



Comments on 33 issues for discussion by the Small Working Group on the Future of the International Whaling Commission



Signatories to this briefing offer the following comments and recommendations on some of the 33 issues known to be of importance to one or more contracting governments to the International Whaling Commission (IWC). These comments and recommendations are presented to assist governments as they draft comments to, and partake in discussions during, the five day meeting of the Small Working Group on the Future of the IWC on 15th September 2008, in Florida. Comments and recommendations should not be construed as necessarily reflecting the opinions or positions of all signatories.



The IWC is unarguably the world's pre-eminent whale conservation body. The presumption that the IWC is broken and in need of 'fixing' is a direct result of the behavior of a small minority of its members who, while ignoring the wishes of the majority to transform the IWC into a 21st century whale conservation body, have systematically worked to destabilise the Commission by ignoring or side-stepping its decisions, including the 1986 moratorium on commercial whaling.



**HUMANE SOCIETY
INTERNATIONAL**

In the 60 years since the IWC was established, attitudes towards whales and the synergistic role that they play in the marine ecosystems have evolved. From being viewed as expendable resources, whales are now increasingly regarded in many countries as species warranting full protection for ethical, economic, ecological, and scientific reasons. The IWC is being afforded a unique opportunity to reshape its future and it would be unfortunate to allow the short-term interests of a few nations to prevent the IWC from using its considerable scientific expertise to secure the future of the world's whales.



**Animal Welfare
Institute**

In considering the 33 issues of importance, we urge Contracting Governments to examine each one independently, and not as possible components of a trade-off in the development of a package to "fix" the IWC. For countries with no interest in conducting whaling but a sincere commitment to whale conservation, there is no benefit to being complicit in a 'cheap deal' or 'quick fix': the IWC's increasingly well developed conservation work can – and will – continue regardless of whether a compromise over whaling is found. A deal which weighs controls over special permit whaling against the resumption of, for example, coastal whaling is seriously flawed, setting the precedent that manipulation of loopholes in Multilateral Environmental Agreements (MEAs) into 'bargaining chips' should be rewarded. The abuse of Article VIII must be dealt with through diplomatic channels (i.e. trade sanctions) and must be handled independently of any other issues within the IWC. A "quick fix" will neither benefit the whales nor restore the IWC's effectiveness or credibility.



Signatories to this briefing are members of *Whalewatch*, a global network of 40 organizations opposed to commercial whaling on welfare grounds.

www.whalewatch.org

1. Advisory/Standing Committee or Bureau – need for

See issue 22 *Procedural issues – improvements to*

2. Animal welfare

The difficulties inherent in killing large, partly submerged, moving animals by shooting explosive grenades from a moving platform give rise to severe and insurmountable welfare concerns. This is a time of increasing recognition of our responsibility to ensure the welfare of animals, including those killed for human consumption/food. An example of society's collective concern over animal welfare is the creation of recommendations for the humane slaughter of animals for human consumption by the World Organisation for Animal Health¹. It is, therefore, entirely retrograde and inconsistent for the IWC to sanction the killing of sentient mammals using methods with demonstrably protracted times to death and low instantaneous death rates. Due to these concerns, signatories to this briefing believe that the moratorium must be maintained indefinitely to prevent unacceptable animal suffering.

Despite the view of several contracting governments and many NGOs that the welfare implications of whaling should preclude any resumption of commercial whaling, many of us participated in good faith in negotiations over the nature and extent of animal welfare provisions in an RMS. Based on sound science, conditions for killing methods which would minimize suffering to the greatest extent possible were elaborated including, but not limited to, specifications over: weaponry; hunting conditions (i.e. maximum sea and weather states); limitations over pursuit time; presence of independent observers; and maximum shooting distance. The necessity to revise the criteria for determining insensibility and death was of importance to many members, as was the need for accurate, full and mandatory reporting of welfare data for each animal struck. Despite these attempts to devise animal welfare provisions which, whilst still far from ideal, would at least offer an improvement on the current situation, the whaling nations made it clear that they would not entertain binding animal welfare provisions as part of an RMS.

Reiterating our belief that a resumption of commercial whaling is indefensible on welfare grounds, we further suggest that contracting governments make clear in their comments that acknowledgement of the IWC's competence and mandatory oversight for animal welfare – both in the context of lethal and non-lethal uses of whales - is an essential component of discussions over the IWC's future.

3. By-catch and infractions

The Scientific Committee should be encouraged to continue and expand its work on bycatch and suitable funds should be made available to promote well focused studies into this major threat to cetaceans. Recommendations should be sought from the Scientific Committee, including in the context of development of mitigations and management plans. The accurate quantification of bycatch is particularly pertinent to the total catches over time provision of the RMP, allowing that all anthropogenic removals are comprehensively included in any catch-quota calculations.

