

WORKSHOP IN POLITICAL THEORY  
AND POLICY ANALYSIS  
513 NORTH PARK  
INDIANA UNIVERSITY  
BLOOMINGTON, IN 47408-3895 U.S.A.

copy

"..The exploitation of the products of the sea is one of the subjects the regulation of which by international agreements appears to be most desirable and realisable."<sup>1</sup>

38

Regionalisation of International Whale Management:  
The North Atlantic Committee for Research on Marine Mammals

Alf Håkon Hoel  
Associate Professor  
College of Fisheries Science/University of Tromsø

Draft. 22 September 1991.  
Comments welcome.

### 1. Introduction

The International Convention for the Regulation of Whaling (ICRW) was established in 1946 "to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry."<sup>2</sup> While failing to achieve this goal the first decades of its existence (Tønnesen 1982), this regime was rather successful from the late 1960's onwards, at least when compared to other international fisheries regimes (Gulland 1988). The development of the International Whaling Commission (IWC) into a preservationist, rather than a conservationist, institution since the late 1970's (Hoel 1985, D'Amato & Chopra 1991) has however generated fissionary forces within this regime. As a consequence of this, developments in marine science and eagerness on the part of coastal states to protect rights gained to extended jurisdiction, international management of whales and whaling may be shifted from a global to a regional level. Many marine management problems by their very nature require regional approaches (Alexander 1978, Hoel 1991, Morgan 1991), as demonstrated by the shift in fisheries science towards ecosystem and multispecies approaches to management (Flaaten 1988, Hoel 1990a).

One emerging regional whaling regime is the North Atlantic Committee for Coordinations of Research on Marine Mammals (NACCRMM). The purpose of this paper is to discuss the evolution of NACRMM, and to consider its relation to the IWC, other international institutions concerned with resource management and the law of the sea in general. NACRMM is an interesting experiment in social engineering at the

international level, in that it attempts to match the regime's jurisdictional level to ecological realities, with a view to multispecies management.

At the outset, some conceptual clarifications will be attempted, before proceeding to a review of the background for international whale management. Then the evolution of the North Atlantic regime is discussed, before we conclude with a discussion of its role and viability. Two caveats: The developments in the IWC are not treated in any detail here, and the theoretical ambitions are modest. It is also taken for granted that whales constitute a resource.

## 2. Regimes for international living marine resources

### 2.1 Living marine resource regimes

In the case of living marine resources, unregulated exploitation may lead to wasteful competition and overexploitation, due to lack of coordination of the utilization of a conditionally renewable, open access resource (Gordon 1954). Natural resource regimes are responses to problems of coordination (Young 1982, 1989), and may be defined as "practices consisting of recognized roles linked together by clusters of rules or conventions governing relations among the occupants of these roles" (Young 1989:12-13). Here we shall be concerned only with international regimes, i.e. with two or more nation state parties.

Two important aspects of natural resource regimes are their functions, what they do in order to realise their goals, and their scope, i.e. their extension with regard to geographical area, membership and resources.

Regimes for living marine resources have basically three

management functions: information gathering, regulation and enforcement. Information gathering provides the data required for assessing the state of the resources, which in turn is the basis for deciding the type and amount of regulations to be established. Usual types of regulations are restrictions on amount that may be taken, seasonal and temporal regulations, and gear restrictions. The enforcement function is aimed at controlling and securing that other management functions are complied with. Due to the sensitivity of sovereignty issues, the implementation of regulations and enforcement is normally left to a regime's member states.<sup>3</sup>

As to the scope of regimes, geographical scope varies from a limited area as the Barents Sea to a global reach, as the case is with the Montreal Protocol. In most cases, (except for the global regimes) boundaries are set more on the basis of political realities than the ecological problems to be handled (Morgan 1991, Hoel 1990b). Membership may range from two - as the case is with the Barents Sea regime, to regimes comprising over 100 member states. As to resources covered, most living marine resource regimes are unidimensional. The Northeast Atlantic Fisheries Commission (NEAFC), for example, are concerned with fisheries only. Moreover, when comprising more than one species, they are not directed at managing on an ecosystemic basis, that is, taking into account that all use and nonuse of living marine resources has ecosystemic repercussions. The sole operative exception to this is the living resources regime for the Southern Ocean (Hoel 1990b).<sup>4</sup> The major changes in the approaches in fisheries science, elaborating the "multispecies management" concept (Flaaten 1988), has therefore only to a very limited extent been reflected in operative regimes internationally.

