

Response to Chairs' Suggestions on the Future of the International Whaling Commission (IWC)



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Signatories to this briefing call upon all Contracting Governments whose priority is the protection of whales to reject the approach proposed in the document 'Chairs' Suggestions on the Future of the IWC' (IWC/M09/4 – Appendix 1).

Overview

Critically, the Chairs' suggestions do not incorporate a binding long-term mechanism to resolve two fundamental problems inherent in the International Convention for the Regulation of Whaling (ICRW), namely, reservations (Article V) and special permit whaling (Article VIII). Without resolving these issues in a binding agreement no package can claim to assure an improvement on the status quo for whales.

Approval of the proposed five year interim package ('Stage 1') would result in a deeper crisis at the IWC in 2014. It is likely that Japan would seek to maintain the 'interim' coastal whaling legitimised in 2009 and probable that it would defeat a Schedule amendment to make permanent the South Atlantic Whale Sanctuary unless further coastal whaling quotas were awarded. Moreover, at that time, Japan and its allies could seek additional concessions through similar tactics.

The Chairs' suggestions lack perspective and are an over-reaction to the rhetoric that the IWC is 'broken', requiring emergency intervention. The proposed five year period would deliver short term, non-binding and superficial gains to anti-whaling nations at the expense of legitimising scientific whaling, institutionalising coastal whaling and undermining the credibility of the IWC. It would also irreversibly erode the international ban on commercial whaling.

The piecemeal structure to the options presented is not consistent with the "nothing is agreed until everything is agreed" basis

underpinning the Small Working Group's (SWG) discussions. Despite an IWC-agreed list of 33 elements for discussion by the SWG, the Chairs propose immediate action on only three¹ elements (Japanese small type coastal whaling, research under special permit, and sanctuaries). Though it is unreasonable to expect that each element could have been adequately discussed and debated in the past eight months, the seven additional items in 'Stage 2' are of fundamental importance to *any* agreement. The notion that discussion on these elements can be deferred whilst the IWC sanctions a resumption of coastal commercial whaling is deeply flawed.

In the following ten points we address specific issues of concern pertaining to both the premise and the content of the Chairs' suggestions.

1. The IWC is not at the point of collapse or disintegration

The perceived need for a compromise package is borne out of the false notion that the IWC is dysfunctional, at the point of collapse and requiring urgent resolution at whatever cost. This misconception is the result of a dedicated long-term campaign by the whaling nations to undermine the IWC's decisions, particularly the moratorium, derail attempts to negotiate reasonable agreements including the RMS, and hold the Commission hostage with threats of leaving and establishing an alternative whaling body.

The IWC is carrying out wholly functional and critical conservation work, which continues in spite of disagreement over whaling under special permit and objection. We urge Commissioners to retain perspective and recognise that the IWC and its work would not disintegrate simply because three members claim not to be getting what they want and threaten to leave.

¹ The proposed 'Stage 1' recognition of non-lethal use of whales as a management option for coastal states cannot be considered a new action.

2. The IWC must not allow itself to be held hostage by Japan

The IWC has elected to undertake a process to address and determine its future. Threats from IWC members must not play a role in influencing or fast tracking decisions.

Whaling countries would leave to their own detriment. In the event that these countries sought to establish an alternative body to manage whaling, the international community and United Nations would be extremely unlikely to accept its competence.

Whaling nations choosing to leave the IWC and engage in commercial whaling outside its parameters would subject their whaling activities to an increased likelihood of legal challenge in international court. Such actions would also increase the potential for trade sanctions under national trade and other laws, e.g. the U.S. Pelly Amendment process.

3. The process of negotiating agreement on the future of the IWC is being undermined by ongoing and escalating whaling and trade in whale products

Whilst the Chairs' Approach focuses almost exclusively on delivering solutions to placate Japan, Japan has shown no movement towards conciliation. Japan, Iceland and Norway have all firmly adhered to a 'business as usual' approach to whaling throughout the Small Working Group process. As a consequence, the negotiation process is being made a mockery by ongoing and escalating whaling (see table 1).

Furthermore, the proposal entirely ignores the threat that international trade in whale products poses to the future of whale conservation and the stability of the IWC. Since the SWG process began, international trade in whale products by Norway, Iceland and Japan under their reservations to the Appendix I listing of whales by CITES, has increased (see table 1).