See also issue 8 *Compliance and Monitoring*

4. Climate change

Climate change is as much a threat to marine animals as to terrestrial species. It greatly increases the risk of extinction for the most vulnerable populations and species and introduces very significant questions for all others. Measurable shifts in species distributions are already occurring and there are

¹ The OIE is the intergovernmental organisation responsible for improving animal health worldwide. It is recognised as a reference organisation by the World Trade Organization (WTO) and, as of January 2008, has a total of 172 Member Countries and Territories. The OIE maintains permanent relations with 36 other international and regional organisations and has regional and sub-regional Offices on every continent. Of the 79 members of the IWC (as of May 2008), 65 are members of the OIE, including Norway, Iceland and Japan. http://www.oie.int/eng/OIE/en_about.htm?e1d1

serious concerns about rapid changes in key feeding grounds for many species and populations at the poles.

The IWC agreed to support a workshop looking at the effects of climate change on cetaceans, scheduled for March 2009. This is a good start and the workshop will undoubtedly define further key research that the Commission should urgently support. At the same time, the Commission needs to fully take into account the scale and implications of this new risk to cetaceans and increase its efforts towards their conservation in recognition of this. This should include the development of conservation/action plans that fully take this new but substantial risk into account.

Climate change raises an entirely new suite of questions regarding the capacity of the RMP to absorb the effects of environmental variability on cetacean populations and this must be directly addressed by the Scientific Committee. The scale of this threat is so great that it has the potential to be a strong argument against any avoidable losses from populations, including commercial takes.

5. Civil society (involvement of)

Effective conservation depends not only upon the commitment and cooperation of Parties to relevant agreements, but also upon the buy-in and input of Non Governmental Organizations (NGOs) who provide unique expertise and represent the interests of public stakeholders.

The principles of transparency and public participation which are reflected in the 1992 Rio Declaration, Agenda 21, and the Aarhus Convention on Public Participation, are increasingly being incorporated into regional fisheries management organizations as well as other conservation agreements such as CITES.

Greater public involvement in the IWC through the participation of NGOs would:

- (1) Enhance the public's understanding of the IWC's conservation and management regimes;
- (2) Improve the quality of decision-making by increasing the information and perspectives available to Contracting Governments; and
- (3) Provide accountability of decision-making through public scrutiny.

6. Coastal whaling (i.e. within EEZ)

In recent years, discussions aimed at reaching a negotiated settlement at the IWC have focused on permitting a resumption of whaling in Japan's coastal waters in return for some concessions by Japan on its scientific whaling. In parallel to these discussions, the government of Japan has claimed for over 20 years that four of its coastal towns have a longstanding history of, and dependence on, Small Type Whaling (STW) of minke whales in their coastal waters; that the moratorium caused financial hardship and cultural disintegration in those towns; and that the IWC has the ability and responsibility to alleviate these problems with a coastal quota of minke whales. It is likely, therefore, that discussion of "coastal whaling" in the package will focus on a request from Japan to permit coastal whaling by these towns; either by directly lifting the moratorium, or by creating a new legal category in the Schedule of "community based" whaling.

The creation of a new category of STW/community-based whaling, and the full or partial lifting of the commercial whaling moratorium would set a terrible precedent in that it would;

- Encourage other countries or territories with coastal whaling communities to use defiance of the moratorium, or abuse of the ASW category, as leverage to secure a STW quota;

- Lack an appropriate management scheme containing provisions for robust Monitoring, Supervision and Control, as well as the implementation of the RMP, leaving the IWC with no more control than it currently has over scientific whaling.
- Pose unique practical challenges involving small vessels below the size that would normally require them to carry a fisheries observer or inspector and which may hunt on an opportunistic basis, making it difficult to place observers for all hunts;
- Legally allow other nations to hunt the whales if a quota were awarded, since the ICRW would not allow limitation of whaling quotas to the Japanese communities, only to stocks or populations;
- Target whale populations already heavily impacted by largely unquantified anthropogenic threats (by-catch, noise, ship strikes, pollution etc) and fail to take these removals into account;
- Threaten the current ban on international trade in whale products by CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora). The CITES ban is only in place because of the IWC moratorium.

Moreover recent NGO research suggests that Japan's proposals for a quota for its four coastal communities are full of misrepresentations and could cause, not alleviate, economic harm to the four communities, who are currently benefiting economically by participating in scientific whaling. An analysis of Japan's STW proposal submitted for discussion at IWC/60, demonstrates that, if implemented, whaling companies would no longer be paid for their participation in the hunt (they currently participate in JARPNII); whale meat could not be transported from Ayukawa (where the hunt is – and would be – centered) to the other towns; local governments would no longer be permitted to sell minke whale meat to local residents and businesses; and those businesses would not be able to sell whale meat to customers and tourists. Furthermore, in addition to participating in JARPNII, the towns are also currently conducting commercial whaling of Baird's beaked whales and large and often grossly unsustainable numbers of small cetaceans. For example, c17,000 Dall's porpoises are taken in Japanese hunts each year with the meat sold commercially, often mislabeled as whale meat. It is far from clear how these commercial operations could be separated from a community-based minke whaling operation that would theoretically have no commercial elements.

7. Commercial whaling moratorium

In 1972, the Stockholm Environment Conference called for a 10 year moratorium on commercial whaling because the IWC was issuing unsustainable quotas, there was evidence of massive under-reporting, and little to no enforcement. Ten years later, in 1982, the IWC members finally agreed to a Schedule Amendment establishing such a moratorium. To date, the moratorium is the single most important conservation measure adopted by the IWC.