"Regional" regimes are here taken to mean social institutions for resource management which covers a large marine ecosystem and which incorporates two or more actors. Regionalism generally increasing in marine resource management (Hoel

1991), after the nationalisation phase following the establishment of 200 mile economic ones from the late 1970's onwards, there has been a growing awareness that also regional cooperation is to be strengthened, not least because many management problems by their very nature require cooperation between two or more states. Living marine resources migrate between various national zones, and between these and international waters, and this necessitates coordination of management.<sup>5</sup> This presupposes, however, a basic mutual recognition that the species/stock in question constitutes a resource, and that management is needed.

## 2.2 International regulation of whales

Regional regimes for living marine resources are not a new invention, the first ones date back to the 19th century. For fisheries, a large number of regional organisations exist (Koers 1973). As for whales, the 1931 International Whaling Convention which preceded the 1946 Convention had a global scope. Later several regional arrangements have emerged: Already in the 1952 Permanent Commission for the South Pacific were whales incorporated, albeit the regulatory powers were weak (Hollick 1954). The 1979 Bonn Convention for the protection of migratory species also envisages regional regimes for the protection of whales in a more ecosystemic context. Here no formal regime is in place yet, but a North Sea organisation is in the process of being negotiated. Also the 1980 Convention for the Conservation of Antarctic Marine Living Resources is, as mentioned, based on an ecosystem principle (Hoel 1990b), but in this case the management of whales is left to the IWC.

The IWC was also by its drafters conceived of as a regional regime. The management problem at the time of the drafting of the 1946 Convention was Antarctic whaling. The sensitivity of sovereignty issues in that area however induced the

negotiators to omit specific references to specific geographical areas, stating vaguely that the Convention applies to "all waters in which whaling are prosecuted" (art.I). The Convention is open to any interested nation; there is no restrictions on entry, which is extremely easy given the rather wide-ranging decision-making powers vested in the organisation. As to resource scope, the Convention does not define it, but the intention of the drafters was obviously that the great whales should be included. 16 species, of which most are smaller whale species, are listed in an annex to the Convention.

As to functions, the 1946 Convention places a duty upon the parties to submit various catch-related data to the Commission (art.VII).<sup>6</sup> The Convention also allows for a wide range of regulatory measures, contained in a flexible Schedule (art.V,1) which may be changed from year to year. As to enforcement, an observer scheme has been in place since 1972, but both regulations and enforcement rely on national measures to be implemented.

The dedevelopment of international whale management after WWII may be described by three phases (Hoel 1985): first an overexploitative phase lasting until the latter half of the 1960's. This pertained mainly to the Antarctic, however. A second, "scientific" phase lasted till the late 1970. In this period regulations were to a large extent set according to the advice from the Scientific Committee. From the late 1970's' however, preservationist interests has increasingly dominated the Commission. Preservationists stands in opposition to conservationists in that they do not regard whales as a resource that may be exploited and managed as other living resources, but rather should be accorded a special status similar to that of human beings (Barstow 1990, D'Amato & Chopra 1991).<sup>7</sup> Thus a new role has been established for actors in international resource management - due to a combination of easy entry and political expediency of engaging in whale

preservation:

