

WHALES IN DANGER

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Honourable Dr. David Kemp MP
Minister for the Environment and Heritage
Parliament House
Canberra ACT 2600

6th January, 2003

Dear Dr. Kemp,

Whales in Danger (WID) has been concerned about Japan's research whaling in the Antarctic for a number of years. We have been collecting information and have been involved in discussions about this research and the approach the Australian government is taking both within and outside the International Whaling Commission (IWC).

Now, because of events in Australia and certain actions of Japan WID believes the Japanese Whale Research Program under Special Permit in the Antarctic (JARPA) is illegal both internationally and in Australian waters and dangerous to citizens.

We assert that the Australian Government, having made claim to an area of the Antarctic marine environment that is currently being exploited annually by Japan for the purpose of killing whales, has inadvertently put Australian lives and others at risk.

Because, Japan's Antarctic whaling has been condemned not only by Australia but by the IWC an organisation to which Australia and Japan are both members, Australian citizens are now putting their lives at risk to stop this injustice. As the act of killing or even harassing whales in Australian waters is illegal the Japanese whalers are now in violation of Australian Law.

Australia's Claim to the Extended Antarctic Continental Shelf and Resources

In December, 1999 our then Federal Environment and Heritage Minister, Senator Robert Hill, and Foreign Affairs Minister, Alexander Downer, announced that the Commonwealth government will take action to define the limits of the continental shelf off the Australian Antarctic Territory so that Australia's rights under the UN Convention on the Law of the Sea (UNCLOS) can be fully exercised.

Mr Downer said that it was believed that the continental shelf off our Antarctic Territory extended up to a further 150 nm beyond our existing EEZ - an area the size of Queensland. [1]

With this claim comes the responsibility to manage and protect the Australian Antarctica Territory (AAT) Economic Exclusion Zone (EEZ) a vast area south of 50° and bordered by 30° East to 130° East. [2] See Map 1

Applicable Australian Law

Whale Protection Act, 1980

Part I - Preliminary

6. Application of Act

- (1) This Act extends to every external Territory and, except so far as the contrary intention appears, to acts, omissions, matters and things outside Australia, whether or not in a foreign country.
- (2) Subject to subsection (3):
 - (a) to the extent that a provision of this Act has effect in and in relation to any waters or place beyond the outer limits of the exclusive economic zone, that provision applies only in relation to Australian citizens domiciled in Australia, Australian aircraft and Australian vessels and the members of the crew (including persons in charge) of Australian aircraft and Australian vessels; and
 - (b) to the extent that a provision of this Act has effect in and in relation to Australia or any waters other than waters referred to in paragraph (a), that provision applies in relation to all persons, aircraft and vessels, including foreign persons, foreign aircraft and foreign vessels.
- (3) This Act has effect subject to the obligations of Australia under international law, including obligations under any agreement between Australia and another country or countries.

Part II - Preservation, conservation and protection of whales

9 Killing, taking etc. of whales prohibited

- (1) A person shall not:
 - (a) in waters to which this Act applies, kill, injure, take or interfere with any whale; or
 - (b) treat any whale that has been killed or taken in contravention of this Act or has been unlawfully imported. [3]

Japanese Scientific Research Whaling

On 2nd January, 2002 Dr Sharman Stone criticised Japan over its Antarctic whaling activity when it was announced that on New Year's Day the Australian research icebreaker Aurora Australis while on a rescue mission to reach another Australian ship, Polar Bird, stuck in the ice since early December in Prydz Bay had come upon three Japanese whaling vessels, including the factory ship. [4]

The Japanese vessels were located at around 64.02° south, 82.13° east. This placed them inside the 200 nautical mile EEZ reaching out from the coastline of the AAT. In a series of radio exchanges the voyage leader aboard the Aurora, Mr Greg Hodge, established the whalers were in no difficulty, and then asked them to leave the area. The whaling ships left the area in a northerly direction, and there was no further

contact. Mr Hodge was unable to provide any detail on the Japanese response. [5] See Map 1

On 9th November, 1999, the Antarctic cetacean research fleet left the port of Shimonoseki, Yamaguchi Prefecture, western Japan, for the Antarctic research ground.

The present reset, the 13th of its kind, will catch up to 440 minke whales in Area IV (70°E - 130°E) and the eastern part of Area III (35°E - 70°E) of the Antarctic. Diverse samples and data will be collected from the caught whales to accumulate scientific information to help effective management of the whale population. [6] See Map 1

Two feasibility studies had taken place in 1987/88 and 1988/89, with the full scale 16 year research commencing the following season and alternating each season in Areas IV and V. In 1995/96 and 1996/97, coverage was extended to Areas IIIE and VIW respectively, for a limited period feasibility study of stock structure. [7a].