Table 1: Diary of whaling nation 'commitment' to compromise throughout negotiations on the future of the IWC

1/4/2008	Norwegian whaling season starts with a quota of 1,052 minke whales
18/5/2008	Small type coastal whalers in Sanriku complete their JARPNII coastal hunt, killing a total of 60 minke whales
20/5/2008	Iceland's whaling season begins with a quota of 40 minke whales
2/6/2008	70 tonnes of whalemeat (65 tonnes from Iceland and 5 tonnes from Norway) exported from Iceland to Japan
6/6/2008	Japanese factory ship 'Nisshin Maru' leaves port for JARPNII offshore hunt
23/8/2008	Nisshin Maru arrives back in port following JARPNII offshore hunt having killed 59 minke whale, 100 sei whales, 50 Bryde's whales and 3 sperm whales
31/8/2008	Norwegian whaling season ends – 534 minke whales caught
9/2008	Icelandic whaling season ends – 36 minke whales caught
20/10/2008	Small type coastal whalers in Kushiro complete their JARPNII coastal hunt, killing a total of 50 minke whales
18/11/2008	Japanese whaling fleet sets sail to the Southern Ocean whale Sanctuary with a self-awarded 'scientific whaling' quota of up to 935 minke whales and 50 fin whales, despite a Japanese stockpile of 3,300 tonnes of whale meat and the sale of products from 20,000 small cetaceans killed annually in Japan's coastal waters
28/11/2008	Whale meat imported from Iceland goes on sale in Japanese markets
10/12/2008	Government of Norway issues a quota for 885 minke whales in 2009
28/1/2009	Government of Iceland announces annual quota of 100 minke whales and 150 fin whales per year for five years – five times higher than 2008 quota
18/2/2009	New Icelandic Minister for Fisheries confirms annual quota of 150 fin and 100 minke whales for 2009

Disregarding this proliferation of international trade will facilitate further increases in unregulated whaling, and may even stimulate illegal trade, that will further destabilise the IWC. It is untenable to hold serious negotiations on the Future of the IWC whilst Norway, Iceland and Japan persist in trading whale products internationally.

Japan, Norway and Iceland continue to make it abundantly clear that they can and will circumvent the will of the IWC whenever it does not meet their needs. We seriously question how the IWC can hold good faith negotiations when three participating countries are so clearly comfortable and intent on acting unilaterally against the direction of two international treaties, the ICRW and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).



Above: celebrations in the port of Shimonoseki as the Japanese whaling fleet departs for the Southern Ocean. © Clare Perry EIA/WSPA

4. Authorisation of coastal whaling in Japan would undermine and lead to the erosion of the moratorium on commercial whaling

The Chairs' suggestions under element 6 would serve to institutionalise and sanction coastal commercial whaling, and as such could reasonably be expected to lead to a greater number of whales being killed in the mid to long-term. Attempts by the Chairs to *lessen* the commerciality of the hunt by declaring that meat must be 'locally consumed' are futile, since the products would still be sold and traded commercially, violating Schedule Paragraph 10(e). Even if a binding agreement were reached prohibiting the sale of products from whales killed in coastal waters, this would be impossible to enforce as long as whale products originating from JARPAII or JARPNII operations or small whale hunts continued to be legally sold.

Awarding a quota to a country in recognition of the 'unique circumstances that exist for four [Japanese] coastal communities' is an ambiguous exercise which sets an extremely dangerous precedent. Any country with an interest in whaling could reasonably expect to have their own, self-defined 'unique circumstances' recognised. This would result in an exacerbation of poorly or un-regulated whaling and an uncontrolled erosion of the moratorium. Such coastal whaling would exploit populations of whales already most at risk from anthropogenic harm (pollution, by-catch, noise etc).

Furthermore, establishing community-specific coastal whaling quotas is not permitted under Article V(2c)² of the ICRW – catch limits cannot be restricted by nationality. It is also a well-established precedent within international negotiations that individual countries cannot be identified for special treatment or to receive unique benefits that are not available to all countries.

² Article V(2c) [catch limits] "shall not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory ship or land station or to any group of factory ships or land stations;"



Above: canned whale products on sale in Ayukawa, one of the five communities proposed to be in receipt of a coastal whaling quota. © Claire Bass/Environmental Investigation Agency

5. The proposal to permit small type coastal whaling in Japan lacks essential detail

The proposal does not delineate criteria for international oversight of a new whaling operation including agreement on monitoring, control, reporting, enforcement, or handling of infractions and resulting penalties. Such criteria are essential components required for the effective management of any resumption of commercial whaling. Without them, this proposal cannot be seriously discussed.