A moratorium on commercial whaling was adopted in 1982, to be in force from 1985/6 till 1990. Implicit in the moratorium decision was also that a revised management procedure should be worked out, which should secure whale stocks against overexploitation. It became increasingly clear in the years following the moratorium decision that the real intention of a majority in the Commission was not to allow for a resumption of commercial whaling (Hoel 1990a). This was not so much due to any genuine concern for whale stocks, as the work of the Scientific Committee to an increasing extent has demonstrated that many whale stocks can sustain commercial exploitation. Rather, for several governments the whaling issue is a tradeable asset, where a preservationist position is an indulgence for sins committed in other environmental policy areas. Some hypothesize that this development is a reflection of a change in the world community's conception of whales (e.g. D'Amato & Chopra 1991), but it is difficult to see such an argument carrying weight as long as the very same nations that are eager to "protect" whales in the IWC are most instrumental in committing the real threat to all marine life, not least whales: pollution.

The very basis for an international regime for managing whaling has thus eroded away - the negotiation of the ICRW would have been impossible today, as there is no consensus on problem definition. As noted above, the foundation for any regime is a joint interest among actors to coordinate actions in a given issue area. In the case of the IWC, there is no such basis, as long as many of the parties do not recognise the 1946 Convention as a convention for the management of resources. The whaling nations and the preservationist group have no common ground, and this begs the question of alternative or supplementary fora for management of whales and whaling.

### 3. The evolving North Atlantic regime'

There is no biological or ecological case for a global whaling regime. Arguing from scientific premises, it is difficult to arrive - as some indeed does (see e.g. Barstow 1990) - at a conclusion that a global regime is needed. Cetaceans do not roam randomly around in the world's oceans, but do rather stick to certain geographic regions. The extent of these regions is however uncertain, as not much is known about the migratory patterns of whales. There is great variation among different whale species as to their migratory behaviour, and no sweeping generalisations can be made about this. The whale stocks in the North Atlantic does not appear to move south of the equator, however, and several stocks, e.g. the Northeast Atlantic stock, stay at least half of the year in Arctic waters. Smaller species stick to more geographically delimited areas. Thus there is a biological basis for regional regimes for whale management:

#### 3.1 The initiative

At the 1936 annual meeting of the IWC, members of the Icelandic and Norwegian delegation, had informal discussions on counter-measures to the developments in the IWC, which was seen as problematical not only on a practical level (no whaling), but perhaps more so at a principled level: who was to decide on a coastal state's utilisation of the resources in its zone?

It was felt that there was not sufficient cooperation among the resource-oriented nations, and that cooperation on a more sustained basis was required, i.a. to coordinate research. Among other measures mentioned were the establishment of a cartel consisting of the North Atlantic nations, which could

respond to sanction threats with embargoes on fish products.<sup>9</sup> After the meeting efforts were made in Norway to institutionalise a working group to handle these matters, but nothing came out of it.

These informal discussions continued at the 1987 annual meeting of the IWC, where the Icelandic fisheries minister, H. Asgrimsson, was the driving force for the establishment of a North Atlantic organisation for nations involved in management and harvesting of marine mammals. This year also Greenland was drawn into the deliberations.

### 3.2 The initial phase: the 1988 and 1989 conferences

In 1988 Iceland took the initiative to the First International Conference on Management and Rational Utilization of Marine Mammals, held in Reykjavik 21-22 January. The scope was now extended, in that also Japan participated. The other participants were the North Atlantic nations Canada, the Faroese Islands, Iceland, Norway, and the USSR. Greenland attended the conference with observer status.

The conference, chaired by the Icelandic fisheries minister, was convened for the whaling nations to take a more active approach to informing the international public on the need for comprehensive management of marine living resources.<sup>10</sup> The agenda for the conference had three topics: present management of marine mammals and other options for this; scientific research; and public information. Under the first item global and regional approaches to marine mammal management were considered, and "...the possibility of developing supplementary fora for cooperation in this field" was discussed." Under the second item current marine mammal research programs were presented, and the "...possible role of ICES or other multi-disciplinary regional bodies" was explored.<sup>12</sup> Under the last information strategies were discussed. In his closing address,

summing up the first Conference, the Icelandic fisheries minister concluded that "real progress can be made towards the establishing a new and equitable order in the management of marine mammals."