Report of the IWC Intersessional Working Group, 1997

"...The following question arose concerning the choice of areal coverage for the sampling and surveys: since the objective of obtaining unbiased estimates of biological parameters for the population required representative sampling, why had coverage been reduced from south of 55°S to south of 60°S after the initial two feasibility exercises in 1987/88 and 1988/89?" See Map 1

In the discussion of these permits in the Commission, an additional factor raised is that the catches take place within the Southern Ocean Sanctuary declared by the IWC in 1994 (to which Japan lodged an objection with respect to minke whales). If a Sanctuary is in place, it can be argued that information on improving management of whaling in that region is unnecessary. [7b]

IWC Resolutions Condemn Japan

Each year the IWC has (by majority vote) passed a resolution urging Japan not to issue a permit for lethal minke whale research in the Antarctic.

Resolution on Whaling under Special Permit in the Southern Ocean Sanctuary

NOTING that since the 51st meeting in May 1999, the Government of Japan has issued special permits, under the provisions of Article VIII of the Convention, for lethal scientific research on minke whales in the Southern Ocean Sanctuary.

NOTING also that the Scientific Committee this year considered all estimates of Southern Hemisphere minke whale population sizes which have been made available since 1990, and concluded that these estimates were 'appreciably lower' than the estimate of 760,000 accepted by the Scientific Committee in 1990.

NOTING further that the Scientific Committee this year recommends that 'minke whale' should be listed as two species in Section 1 of the Schedule to the Convention.

RECOGNISING that the Commission has agreed on the urgent need for the Scientific Committee to proceed with the planned review of the estimates of population sizes of minke whales, including development of agreed estimates, prior to seeking advice from the Commission on how to assess the impacts of JARPA on these stocks.

NOW THEREFORE THE COMMISSION REQUESTS that the Government of Japan refrains from issuing any Special Permits for the 2000/2001 season for the take of minke whales in the Southern Ocean Sanctuary. [8]

Citizens in Danger

In early December 2002, the Sea Shepherd Society vessel Farley Mowat departed from Auckland, New Zealand, and sailed for the frigid waters of Antarctica. Their mission is to intervene and suspend pirate whaling by the notorious Japanese whaling fleet, and to escort their fleet out of the hunting area.

"The Japanese whaling practices can no longer be tolerated. There is no legal enforcement on the high seas against the Japanese illegal whaling practices. This is what Sea Shepherd does . . . and we do it very well." said Paul Watson. [9]

There are forty-three volunteer crew members on board the Farley Mowat, representing 10 nations and includes five Australians.

Kylie Herd - Perth, Western Australia.

Timothy O'Callaghan - Originally from Perth.

Jon Sumby - Melbourne, Victoria.

Peter Woof - Ulladulla, New South Wales.

Jack Kerr - Independent Journalist. [10]

On December 13th, the Parliamentary Secretary for Antarctica, Dr. Sharman Stone, stated that the government of Australia would not support the Sea Shepherd Conservation Society's campaign to oppose illegal Japanese whaling activities in the Antarctic Whale Sanctuary.

Stone stated that the Australian government cannot condone people risking their lives to protect the whales in the Southern Ocean. [11]

Australia's National Search and Rescue Plan (SAR)

Australia is obligated internationally and domestically to maintain a maritime Search and Rescue Plan. It has wherever possible exceeded the requirements of International Treaties & Conventions, community expectations and Australian government policy.

Australia's National SAR Plan is derived from international and domestic agreements between authorities sharing a common interest.

For Search and Rescue incidents at great distance from the Australian coast, Australian Defence Force long range assets are normally requested. Even with these very capable units, not all of Australia's Search and Rescue Region can be reached by Australian based aircraft or by ships in a timely fashion. [12]

Conclusions

- a. Australia's claim to an Antarctic Territory EEZ makes it responsible for all actions within the EEZ. This includes all military and civilian activities. Australia's responsibility does not exclude jurisdiction over illegal actions such as whaling and any protests or demonstrations that may occur as a consequence of public disapproval or of illegal acts.
- b. Japanese Antarctic research whaling occurs primarily within the AAT EEZ. It is illegal both internationally and now under Australian Law. The Australian government must stop the slaughter of whales in its AAT EEZ as mandated by the Whale Protection Act, 1980.
- c. WID believes Australia's primary concern must be the safety of its citizens and others in the AAT. As of 1st January, 2003 there are approximately 300 Japanese nationals and more than 43 citizens from 10 nations within the AAT. Due to the great distance and the hostility of the environment, the safety of these people must be assured. To this end, Australian Defence Force vessels MUST be dispatched to the region immediately. This will ensure that if emergencies occur appropriate measures can be taken in a timely fashion.
- d. WID believes that, from this day forward, Australian Defence Force vessels must be stationed in the AAT EEZ whenever foreign and/or Australian citizens are present.