It is worth recalling the 10 years of negotiations to identify and agree upon such criteria within a Revised Management Scheme (RMS). Those negotiations failed due to the unreasonable freedom demanded by the whaling nations. Consequently, there is no reason to imagine that an effective agreement on the monitoring and enforcement of the proposed coastal whaling could be successfully concluded at this time. An agreement in principle to sanction coastal whaling without these elements first in place would be wholly premature and unacceptable.

6. The proposal to award an interim quota for minke whales in Japanese coastal waters undermines the IWC as a credible body lead by science

The Small Working Group agreed that one key objective of any package must be to *'Provide for the recovery of depleted or endangered stocks based on the best available science.'* However, on the very

same page of the Chairs' Report, element 6 proposes the awarding of an interim quota for minke whales in Japanese coastal waters.

It is proposed that this quota would be agreed, by schedule amendment, based on the Scientific Committee's (SC) 'interim advice concerning the total removals of O and J-stock minke whales.' However, as it is extremely unlikely that the SC will provide consensus advice, Commission members would be left to selectively rely on and vote in accordance with the scientific advice which best suited their agenda.

Under the current state of knowledge of the population structure and abundance of North Pacific minke whales, the Scientific Committee would not be in a position to assure the sustainability of any quota for minke whales in Japanese coastal waters. Although Japan has claimed that J-stock catches could be limited by preventing whaling close to shore, Japan's own data (IWC/SC/59/NPM5) shows that even at 50 nautical miles offshore (close to the day-trip limit for a small-type whaling vessel) one in ten minke whales caught are J-stock animals. Furthermore the J-stock is already threatened due to by-catch in Japanese and Korean coastal waters and significant catches of J-stock animals in JARPNII hunts. Given all of these concerns, the Chairs' Report suggestion to award a quota which would unquestionably *further deplete* the J-stock is in direct opposition to the stated objective to *'provide for the recovery of depleted or endangered stocks...'*

Attempting to tailor science in the form of 'interim advice' to meet quota requests would be a return to the IWC's dark pre-moratorium days of arbitrary quotas, when the only "enlightened" policy was to prevent economic extinction. Science must lead management advice, not the other way around.

7. The proposed approach would endorse and reward a member country's exploitation of Article VIII (special permit whaling) to circumvent Article 10e (moratorium)

The statement that *'it will not be possible to reach agreement on coastal whaling without agreement on research whaling under special permit'* is entirely indulgent of Japan's unreasonable bargaining activities and aspirations. Directing the Scientific Committee to effectively set quotas for Japan's whaling would indisputably legitimise these operations, despite the Chairs' assurances otherwise.

At least half of the current membership of the IWC would agree that Japan's so-called 'scientific whaling' is a very thinly veiled commercial whaling operation, employed to circumvent and undermine the moratorium. Since 1987 the Commission has passed 20 Resolutions stating its objection to Japan's scientific whaling operations. Japan has responded to this criticism by escalating its scientific whaling programmes and attempting to use the threat of increased quotas to progress its own agenda. For the Commission to now adopt a deal which essentially rewards Japan's abuse of Article VIII and recognises it as a legitimate bargaining tool would portray the IWC as self-contradictory and irresolute, and would establish a dangerous precedent within the Commission.

The Chairs' Report highlights the importance of protecting *'...the continued relevance and credibility of the Commission as an effective global conservation and management body...'*. The credibility of the Commission as a democratic conservation and management organisation will be irreparably undermined if members choose to endorse and reward one member's exploitation of a loophole in the Convention.

8. The proposal would not prevent scientific whaling outside existing programmes, nor would it control whaling under objection or reservation

During the period 2004-2008 Japan killed a total of 1,357 minke, Bryde's, sperm and sei whales in the North Pacific. Since the

moratorium was implemented, Norway has taken 8,640 whales in commercial hunts, whilst Iceland has killed 214 whales in a mixture of scientific and commercial hunts since 2004.