The second International Conference on Management and Rational Utilisation of Marine Mammals was held in Thorshavn in the Faroese Islands 18-19 April 1989, with the same nations participating and observing as in 1988. The conference was focused on multispecies management of living marine resources, with three items at the agenda: the state of knowledge on multispecies management; the role of marine mammals in the ecosystem; and management issues.

The latter item was the major one, with Iceland arguing for the establishment of a regional mechanism for cooperation on management of marine mammals. This was supported by the Faroese Islands, who argued for multispecies management of marine mammals and fish in regional organisations of a NASCO-type, i.e. with an umbrella organisation with several regional subsidiaries. Others envisaged a less ambitious scheme, with emphasis on collection and dissemination of information, rather than management functions. Norway suggested that it would be willing to establish an office at the University of Tromsø to that end. At the end of the conference Iceland presented a draft final act, to be presented to the respective governments, suggesting a mechanism for cooperation on marine mammal research in the North Atlantic. There was universal agreement, however, that this mechanism not was intended to replace any existing organisation, but rather supplement it.

### 3.3 1990: Formalisation and expanding ambitions

The 1990 conference was hosted by Norway in Tromsø, and saw several changes in participation: Greenland changed status to

full participant, not least because it had been pressed by animal welfare groups over its earlier association with the conference.<sup>13</sup> The Nordic Council of Ministers attended the conference as observer, while the USSR did not participate at this meeting.<sup>14</sup> The Nordic nations at the conference were all represented at political level, adding emphasis to the significance of the role of the conference.

As it was clear at the outset of the conference that an MOU would be signed by the Nordic nations participating at the conference, Norway had issued an invitation to the "Third International Conference on Management and Rational Utilization of Marine Mammals in the *North Atlantic*" (my emphasis), with Japan invited as an observer.<sup>15</sup> This was however not accepted by Japan, and the regional indication in the title was removed.

In his opening address, the Norwegian fisheries minister stated that the draft MOU emerging from the Thorshavn conference was a "outcome of the process of cooperation..<sup>16</sup>, and focused the conference agenda on marine mammal research and "the future management procedures for whale and seal stocks in the light of these latest scientific achievements."<sup>17</sup> In addition the MOU was to be signed, and a working group was established to finalise the document for signature. Since the MOU was to apply only to the North Atlantic, Japan did not take part in this work. The discussions on research and management procedures was based on introductions from Icelandic, Japanese and Norwegian scientists, and this year also the management of seals was an important topic. The question of information of marine mammals issues was also addressed, but here the participants had diverging views as to the appropriate approach, with some advising a low profile internationally in these matters while others favoured a more aggressive information campaigns.

As to the MOU, its signature established the North Atlantic

Committee for Cooperation on Research on Marine Mammals (NACRMM). The Committee did not constitute itself at that time, however. The preamble of the MOU identifies the need for conservation and management of marine mammals in the North Atlantic and the need to do this by a multispecies approach. It further notes the special needs of aboriginal communities and the need, to take the relevant components of the law of the sea in view. On the basis of this the function of NACRMM is to enhance "cooperation in research on marine mammals and their role in the ecosystem." It is however also stated in the MOU that it shall work towards ".. the development of mechanisms to ensure the conservation and joint management of shared stocks."

The MOU contains three substantial points. In addition to the establishment of NACRMM, with one representative from each party, a secretariat was set up at the University of Tromsø and steps were taken to establish a "working relationship" with the International Council for the Exploration of the Sea (ICES). The MOU was to be open for signature in Oslo by other governments. Karsten Klepsovik, Head of division in the Norwegian ministry of fisheries was elected the first chairman. Admission of observers from countries outside the NACRMM area to the meetings could be considered when "..this is in line with the activities under the MOU" - the open entry situation of the IWC situation in the IWC was to be avoided. The secretariat consist of one person working part-time, combining this function with the secretariat for the Norwegian Marine Mammals Research Programme.