In adopting Schedule Paragraph 10(e), the Commission expressed its desire for an indefinite pause in whaling for commercial purposes. The verbatim record of the relevant Plenary sessions shows that two main reasons were given for the pause: to provide an opportunity to consider new regulations for commercial whaling and to give depleted populations the chance to recover. To date, neither objective has been met.

The IWC, despite years of trying, has never been able to agree an RMS that would adequately protect whales. Furthermore, the Scientific Committee is still far from completing the *comprehensive assessment* of the consequences of the moratorium that it was to have made by 1992. There are two reasons for this:

Firstly, because commercial whaling has never actually ceased, the moratorium never came into full effect. Norway has conducted substantial commercial whaling operations under its objection to the

moratorium decision; Japan has conducted unregulated and escalating commercial whaling under special scientific permits in the North Pacific and Southern Ocean; and Iceland has conducted both special permit, and commercial, whaling in the North Atlantic. Secondly, the scientific methods to conduct the assessment of whale populations remain inadequate (see issue 24 *RMP*).

Now is not the time to consider overturning, or limiting the scope of the moratorium. Instead, it needs to be given a proper opportunity to work. This can only be achieved if members abide by the intent of the moratorium and stop killing whales for commercial gain. Since certain countries persist in circumventing the intent of the moratorium, the IWC should address the loopholes that allow for continued commercial whaling, namely removing the commercialization of whale products from Article VIII and removing the objection section from Article V. Only then can the effect of the moratorium truly be gauged.

8. Compliance and monitoring

Compliance

International agreements to conserve and manage fisheries have little effect without compliance and enforcement schemes. To be effective, these must include: (1) a transparent and neutral body to review alleged infractions and make recommendations for penalties; (2) penalties of sufficient gravity to deter non-compliance; and (3) a binding dispute mechanism to address conflict or disagreement amongst the parties regarding compliance.

The IWC lags far behind most modern MEAs, including almost all Regional Fisheries Management Organisations (RFMOs), with respect to enforcement of its provisions. Most RFMOs have established rules and compliance mechanisms to ensure effective implementation and enforcement of the agreement. By contrast, the IWC has no compliance mechanisms, no definitions of infractions, no dispute resolution mechanisms, and its Infractions Sub-Committee is powerless to investigate or punish violations. Member nations are therefore left with using diplomatic pressure and domestic legislation in the form of trade sanctions as means to bring other member nations into compliance. Although these options have been used as effective compliance tools in the past, IWC governments currently appear reluctant to use these options, presumably because of potential adverse international political ramifications.

Many fisheries agreements require parties to adopt national legislation that makes breaches of the agreement a punishable offence and to prosecute and sanction violators under these laws in a way that deters future violations (see, e.g., CCAMLR, FAO Compliance Agreement, Straddling and Migratory Fish Stocks Agreement, MHLC Convention). In addition, many RFMOs and other agreements such as the Montreal Protocol and CITES, have created international compliance mechanisms that include trade restrictions and loss or reduction of privileges for violations of the regulations (see CCAMLR, CCSBT, ICCAT, NAFO, FFA, AIDCP, ICCAT)².

Many members of the IWC, including the whaling nations, are parties to CCAMLR, CCSBT, IATTC, AIDCP, ICCAT, FFA and NAFO. Consequently, they have proven themselves willing to participate in the control and monitoring of fishing activities from the time a vessel leaves the dock until after the entry into the market of the catch. Furthermore, they submit to compliance measures that include trade restrictions and quota reductions, as well as to high seas inspections by non-flag states. Despite their acceptance of best practice in many of these regimes, the whaling nations have

² AIDCP- Agreement on International Dolphin Conservation Program; CCAMLR - Convention for the Conservation of Antarctic Marine Living Resources; CCSBT - Convention for the Conservation of Southern Bluefin Tuna; CITES – Convention on International Trade in Endangered Species of Wild Fauna and Flora; FAO Compliance Agreement - U.N. Food and Agricultural Organization Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; IATTC - Inter-American Tropical Tuna Convention; ICCAT - International Convention for the Conservation of Atlantic Tuna; NAFO - Northwest Atlantic Fisheries Organization; FFA - Fisheries Forum Agency; MHLC Convention - Multilateral High-Level Conference: Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean Straddling and Migratory Fish Stocks Agreement - U.N. Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks

staunchly opposed the application of such Monitoring, Control and Surveillance and (MCS) measures in the IWC. It is this intransigence to accept in the IWC what is common practice elsewhere, that led to the demise of the RMS negotiations; not unreasonable demands from the non-whaling nations.

Before any contemplation of a resumption of whaling, the IWC must restart the process of establishing strong and credible MCS mechanisms.

Monitoring

In recent years, many fisheries agreements have developed comprehensive MCS programmes to respond to rising concerns over seriously depleted fisheries resources and illegal, unregulated and unreported (IUU) fishing – the same issues faced by the IWC throughout its long history.

