively meant 'preservation' and this was an idea which still did not have a firm footing, the book provides important understanding and, itself, had an important place in the history of academic literature on the subject.
3. The essays in the 1994 collection by **M. Freeman** and **U. Kreuter**, *Elephants and Whales: Resources for Whom*, are, essentially, in favour of sustainable use. Authors include **H. Broch** and, separately, **M. Ris** on Norwegian attitudes; and **A. Kalland** on symbolism and the nature of the conflict. Approximately half of the essays deal with aspects of whaling and these are largely pro-whaling.
4. In a monograph *The International Politics of Whaling*, 1997, **P. Stoett** considers the policies of 'conservationist' and 'preservationist' contracting governments to the IWC. Arguing, ultimately, for greater attention to be paid to the preservation of habitats, Stoett suggests that the 'symbolic' status of whales could become problematic.

5. The essays in the 2001 collection edited by **R. Friedheim** and titled *Toward a Sustainable Whaling Regime* are essentially pro-whaling and give a good understanding of the view that the IWC is presently dominated by anti-whaling ideologies, through academic critiques of the arguments made in the regime. The essays include subjects such as a possible new whaling agreement; the role of science; cultural conflict; membership and negotiation; and proposals for 'fixing the regime'; amongst others. Authors include **S. Andresen** on the nature of the whaling regime; **W. Burke** on the possibility of a new whaling agreement; **M. Freeman** on cultural conflict; **R. Friedheim** on the nature of negotiating within the IWC; **J. Jacobson** on the rule of law; **C. Stone** on the nature of the conflict and the future; and **D. Victor** on the regime.
6. The 2003 collection edited by **W. Burns** and **A. Gillespie**, *The Future of Cetaceans in a Changing World*, is unusually well-balanced in terms of containing authors writing from opposed perspectives. It contains chapters on Japan's position; cultural conflict; science and politics; biodiversity conservation; regional management; small cetaceans; and environmental threats; amongst others. Authors include **P. Birnie** on cetaceans' importance to conserving biodiversity; **W. Burns** and **G. Wandesforde-Smith** on cetaceans in a changing world; **R. Gambell** on the nature of the conflict in the IWC; and **Y. Iino** and **D. Goodman** on Japan's position.
7. The 2003 monograph by **M. Komatsu** and **S. Misaki**, *Whales and the Japanese: How we have come to live in harmony with the bounty of the sea*, contains a clear exposition of the Japanese approach to whaling – both through history and in current times. The authors present a pro-whaling perspective on the history of the IWC, explaining, for instance, why it is that Japan believes that there may be 'too many' of certain species of whales and why Japan is 'mistrustful' of anti-whaling states.
8. *Whaling Diplomacy: Defining Issues in International Environmental Law* is a 2005 book by **A. Gillespie** which seeks comprehensively to explain the history of the IWC. It covers the history of whaling, and then contains chapters on selected controversial issues, such as 'reservations', 'small cetaceans', 'finance' and 'sanctuaries'.
9. The 2006 monograph by **M. Heazle**, *Scientific Uncertainty and the Politics of Whaling*, considers the course of the way in which science has been used as the basis for decision-making through the history of the IWC. Particularly, he shows how science has historically been 'abused' as much as it has been 'used'.
10. **A. Darby's** 2007 monograph *Harpoon: Into the Heart of Whaling*, is written from an openly anti-whaling perspective. It considers various subjects such as historical overviews and Australian whaling, recent movements within the IWC, the Japanese position, and scientific permit whaling.
11. A 2012 monograph by **D. Burnett**, *The Sounding of the Whale: Science and Cetaceans in the Twentieth Century*, provides a 'readable' (fortunately, as it is nearly 800 pages long!) account of the history of whaling and of the IWC and,

more particularly, of the involvement of many scientists. Burnett considers the problematic relationship between science and policy.

12. The 2014 monograph, **E. Couzens**, *Whales and Elephants in International Conservation Law and Politics: A comparative study*, considers the histories (in parallel) of the international conservation of two large grey animal species, comparing and contrasting particularly the IWC and CITES, and questioning the relationships between different treaties. The opinions of many experts, with different standpoints, are given, and so I hope that I will be forgiven for having included my own publication on this list.

Further readings

History, politics and law

1. Day, D. (1992), *The Whale War*, London: Grafton.
2. Creighton, M. (1995), *Rites and Passages: The Experience of American Whaling, 1830-1870*, Cambridge: Cambridge University Press.
3. Nikonorov, I. (1996), *Whale Mystery: A Review*, Moscow, VNIRO Publishing.
4. Martin, S. (2001), *The Whales' Journey: A year in the life of a humpback whale, and a century in the history of whaling*, Crow's Nest, NSW: Allen & Unwin.
5. Komatsu M. & Misaki, S. (2001), *The Truth Behind the Whaling Dispute*, Tokyo: Institute of Cetacean Research/Japan Whaling Association.
6. Lapointe, E. (2003), *Embracing the Earth's Wild Resources: A Global Conservation Vision*, Sherbrooke, Quebec: Éditions du Scribe.
7. Miyaoka, I. (2004), *Legitimacy in International Society: Japan's Reaction to Global Wildlife Preservation*, Basingstoke: Palgrave MacMillan.