As to the relationship to the ICES, the meeting formulated a letter to the General Secretary of ICES, pointing out areas of joint interest to ICES and NACRMM: the role of marine mammals in the ecosystem and the management of marine mammals in a multispecies context. National research programmes to this end needed coordination, and ICES was seen as the appropriate body for this,<sup>18</sup> due to its central role in North Atlantic

fisheries management, and the fact that the NACRMM nations also are major contributors to and actors within the ICES system.

An informal meeting of NACRMM was held at Å July 1990 at the annual meeting of the IWC in Nordwijk. The four signatories, plus Canada, Japan and the USSR in the capacity of observers, participated. This was the first NACRMM meeting where questions of substance were discussed, and the major issue was the relationship with the ICES. The General Secretary of ICES had replied in a letter of 27 April to NACRMM that he believed that ICES was the appropriate international forum to coordinate the research in question here, and at some later stage provide scientific advice for conserving and managing marine mammals in an ecological context in the North Atlantic. The question of small cetaceans was also discussed at the meeting, and since this was a problematic issue to the IWC, a future role for NACRMM was envisaged here. The parties agreed that this was no issue for the IWC to engage in, i.a. because this could be seen as creeping jurisdiction on the part of an international organisation. The four signatories also invited Canada and the USSR to sign the MOU.

#### 3.4 1991: More ambitious functions, less ambitious scope

Due to the establishment of NACRMM in 1990, two meetings were held in 1991: the second NACRMM meeting and the fourth Conference on Management and Rational Utilization of Marine Mammals. The meetings were held consecutively, in Reykjavik 16-17 April 1991. At the latter, the four signatories to the MOU participated, with the new actor Alaska, USSR and Japan as observers. At the conference Alaska held observer status, while the other nations mentioned were full participants.

The conference's agenda addressed five issues: first, the completion of the revised management procedure in the IWC was

discussed. All parties wanted to see it completed, but none saw the IWC politically able to do so. Second, in connection with the 1992 UNCED conference the issue of marine mammals was attempted raised, and the participants were rather wary of this, bearing in mind the 1972 UNCHE conference which first called for a moratorium." Third, small cetaceans was becoming a major item at IWC's agenda, and there was wide agreement at the conference that the IWC is not the right forum for handling this issue. Regional approaches is to be favoured. Fourth, as a consequence of this, the participants discussed NACRMM as a possible regulatory body for sealing and whaling in the North Atlantic. Several participants emphasized that this was not an alternative body to the IWC as far as large cetaceans were concerned. It was agreed that an ecosystem approach is to be favoured for the North Atlantic regime. The USSR argued for a revision of the 1946 Convention on the basis of the 1982 Law of the Sea Convention.

The NACRMM meeting went into a more elaborate discussion of a regional management scheme, and in particular a mechanism for conservation and management of shared stocks. Greenland, presented a paper of marine mammals of joint interest, comprising 17 whale species, and argued for the creation of a "working regional organisation with respect to management of shared stocks of seals and small cetaceans." The parties were favourably inclined to this initiative for expanding NACRMM's functions, but were so to varying degrees, and a concrete proposal was asked for. The following day Greenland tabled such a proposal, which essentially consisted of the establishment of a North Atlantic Management Committee, organised along the lines of NASCO, consisting of a main body with management subcommittees for various ecosystems.<sup>20</sup> As for decision-making, each party was to have a veto right.

Also the relationship to the ICES was discussed, as the question of what a "working relationship" should mean had

become urgent. The Council of ICES had been more reluctant to take upon it the tasks requested by NACRMM than the General Secretary had been,<sup>21</sup> and the participants was somewhat surprised at this, as there was no precedence in the organisation for declining such requests, not even in politically sensitive situations." ICES had however established, a study group for pilot whales, one of the species potentially under the purview of a North Atlantic regime.