Deploying a range of complementary monitoring, observation, and reporting obligations, fisheries agreements are using MCS programs to verify legal fishing, detect and punish illegal fishing and ensure that catch levels are sustainable. All the mechanisms used, including Vessel Registration, Vessel Monitoring Systems (VMS), Observer Schemes, Inspection, Tracking of Trade and Catch Documentation Schemes are relevant to the IWC and must, at the very least, be prerequisite to any possible resumption of commercial whaling in the future.

9. Conservation Committee

The Conservation Committee has already demonstrated its value in starting a process to address important issues such as ship strikes, and has an important role in developing mitigation approaches to international whale conservation challenges. Such issues should not be contentious and therefore should represent an opportunity for contracting governments to work collaboratively towards shared conservation objectives. The Committee's valuable work should be encouraged and further invested into by the IWC. Further collaboration with the work of the Standing Working Group on Environmental Concerns of the Scientific Committee would benefit the assessment of priorities for the Conservation Committee.

Clarifying the role of the CC relative to the SC would also be helpful. For example, the CC could be the conservation implementation wing of the Commission, with the SC as the expert adviser. The CC should thus seek to develop and then implement conservation plans – well defined mitigative actions for specific threats (such as ship strikes) or specific threatened populations or species. It should seek advice from the SC on specific topics and/or assist the SC by facilitating funding of particular initiatives.

10. Conservation management plans

We strongly welcome this initiative by the Government of Australia at IWC60. We propose the Conservation Committee (with appropriate input from the Scientific Committee) as a suitable vehicle for discussion and recommendation of action plans to address, with appropriate funding, key issues threatening cetacean species, populations or habitats (see also issue 9 *Conservation Committee*).

11. Convention (purpose of)

The ICRW's Preamble stated the signatories' objectives at some length and, by 1946 standards, used some forward-looking language. It was one of the earliest international environmental instruments to give formal recognition to an obligation to "future generations". Taken in its entirety, therefore, there are many more preambular references to "conservation" than to the conduct and management of whaling; even the mandate to manage whaling is expressed in conservation terms.

Keeping in mind the Convention's objectives of conservation and development of viable industry dependent on the use of whales, the most lucrative and sustainable whale industry today is whale watching, not catching. The Convention's purpose must, therefore, be allowed to naturally evolve (or 'modernise') to protect cetaceans in an increasingly degraded and changing marine environment, and to provide advice for the sustainable and humane management of their non-lethal use.

12. Co-operative non-lethal research programmes

We fully support and welcome the Government of Australia's proposal for co-operative non-lethal research programmes for cetaceans. We also encourage that research should be non-invasive.

13. Data provision

We encourage Parties to make data freely available. The IWC has a history of hidden data (for example Russian whaling records) and convoluted arrangements for data sharing. Public confidence will be increased if it is clear that all parties are cooperating openly. Data provision must include DNA databases that arise from whaling activities – i.e. data should be freely shared to help monitor sources of whale products, and full welfare datasets (see issue 2 *Animal Welfare*)

15. Ecosystem-based approach to management

The Japanese have used Ecosystem-based management (EBM) as a rationale for needing to cull whales. They claim that protecting whales is unbalanced, outdated single-species management and leads to fish declines and that culling predators (whales) is justified by EBM. This is a gross misinterpretation of EBM and it has been deliberately abused by the pro-whaling lobby to justify the culling of commercially valuable marine predators allegedly to protect fish stocks; no legitimate science supports this argument. Culling predators is, using Japanese arguments, as much "single-species management" as protecting them. True ecosystem-based management considers multiple species and their interactions and seeks to manage resource-use in this context. The complex interactions of whales, their prey, their competitors, and their environment must be considered when determining how to manage resources and given the heavy exploitation of whales in the recent past, it is vanishingly unlikely that culling them today meets any standards of EBM. Culling predators is in fact rarely acceptable under EBM - the conditions that must be met are stringent and the Japanese "scientific" whaling proposals have never met them.

The self-serving theory that whales are consuming 'our' fish, and so need to be culled, has been disproved many times over. It is abundantly clear and widely recognized by both scientists and policy makers that depletion of global fish stocks is due to commercial fisheries, not whales. To give further credence to this issue would be to undermine the scientific credibility of the IWC.

16. Environmental threats to cetaceans

When the ICRW was signed in 1946, few imagined that it would be the environment that would present the greatest challenge to cetacean conservation. Cetaceans around the world now face the combined threats of climate change, ozone depletion, chemical and noise pollution, over-fishing, by-catch, ship strikes and habitat destruction.

The effective conservation and management of cetaceans must include the long term, multi-disciplinary study and understanding of these threats to cetaceans and the marine environment, in order to develop appropriate mitigation strategies, as well as to meet the total catches over time provisions of the RMP. While the Scientific Committee has made some progress in this area, much more can be done. To date, the work of the Environmental Concerns Working Group has been

restricted by its limited share of the Scientific Committee budget, which has favoured RMP-related activities geared towards catch quota derivation - despite the moratorium.