The Chairs' suggestions for element 23: Option 1 does not address escalating scientific whaling in the North Pacific, nor does it preclude the development of new 'scientific' programmes during the five-year interim period. Moreover, in Stage 1 no consideration is given to stopping or bringing under IWC control whaling that exists under objection or reservation, as conducted by Iceland and Norway. If the Chairs' intention is to reduce the number of whales killed and bring all whaling under IWC control then this effort cannot be directed exclusively at Japan and must be broadened.



Above: A minke whale captured by Norwegian whalers in 2006. © EIA/WSPA

9. There is no clarity on if or how options to limit scientific whaling would be binding, or effective in the long-term

The Chairs' suggestions fail to consider or articulate how proposed options for "scientific" whaling could be implemented. The only fully binding mechanism by which to achieve either option would be an amendment to the ICRW requiring ratification by each IWC member nation. A Schedule amendment could not be used to implement these suggestions in a binding or enforceable manner.

Option 1 could be construed as a respectable exit strategy for Japan and would likely gain additional support if it offered a permanent phase out of "scientific"

whaling, both in Antarctica and the North Pacific. This option, however, is heavily compromised by the ambiguous line preceding it specifying that *'the issue will be discussed further with a view to seeking a long-term arrangement.'* In Japan's view such a long term arrangement may well be the establishment of higher and/or permanent scientific permit 'quotas' after the expiration of the five-year interim period. Alternatively, if the interim period ended without any agreement on a long-term arrangement, Japan could resume its "scientific" whaling program based on its own self-allocated quotas. The proposal offers no longer term measures to curtail either outcome.

Option 2, the setting of 5 year quotas equates to IWC endorsement of special permit whaling, is wholly unacceptable and does not merit discussion.

10. The proposal would sanction an inherently cruel practice out of step with 21st century commitments to animal welfare

A significant percentage of the public who oppose whaling do so on welfare, as well as conservation grounds. A package which essentially just moves the cruelty from the Southern Ocean to the North Pacific – and in doing so *sanctions* that cruelty - is no solution to the problem.

Since the last time the IWC sanctioned commercial whaling, some twenty-three years ago, the science and management of animal welfare has developed significantly. Slaughter methods used in commercial whaling are now wholly out of step with international commitments to protect the welfare of animals killed for food. The IWC must modernise itself accordingly.

The SWG identified animal welfare as a priority issue yet it is recommended that animal welfare issues are dealt with in Stage 2 of the proposal, during the five year interim period. It is premature for the IWC to even consider sanctioning commercial whaling when there is no agreement on whether current practices are acceptably humane or how animal welfare criteria should be monitored and reported.



Above: Partially exploded harpoon being removed from one of 7 fin whales caught by Iceland in 2006. © Jonas Fr. Thorsteinsson

Recommendations

Signatories to this briefing recommend the following actions and positions at the IWC's 2009 Rome intersessional and annual meeting (IWC/61) in Madeira:

1. Uphold, reinforce and strengthen the commercial whaling moratorium by rejecting any proposals that would lift or otherwise erode the moratorium.
2. Reject all proposals which legitimise special permit whaling, including by making it subject to oversight and control by the IWC's Scientific Committee.
3. Propose and support a 5-year 'good faith' cessation of all commercial and scientific whaling in order to undertake a period of serious negotiation towards the modernisation of the ICRW.
4. Require that, as a precondition to any further negotiations on the Future of the IWC, all whaling nations stop trading in whale meat and lift their reservations to the Appendix I listing of whales by CITES.
5. Offer tangible support for the IWC to reform itself into a modern conservation body via the development of Conservation Management Plans and Non-Lethal Cetacean Research Partnerships.
6. Modernise the function of the Scientific Committee so that its significant expertise can be devoted to studying anthropogenic threats to whales and their habitats, and to providing advice on mitigation strategies.
7. Reject claims that if the IWC does not capitulate to Japan the IWC will collapse and whaling will be legitimised through the formation of an alternative new body.
8. Promote the establishment of a permanent whale sanctuary in the South Atlantic.
9. Recognise whale-watching to be the most economically important, sustainable and humane use of whales; highlight and promote the importance of the IWC's work to monitor, and develop guidelines for, non-lethal use of whales internationally.
10. Reject proposals to further exclude civil society from deliberations over the IWC's future. Promote transparency and full participation by civil society in IWC meetings and activities, consistent with other multi-national environmental conventions.

WHALEWATCH
It's Time To Watch Their Welfare

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