As for more administrative matters, it was decided that NACRMM should be represented at meetings in relevant international organisations, and E. Lemche (Greenland) was elected chairman. Canada notified that it would not sign the MOU, while the USSR Stated that it would take some time to consider a signature. The points raised by Greenland as regards the development of the organisation so as to take on management functions was to be responded, upon by mail by the signatories. By august 1991 all parties had responded, and favourably so.

#### 4. The role and viability of NACCRMM

##### 4.1 Why NACCRMM?

A basic question in regime analysis is why they arise (Krasner 1983). The foregoing discussion suggests at least three different motive forces: the evolution of the IWC into preservationism; the development of fisheries science towards multispecies fisheries management; and the reluctance of coastal states towards creeping jurisdiction on the part of an international organisation. While the first no doubt instigated NACCRMM, the latter two has become more important over time. The focus at the 1988 Conference was at establishing an alternative to the IWC, but later this focus has to some extent been replaced with an interest in

establishing a management body for multispecies management, particularly for marine mammals outside the current purview of the IWC.

##### 4.2 Scope and functions

The regime's actor set has been fairly stable, increasing to eight parties at the 1991 Conference. The hard core is however the four Nordic members which are signatories to the MOU. Some of the actors in NACCRMM (and the Conference) are somewhat special in that Alaska, the Faroese islands and Greenland are not sovereign states, with control over foreign policy being left to the USA in the case of Alaska and Denmark for the latter two. In fisheries matters these three actors do however have some freedom of action, which has been very actively exploited by Greenland and the Faroese Islands. In the early phase Iceland was the driving force, by taking the initiative to the first conference and by being the actor pressing most actively for the establishment of a regional management body. Later the other two West-Nordic actors has become at least as active.

Initially, the regime's geographical scope was conceived of as global, but here the ambitions have been lowered. The reasons for this are that there is no scientific basis for establishing a global alternative to the IWC, what is needed for management purposes are regional bodies. Two additional, political grounds for this delimitation are that there already exists a loosely structured network for fisheries cooperation at the Nordic level," and that the fewer actors that are involved, the less complicated the decision-making. Open channels to other likeminded nations are maintained by retaining the Conference institution, which have no regional connotations.

As to species scope, this issue is not settled yet. The 17



species list forwarded by Greenland has not been discussed formally. There appears to be widespread agreement that NACCRMM is no substitute to the IWC, but rather a supplementary body, with functions in areas where the IWC has none. That means that small cetaceans and seals are the most likely areas of active involvement in the near future. The possibility should not be ruled out, however, that NACCRMM in the future may take on a role also with respect to large cetaceans, if the IWC should decide to continue its abdication from its treaty based management responsibilities.

The regime has thus become less ambitious with regard to scope, while becoming more so with regard to functions. The question of information to the world community is not a major topic any more, and the early idea of an anti-sanctions body has never surfaced again. Instead management, and especially multispecies management, is at the center of discussions. The 1990 MOU established a regime with research coordination functions, to be based upon ICES work and advice. As the NACCRMM nations are both major contributors to research under ICES auspices and major users of this knowledge, it has been noted with concern that several ICES Council members have had their hands tied by their governments in this issue. Thus the potential of the ICES to engage scientifically in multispecies management appears to be threatened.

The fate of the proposal for establishing management functions remains to be seen, but at least there is a general goodwill for this. A NASCO-type structure, where the actual management decisions are taken by ecosystem-based subunits claims wide support, not only among NACCRMM signatories. At the Nordic level, all Nordic countries, Sweden and Finland included, has supported this as the general principle in setting the jurisdictional levels for living marine resources regimes.<sup>24</sup>

#### 4.3 Relation to IWC, other regimes and to international law

The lack of agreement on problem definition may lead to the demolition of the IWC. Both from the conservationist and from the preservatist side there have been calls for an international conference to renegotiate the ICRW. While conservationists (in particular the USSR) argues for the need to bring the ICRW in line with recent developments in international ocean law, preservationist actors (e.g. New Zealand) wants to negotiate a new convention based on the idea that marine mammals in general and whales in particular stands above other animals and therefore requires special legal treatment.