In 1993, the IWC decided that the evaluation of environmental threats was a priority, "...in order to provide the best scientific advice for the Commission to determine appropriate response strategies to the new challenges". Fifteen years later, the IWC has made only small steps towards assessing these threats, and no progress towards determining appropriate response strategies. The IWC should therefore recognise that environmental degradation is the greatest threat to cetacean populations worldwide, and a fundamental impediment to any resumption of commercial whaling if it is to be responsibly managed. The IWC should take immediate steps to truly prioritise the issue, including the expansion of the Scientific Committee's work and budget to address environmental threats.

17. Ethics

'Ethics' is defined as the branch of philosophy dealing with values relating to human conduct and are principally identified with respect to a particular culture or group of people. With respect to whaling the consideration of two applications of ethics are applicable; environmental ethics and bio-ethics.

Environmental ethics

According to Kato (1991), environmental ethics has three objectives: (1) To establish a standard of behaviour necessary for the survival of the human race in a finite global environment; (2) To establish a standard of behaviour necessary for the survival of the future generations of the human race; and (3) To establish a standard of behaviour that also takes other creatures into account.³ The practice of whaling does not meet objective one, relying as it does, according to acclaimed marine biologist and ecologist Sylvia Earle, on "...mobilizing large ships consuming large amounts of fuel with large crews traveling large distances to satisfy the tastes of a small number of consumers..."⁴. Earle does not consider that whaling "qualifies as a reasonable use of resources, let alone as a 'sustainable' enterprise."

Objective two merits consideration of the increases in global population and associated expansion of meat production. Global meat production is now an undisputed cause for concern in terms of both sustainability and environmental change and destruction. Whaling nations claim that meat procured from whaling would offer alleviation from these concerns but the claimed contribution to world food security that whaling could make is seriously flawed; dependence by a growing human population upon long-lived slow-breeding mammals such as whales would lead to increasing pressures for higher quotas to meet demand, likely over-exploitation followed by economic extinction, followed by a food shortfall for the people concerned. Reliance on whales as solution to world food security is not a long-term prospect for either whales or people.

In the context of whaling, objective three requires consideration of the role of whales in the marine ecosystem and the impacts of whaling upon it. The great whales have a significant role in the global marine ecosystems and declines in whale populations due to over-hunting can reasonably be expected to negatively impact many other marine species. Although presently poorly understood, changes in the abundance of many species following previous over-exploitation of whales in the Southern Ocean suggest that whales play critical top-down stabilizing role in many delicately balanced marine food chains. Furthermore, whaling presents risks to largely pristine areas of the world, including fuel and noise pollution and ship strikes. For these reasons, whaling cannot be said to meet Kato's third objective of environmental ethics.

³ Kato, Hisatake. 1991. *Introduction to Environmental Ethics*. Tokyo, Maruzen. (Japanese language).

⁴ Op Ed in Los Angeles Times, 3rd December 2007, by P. Heller, "Japan's Whaling Shame"

Bioethics

The moral and ethical concerns over the killing of whales are intrinsically linked to the welfare problems inherent in whaling (see issue 2 *Animal welfare*). The whaling nations are quick to claim that whales enjoy a far better quality of life than intensively farmed terrestrial animals killed for meat; this is true but it does not negate the ethical obligation to protect whales from inhumane slaughter. In a paper to IWC58 Japan acknowledged that modern whaling faces a 'catch 22' choice in aspiring to the humane slaughter of whales:

*"A grenade harpoon with a large dose of gunpowder would certainly improve the rate of instantaneous death, but it would not achieve the objective of securing meat for human consumption. If food is wasted, it is also disrespect for the animal killed. Neither would it be practical to demand unreasonable efforts on the part of the whalers for the sake of small improvements in the humane killing of the whales, since they are working in the severe conditions of the Antarctic where a plunge in the icy waters would result in a quick death by freezing."*⁵

The next logical question must therefore be 'can the benefits from whaling be justified from the suffering which must be *knowingly inflicted* on whales in order to reap these benefits?' As there is clear current demonstration that the world functions without the products of commercial whaling, it must be deemed an optional or non-essential practice. There can be no ethical justification to knowingly subjecting whales to the unavoidable suffering of whaling when the only clear benefits are economic profits and satisfaction of the dietary desires of a small proportion of the population in a handful of countries.

19. Frequency of meetings

See issue 22 *Procedural issues – improvements to*

20. Marine Protected Areas (MPAs)

MPAs have proven extremely valuable in allowing recovery of damaged ecosystems and also provide a baseline by which to quantify degradation in non-protected areas. The IWC, through its Scientific Committee, can help to identify areas that are of particular importance to cetaceans. These sites can be made candidates for protected status and then the IWC could play a role in developing management regimes. Ideally MPAs for cetaceans should form a network to protect whales on essential breeding and feeding grounds. The IWC should also strive for greater collaboration with other bodies engaged in the creation and management of MPAs, to monitor the effects on cetaceans and, where appropriate, provide management advice to improve MPA protection for cetaceans.

Whale sanctuaries are also especially important in ensuring the absolute protection of whales as a resource upon which whale-watching industries are dependent.