"If Australia is really concerned about not having us place ourselves in danger then I would suggest that Australia stop it's whining about us, and get off their bureaucratic backsides and do something to stop the merciless slaughter of these protected whales by this outlaw fleet." Paul Watson [11]

- e. WID believes that Australian Defence Force vessels MUST administer the law in the Antarctic as no other nation can. Australia is seen worldwide as the 'Gateway to the Antarctic' and as such should be regarded as the 'Gate Keeper' and the 'Keeper of the Peace' within the Antarctic. Australia makes claim to almost 50% of the Antarctic continent and in doing so bestows its humanity upon much of the land. It is only right that Australia becomes the Antarctic Police.
- f. JARPA is a 16 year whale killing research project carried out by the Japanese government. It's original objective was the:
 - 1) estimation of the biological parameters to improve the stock management of the Southern Hemisphere minke whale;
 - 2) elucidation of the role of whales in the Antarctic marine ecosystem.

In response to 'developing requirements' Japan added two further objectives:

- 3) elucidation of the effect of environmental changes on cetaceans;
- 4) elucidation of the stock structure of the Southern Hemisphere minke whales to improve stock management.

WID believes that Japan's original objectives were admirable but its 'developing requirements' were merely the want to circumvent the Moratorium on Commercial Whaling and sell whale meat to its nationals. [7c]

JARPA's final season 2004/2005 MUST be it's last. The Australian government MUST ensure that no new cetacean research, or other activity by any nation or state, will violate Australian territories, EEZ or laws.

- g. "Australia's sovereign rights could be used to prevent others from exploiting the area [AAT EEZ] so that the sea-bottom marine life is protected," Senator Hill. [1]

Australia's sovereign rights should be used to eject Japanese whalers from the Australia Antarctic Territory EEZ.

Yours Sincerely,

Graham J. Clarke
President,
On behalf of Members.

Cc: Senator Robert Hill, Minister for Defence
Honorable Dr Sharman Stone, Parliamentary Secretary to the Minister for the Environment and Heritage
Paul Watson, Sea Shepherd Society
Bianca Havas, Greenpeace Australia
Sarah Dolman, Whale and Dolphin Conservation Society
Sue Arnold, Australians for Animals

Whales in Danger Objectives:

The primary objectives of the Association shall be to serve the needs of its members, through research and education, in the conservation of cetaceans, and any other marine animal of interest; and such other activities as the Association may determine. [13]

References:

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[2] AAT Stations in the Australian Antarctic Territory Map No:12182
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http://austlii.law.uts.edu.au/au/legis/cth/consol_act/wpa1980190.txt
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Sharman Stone, Parliamentary Secretary to the Minister for the Environment and Heritage
<http://www.ea.gov.au/minister/ps/2002/psmr02jan02.html>
- [5] News Item - Illegal Japanese Whalers found in Australian Waters
<http://www.whales.org.au/news/antarctic.html>
- [6] News Item - 13th Antarctic Cetacean Research Fleet off to the Southern Ocean
<http://www.whales.org.au/news/index.html>
- [7a] Report of the Intersessional Working Group to Review Data and Results from Special Permit Research on Minke Whales in the Antarctic, Tokyo, 12-16 May 1997 - SC/49/Rep1
Item 1.7 - Outline of the JARPA research
<http://www.icrwhale.org/eng/SC49.pdf>
- [7b] Report of the Intersessional Working Group to Review Data and Results from Special Permit Research on Minke Whales in the Antarctic, Tokyo, 12-16 May 1997 - SC/49/Rep1
Item 2.1 - Original and additional research objectives
<http://www.icrwhale.org/eng/SC49.pdf>
- [7c] Report of the Intersessional Working Group to Review Data and Results from Special Permit Research on Minke Whales in the Antarctic, Tokyo, 12-16 May 1997 - SC/49/Rep1
Item 1.6 - Original research proposal and later additions
<http://www.icrwhale.org/eng/SC49.pdf>
- [8] IWC Resolution 2000-4 : Resolution on Whaling under Special Permit in the Southern Ocean Sanctuary
- [9] Sea Shepherd Captain's Log
<http://www.seashepherd.org/log.pdf>
- [10] Farley Mowat - Crew Members
<http://www.seashepherd.org/crew-main.shtml>
- [11] Australian Government Chooses NOT to Uphold International Marine Law
<http://www.seashepherd.org/news30.shtml>
- [12] Australia's National Search and Rescue Plan
<http://www.amsa.gov.au/aussar/PLAN.HTM>
- [13] Whales in Danger Constitution
<http://whales.netfirms.com/members/pages/meetings/constitution.html>

Map 1