As will be clear from what has been said above about the modest ambitions of the NACCRMM with regard to geographical and species scope, the threat to the IWC stems more from efforts at opening up for renegotiations. This will be an experiment which is very likely to come to naught if it is a point that all interested actors should be parties to the regime, while at the same time clarifying the lack of common ground to an extent that may leave many parties with no choice but to leave the organisation. Many of the current members have a general resource policy which says that resources should be utilised when there is scientific basis for it, a policy which is not reconcilable with the current IWC policy.

As to the relationship between NACCRMM and other regional management bodies, the problematic organisation is the emerging North Sea regime under the 1979 Bonn Convention. The Bonn Convention essentially envisages a "protected status" for all cetaceans, which implies no catch. A draft framework for cooperation for the North Sea<sup>25</sup> also prohibits killing of cetaceans for research purposes. This regime thus comes into conflict with NACCRMM in the North Sea area, insofar as lethal research is involved. But there is also a potential for

cooperation in research, not least with regard to the environmental threats marine mammals are especially exposed to in this region.

As far as the law of the sea is concerned, reference may be made to article 65 of the 1982 Law of the Sea Convention. Here coastal states are exempted from the duty to ensure optimum utilisation of living marine resources laid down in article 62, as far as marine mammals are concerned. That is, the catch of marine mammals may be regulated more strictly than fishing. Moreover, in the case of whales, states shall "...work through the appropriate international organisations for their conservation, management and study."<sup>26</sup> Here two points are of interest in relation to NACCRMM: first, "organisations" are referred to in the plural - no mention is made of the IWC, nor is it envisaged that states should stick to only one international organisation for whale management. Second, "appropriate" appears to relate to whether the international body are engaged in "...conservation, management and study..." It is difficult to see how the IWC by these standards is a more appropriate organisation for international whale management than NACCRMM. Thus there is no conflict - both organisations may coexist, and states may be parties to both. The basic point to be made in this context is however that the 1982 Law of the Sea Convention has not yet entered into force, as 60 ratifications is required, while 47 have ratified thus far. Iceland is the only NACCRMM signatory which has ratified the convention, and thereby is bound by its provisions. Article 65 by itself can probably not be said to constitute customary international law.

This is not to say however, that the IWC merits a continued existence - that question is not elaborated further upon here, but the major problem in international whale management is now - as it was ten years ago - that the real threat to whale stocks of any kind is not so much harvest as the indirect impacts from pollution, bycatch in fisheries, seismic

survey shooting, nuclear test explosions and the like. A future policy area for the IWC is perhaps the formidable task of informing its member governments of the effects of such activities on whales, while the management issues could be shifted to appropriate regional organisations.

**Litterature:**

Alexander, L. 1978: "Regionalism at sea: concept and reality" in Johnston, D. 1978: Regionalisation of the Law of the Sea Proceedings from Law of the Sea Institute 11th Annual Conference, Honolulu, November 14-17 1977

J. Bulber 1988: "International management of Atlantic Salmon: equitable sharing and building consensus" Ocean Development, and International Law Vol.19, pp. 35-57

D'Amato, A & Chopra, S. 1991: "Whales: their emerging right to life" The American Journal of International Law Vol. 85, No.1 pp.21-62

Flaaten, O. 1988: The Economics of Multispecies Harvesting Springer Verlag, New York

Gordon, S. 1954: "The Economic Theory of a Common Property Resource" Journal of Political Economy Vol.62, No.2, pp. 124-42

Gulland, J. 1988: "The end of whaling?" New Scientist 29 October 1988

Hoel, A.H. 1985: The International Whaling Commission: New Members, New Concerns R:002, Polhøgda, Lysaker