21. Objections and Reservations

Article V of the ICRW permits Contracting Governments to lodge objections; to exempt themselves from the effect of a new regulation at the time of its adoption. The Convention does not explicitly grant a right to take reservations, but several have been taken to the Convention. Norway and the Russian Federation maintain objections to the 1982 moratorium decision and are not bound by it, whilst Iceland took a controversial reservation to the moratorium when it rejoined in 2002.

⁵ IWC/58/WKM&AWI Information Paper from Japan: 'Ethics of Whaling' Hayashi, Y., Morishita, J., and Ohmagari, K.

By allowing Contracting Governments to take objections to adopted regulations and/or take reservations at the time of ratification (or re-ratification), the IWC awards States free will to reject – and to therefore undermine - management elements that they do not wish to be bound by.

The only way to prevent such abuse of future regulation of whaling is to amend the Convention to remove the right of Governments to take objections to any of its parts or provisions, and to explicitly forbid reservations. This move would be in line with the trend in modern treaties to prohibit the ability to take reservations, for example reservations are forbidden by the CCSBT, FFA and MHLC. In conjunction with this move, Norway and the Russian Federation should be requested to withdraw their objections to the moratorium, and Iceland to withdraw its reservation to the same.

22. Procedural issues – improvements to

Many NGOs work in other multilateral environmental agreements as well as the IWC, including CITES, CMS, CBD and a variety of RFMOs. We have long been frustrated by many of the working practices of the IWC, as well as its Rules of Procedure which, we believe, are old-fashioned and obstructive to transparency, cost effectiveness, participation by civil society, and efficiency. We were therefore pleased with some of the progressive steps discussed and agreed in Santiago, welcome this review of procedural issues and intend to provide more input to interested governments in due course.

23. Research under special permit

Article VIII of the ICRW was clearly not intended for the provision of large-scale, open-ended hunts with products sold commercially.⁶ It is imperative that this loophole is closed since its existence entirely undermines the IWC's ability to control or limit whaling. One potentially viable step towards dis-incentivising the use of Article VIII to circumvent the moratorium would be for the IWC to prohibit the sale-for-profit of 'by-products' from permit hunts.

Whilst we welcome the new Scientific Committee protocol to conduct expert reviews of the scientific merit and necessity of special permit hunts, we caution against over-reliance on this process and note that its value is severely limited by the fact that the proponents of lethal permits will remain entirely at liberty to ignore the conclusions and recommendations.

24. Revised Management Procedure (RMP)

Confidence in the robustness of the RMP continues to be undermined by lack of certainty over the data input into the model. Discussions at IWC SC60 reflected new concerns that underestimation of the effects of environmental variability may impact baleen whale population growth and recovery rates more negatively than previously thought.

Furthermore, the accurate estimation of whale population abundance is seriously limited by the inherent difficulties – and expense – of observing and quantifying these wide-ranging, deep diving marine mammals. Differing analytical techniques also frequently lead to large variations in apparent abundance, as evidenced by the current uncertainty over the size of the Antarctic minke whale

⁶ The ICRW borrowed its exceptional Article VIII rule on whaling for 'scientific purposes' from a precursor text - Article 10 of the 1937 International Agreement for the Regulation of Whaling. The ICRW actually goes back to a draft by Norwegian diplomat Birger Bergersen (1891-1977), first chairman of the IWC, who also participated in the drafting of the 1937 Agreement. According to the recollection of Professor Lars Walloe, the current head of Norway's delegation in the IWC Scientific Committee, in Bergersen's mind 'the number of whales a country could take for science was less than 10; he didn't intend for hundreds [let alone thousands] to be killed for this purpose.' Sand, Peter H. Japan's 'Research Whaling' in the Antarctic Southern Ocean and the North Pacific Ocean in the Face of the Endangered Species Convention (CITES), *Review of European Community and International Environmental Law (RECIEL)*, Volume 17, Number 1, April 2008, pp. 56-71(16).

population. Potentially large (and insurmountable) errors in the data put into the RMP represent a fundamental challenge to confidence in its ability to guarantee safe management advice.

25. Revised Management Scheme (RMS)

The concept of the Revised Management Scheme (RMS) was first adopted by the Commission in a Resolution passed at its 44th Annual Meeting in 1992. The Resolution accepted the Revised Management Procedure (RMP) as completing the main scientific component of the RMS. The 1992 Resolution further specified the following further elements of the RMS: a fully effective system of observation and inspection; guidelines for conducting surveys; minimum standards for data; and arrangements to ensure that RMP catch limits are not exceeded over time. The latter issue relates to the problem of catches outside the RMP, such as whaling under scientific permit, illegal and/or non-IWC whaling, and by-catches as a part of calculating all anthropogenic impacts upon populations. The basic structure of the RMS was agreed in a Resolution adopted by consensus by the Commission in 1994, and confirmed in subsequent consensus Resolutions adopted in 1996 and 2000.

Signatories to this briefing believe that commercial whaling should remain banned for the numerous reasons outlined in this document. However, in the event that the IWC attempts to sanction any new category of whaling, including “community based coastal whaling”, an RMS or similar management type scheme would first have to be adopted into the Schedule. In those circumstances, an RMS for coastal or community type whaling would, at an absolute minimum, need the following binding elements:

- **AN RMS MUST PROVIDE AS MUCH PROTECTION AS THE MORATORIUM**
As agreed in previous consensus Resolutions, the RMS should set all catch limits to zero by default, and not allow changes other than by a $\frac{3}{4}$ majority Commission decision to enter alternative limits into the Schedule. No element should be entered into the RMS that could be construed as authorizing whaling under any other circumstances.
- **NO AUTOMATIC LINK TO MODIFYING THE MORATORIUM OR TO ADDING A NEW CATEGORY OF COMMUNITY BASED WHALING**
The moratorium cannot be modified, nor a new whaling category (such as community based whaling) introduced, before an effective RMS has been adopted and is in force. Such an RMS must provide a level of protection that is equal to or stronger than the moratorium, and the objection period (90-210 days) must have expired. If the moratorium were lifted partially or fully before then, there would be no catch limits in effect, zero or otherwise, and unlimited whaling would be allowed. It would become very hard for the IWC to limit catches ever again.
- **BINDING AGREEMENT ON SCIENTIFIC WHALING**
A binding Protocol to the Convention preventing the use of Article VIII to bypass catch limits must be adopted before an RMS can be agreed to or implemented. The previously proposed “Code of Conduct” for “scientific whaling” is not acceptable, since it is not binding and could be mis-used to legitimize scientific whaling. Any agreement should include a prohibition on the commercial sale of products from scientific permit whaling.
- **BINDING AGREEMENT ON ANIMAL WELFARE COMPONENTS**
The strictest possible criteria to decrease, to the greatest extent possible, the suffering inherent to whaling must be a mandatory provision within any RMS (see issue 2 *Animal welfare*).
- **NO RESERVATIONS ON THE RMS**
Reservations on the RMS by new or existing members should be precluded by appropriate binding measures, including but not limited to an IWC agreement that accessions to the ICRW with reservations on the RMS will not be recognized.

- **INTERNATIONAL DNA REGISTER**
There should be an international diagnostic DNA register held by the IWC that enables the unambiguous detection of products from illegally killed whales. The Scientific Committee and any Contracting Government should have unfettered access to the register.
- **AGREED VERSION OF THE RMP WITH SAFEST TUNING**
The RMS should restrict consideration of non-zero catch limits to those calculated by the Scientific Committee using the agreed, published version of the RMP (including the tuning level of 0.72 and the protection level of 0.54) adopted into the Schedule, and only using independently verified abundance estimates as input. RMP limits must be adjusted downwards to account for other anthropogenic, non-natural removals from populations including the longer term impacts of pollution, climate change, by-catches, ship strikes, scientific permit catches and non-RMS whaling. Any resulting negative limits should constitute an obligation to reduce these other removals.
- **SUPERVISION AND CONTROL**
The Schedule should prohibit whaling by any vessels not participating in a fully effective and transparent IWC-approved observation and inspection scheme that provides supervision in accordance with the best international practice. There must be a robust compliance regime (including a Compliance Committee to assess infractions, and a dispute resolution mechanism) through which the IWC is able to impose penalties of sufficient gravity to deter acts of non-compliance, such as exceeding catch limits. Available penalties should include but not be limited to the non-renewal or revocation of catch limits, such that they revert to zero.
- **COSTS**
Operational costs of regulating coastal or community based whaling or any other forms of commercial whaling, including observation and inspection, and the costs of ensuring compliance with regulations, such as data and reporting requirements, are costs of doing business, and should be borne by the Contracting Governments and industries concerned, not by the IWC, whose limited resources should be used for conservation priorities.

26. Sanctions

See issue 8 *Compliance and monitoring*

27. Sanctuaries

See Issue 20 *Marine Protected Areas (MPAs)*

28 Science – role of science and functioning of Scientific Committee

As part of the discussions on the Future of IWC at IWC60, the Commission agreed to establish an Intersessional Correspondence Group on Issues Related to the Scientific Committee. We believe that this process provides an important opportunity to review the Scientific Committee, compare it to other relevant scientific advisory bodies, and to seek necessary reforms. However, it does not go far enough in seeking ways to improve both the processes and the substantive outputs, of the Scientific Committee.

We are particularly disappointed that consultation is limited to contracting governments and therefore excludes many members of the international community who have extensive experience of both the IWC's Scientific Committee (as Invited Participants) and equivalent scientific advisory bodies in other fora. We urge Contracting Governments to formally request that this consultation process be extended to involve NGOs and other non-governmental experts.

29. Secretariat – implications for role of/expertise

We note that a review of the role of the Secretariat has not been conducted for many years. We suggest that, in their consideration of the future of the Commission, contracting governments look to other Multilateral Environmental Agreements, particularly those under UNEP, to consider how a professional secretariat can best meet the needs of MEAs in the 21st century.

30. Socio-economic implications

See issue 17 *Ethics*

31. Small cetaceans

More than 85% of cetacean species are 'small cetaceans' - toothed whales, dolphins and porpoises which are not classified in the Schedule (except the sperm whale and North Atlantic bottlenose whale) and generally considered in a separate category to baleen whales by the IWC.