Hoel, A.H. 1990a: "Norwegian Marine Policy and the International Whaling Commission" Journal of North Atlantic Studies Vol.2, No.1-2

"Den Internasjonale Hvalfangstkommissjonen ved veis ende?" Ottar nr. 184, pp. 24-31

Hoel, A.H. 1990b: "Fishing in Antarctic Waters" working paper, Norwegian College of Fisheries Science/UiT0

Hoel, A.H. 1991: "The 200 Mile zone and Management of Distant Water Fishing" Paper presented to International Conference on Coastal Fishing in Developing Countries. Tromsø, May 23-24

Koers, A. 1973: International Regulation of Marine Fisheries Fishing News Books, London

Krasner, S. (ed.) 1983: International Regimes Cornell University Press, Itacha

Tønnesen, 1982: The History of Modern Whaling Hurst & Co. London

Young, O. 1982: Resource Regimes Cornell University Press, Itacha

Young, O. 1986: "International Regimes: Toward a New Theory" World Politics Vol. XXXIX, No.1

Young, O. 1989: International Cooperation; Building Regimes for Natural resources and the Environment Cornell University Press, Itacha

1. League of Nations Committee of Experts 1927, Doc.C.199.M.73.V, pp.44-5

2. Preamble, 1946 International Convention for the Regulation of Whaling.

3. The European Community's fisheries regime is an interesting exception to this rule. Regulations adopted at EC level automatically apply also in member countries (Hoel 1991b).

4. Also regional bodies established on the basis of the 1979 Bonn Convention may be so directed, but none are finished yet, albeit a North Sea regime for marine mammals is close.

5. Regional fisheries management organisations may also have other goals: The South Pacific Forum Fisheries Agency, for example, is basically a mechanism for extracting resource rent

from distant water fishing nations fishing in its area (Hoel 1991).

6. Previously data were to be submitted to the International Bureau of Whaling Statistics in Norway, but since 1985 (?) the Commission's secretariat has taken over this role.

7. The premise for that, that whales in general are especially intelligent, is however questionable, to say the least. (Klinowska 1988:\*\*, Walløe 1990)

8. The background material for this section is based on interviews with key actors, NACCRMM secretariat archives, and observations made at the 1990 and 1991 NACCRMM meetings.

9. The USA had threatened with trade sanctions against Norwegian and Icelandic fish products if whaling was not halted.

10. Opening statement by Iceland's prime minister.

11. Press release, first Conference.

12. Press release, first conference.

13. Rather than frightening Greenland away from its earlier associating with the conference, pressure from environmental groups made Greenland sign the MOU.

14. The reason why the USSR did not participate in 1990 seems to be more related to administrative and logistic concerns than to policy.

15. Invitation to to third conference, letter from fisheries minister Svein Munkejord of 7 March 1990.

16. Opening statement, Norwegian fisheries minister

17. Opening statement, Norwegian fisheries minister.

18. Letter of 20 April from NACRMM secretariat to ICES

19. In a Prepcom paper to UNCED all cetaceans were classified as endangered species, positive evidence to the contrary notwithstanding.

20. For a discussion of the NASCO structure, see J. Bulber: "International management of Atlantic Salmon: equitable sharing and building consensus" Ocean Development and International Law Vol.19, pp. 35-57

21. The reluctance in ICES' council was voiced primarily by the United Kingdom and the Netherlands - both major preservationists in the IWC. Report of ICES Council delegates' meeting 4-12 October 1990.

22. As in the cod wars between Iceland and the United Kingdom.

23. The Nordic Council of Ministers.

24. NEFDOK 13/91, vedlegg 2. (Nordic contribution to UNCED, on the issue of "Protection of the oceans and the protection, rational use and development of their living resources"

25. Administrative agreement, dated 12.9.1990.

26. Article 65, 1982 law of the sea treaty