Hundreds of thousands of small cetaceans are dying each year around the world from direct hunting, interaction with fishing operations and threats to the marine environment including habitat destruction, climate change, ozone depletion, pollution and over-fishing. Some populations, including the Dall's porpoises and striped dolphin in Japan's coastal waters are being driven towards extinction as a result of unregulated or inadequately regulated directed hunts. In 2007 the first extinction of a cetacean species, the Baiji or Chinese river dolphin, was reported by scientists. The Mexican vaquita, numbering at most 150 animals as a result of mortalities in gillnets, could be next.

The small-cetacean sub-committee of the Scientific Committee has formed an integral part of the scientific remit of the IWC for more than half its lifetime, and has carried out objective scientific review of every small cetacean species in every part of the world. A voluntary small cetacean fund operates to ensure the participation of developing country scientists. The sub-committee plays a unique role which could not be undertaken by any other organisation in the world.

The IWC's work on small cetaceans has played a major role in bringing international attention to some of the most pressing cetacean conservation issues, and has helped to achieve some major successes including massive reductions in the number of animals killed in fishing gear. The work of the sub-committee and subsequent Resolution on Dall's porpoise in 1990, the first Resolution ever on a small cetacean species, helped persuade Japan to reduce the catch from over 40,000 animals in 1988 to less than half that number in 1991. Additionally, studying small cetaceans contributes valuable information relevant to all cetaceans, including the effects of threats to the marine environment.

Although other regional and national bodies address small cetacean conservation and welfare including regional agreements under the Convention on Migratory Species, the IWC is the only international body with the expertise to assess and mitigate the threats to small cetaceans at a global level. Whilst some countries still claim that the IWC is not competent to discuss small cetaceans, the IWC has passed numerous Resolutions on small cetacean species, demonstrating its desire and competence to constructively contribute to improving the conservation and management of these species.

Cooperative development of this work, including additional financial resources to the small-cetacean sub-committee, would be enormously beneficial to the conservation of small cetaceans, particularly in developing countries that do not have adequate resources or expertise and are not covered by regional agreements.

32. Trade restrictions

Following decades of over-exploitation which reduced some whale populations by over 90%, the IWC banned commercial whaling on a number of whale species from the 1960s onwards. It consolidated these species-specific bans with a global ban on commercial whaling of all great whale species (the 'moratorium') in 1986/7. CITES has deferred to the IWC on issues relating to whale management since it entered into force in the 1970s. CITES responded to the IWC's early bans on commercial whaling by listing each species on CITES Appendix I, prohibiting international trade for primarily commercial purposes. Since the moratorium, CITES has protected all great whale species from international commercial trade.⁷ Japan, Norway, Iceland, St Vincent and the Grenadines, and Palau hold reservations to the Appendix I listing of several whale species.

The relationship between the IWC and CITES has been codified in a series of Resolutions consolidated in RC 11.4 (Rev. CoP12) which recognizes the IWC's primary competence for the management of whales, notes the risk of illegal trade, and recommends "that the Parties agree not to issue any import or export permit, or certificate for introduction from the sea, under this Convention for primarily commercial purposes for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling". The IWC has responded with eight Resolutions thanking CITES for its co-operation and calling for improved mechanisms to prevent illegal trade. The most recent IWC Resolution, adopted in 2007, affirms that the moratorium on commercial whaling remains in place and that the reasons for the moratorium are still relevant; considers that the IWC has not yet completed the necessary measures to regulate commercial whaling and states that any weakening of existing restrictions on trade under CITES could have significant adverse effects on the moratorium on commercial whaling and increase threats to whales. CITES also reaffirmed the deferential relationship in a 2007 decision that states "No periodic review of any great whale, including the fin whale, should occur while the moratorium by the International Whaling Commission is in place" (Decision 14.81).

Despite this, in May 2008, Norway and Iceland exported whale meat to Japan under their CITES Reservations. A long list of NGOs signed a statement at IWC60 in Santiago, expressing deep concern about this trade; expressing the view that "the trade showed disregard for the will of the international community to protect whales from commercial exploitation" and was "wholly incompatible with the spirit of compromise sought by the Chair at this meeting to facilitate discussion of the Future of the IWC". We repeat here, the request made in that statement with respect to the negotiation of a package - that Contracting Governments holding reservations to the Appendix I listing of whales immediately declare their intent to remove their reservations as a pre-requisite to any further discussion on the future of the IWC.

33. Whalewatching/non-lethal use

Whalewatching is estimated to be a \$1.25 billion industry worldwide, enjoyed by over 10 million people in more than 90 countries each year, making it by far the most important economic use of whales in the 21st century. Whalewatching must be carefully managed to ensure it is sustainable and does not unduly disturb, or in any other way negatively impact upon the whales being watched. The IWC is the international body with oversight and competence to monitor this industry, to ensure sustainable and humane standards are maintained, and to provide guidance to and linkages between whale watching industries worldwide. Moreover, the IWC is well placed to co-ordinate the integration of whalewatching with science, making use of valuable platforms of opportunity to increase our understanding of whale populations, as well as their social groups and individual behaviours.

⁷ with the exception of the West Greenland stock of minke whales which remains on Appendix II.