



Antarctic and Southern Ocean Coalition

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ASOC Policy Briefing for the 61st IWC¹

Prologue

The interest of what is now commonly referred to as Civil Society in the affairs of the IWC were manifest from its very beginning. The first – and still continuing – concerns were about the perceived inhumanity of the "Modern" method of killing whales started with a doctor – Harry Lillie – who had been on board a British factory ship in the Antarctic in the late 1940s and was appalled at what he considered to be an incredibly cruel industry (a reaction that was shared by officers of the ship's crew).

In the 1950s and 60s representatives of some national and international organizations concerned with animal welfare attended IWC meetings, when public consciousness about whaling came to the fore. In 1965 observers from the International Union for the Conservation of Natural Resources, the World Wildlife Fund, the Fauna Preservation Society and the Universities Federation for Animal Welfare attended a Special Meeting of the IWC, adding new concern about the conservation aspects of whaling. Later that year the International Society for the Protection of Animals attended the regular Annual Meeting of the Commission.

In the 1960s, it was mostly scientists and – encouraged by this civil society activism – a few governments that became deeply concerned about the consequences of the IWC's activities – and inactivity. Representatives of more and more of the new generation of organizations concerned with the environment and the conservation of biodiversity began to attend in the late 1960s. From then on, every year more non-governmental organizations have expressed their interest and concern not merely by words and documents but by deeds and, until recent reforms, by paying exorbitant participation fees. It is a testament to the tremendous breadth of global public interest in whaling and the future of the world's whales, that we see so many NGOs here today, with ever-increasing participation from Africa, Asia, and Latin America.

Representatives of civil society on all continents are deeply worried about the ongoing "Future of the International Whaling Commission" process on which the IWC Chair reported on 18 May 2009.

While we respect the Chair's motivation in seeking a consensus package to bring whaling back under the IWC's control and to address the 33 issues identified as priorities by members of the IWC, the process has evidently failed.

The Chair asserts that "the real impediments to consensus are the issues of coastal whaling, research under special permits, and sanctuaries" and seeks another year for deliberation so that recommendations can be put to the Commission for a decision in 2010. We disagree with his

¹ Dr. Sidney Holt authored this document, and represented ASOC at the IWC meeting in Madeira, at which it was circulated. His oral statement on behalf of NGOs to the IWC Commissioners is based on this document.

assessment of why the process has failed and do not support his request for more time unless that time is used in a different way by revising the terms of reference for the process.

Over the last ten years, two other major negotiations within the IWC – the Irish Proposal and the RMS – have shown that the real impediment to compromise is the unwillingness of Japan and other whaling countries to make any concessions. For example, since the current process began in 2008 with the Chair's plea for all sides to act in good faith, Japan has failed to make a single concession towards ending, or even substantially reducing, its whaling programmes and Iceland has resumed commercial whaling, including – this week – provocatively killing fin whales, designated internationally as an endangered species. Moreover, more whale meat has been traded internationally under reservations to the CITES ban in the last year than in the whole previous decade. These actions undermine the effectiveness of the IWC and the Small Working Group (SWG) process and are hardly signs of good faith.

In contrast to the intransigence of the whaling nations, other members of the Commission were willing to contemplate a proposal tabled by the Small Working Group in March 2009 that would establish a new category of whaling and effectively modify the commercial whaling moratorium, give new rights to Japan to kill whales, and condone scientific whaling; all with no safeguards in place to ensure compliance with international regulations, no mechanism to address commercial whaling in defiance of the moratorium by Norway and Iceland, nothing to prevent other nations from starting whaling under the new category, and nothing to stop the international trade that is continuing despite CITES decisions. Some governments are even considering using an *ad hoc* method to calculate catch limits for a new category of whaling, rather than using the Revised Management Procedure (RMP) accepted by the Commission in 1994, a procedure for setting precautionary catch limits for baleen whales that the Scientific Committee spent six years developing and was adopted by the Committee by consensus.

Without significant concessions from the whaling nations, the SWG process is not a negotiation, and it will not deliver the Chair's objective of bringing whaling under control and improving the conservation status of whales. Therefore, without a commitment from all nations to eliminate all whaling outside international control, we urge the Commission and its contracting government not to allocate more scarce resources to the continuation of these negotiations. Instead we believe the IWC should become an effective organization dedicated to the conservation and protection of cetaceans.

ASOC's Position

ASOC strongly supports the continuation, unchanged, of the 1982 decision, embodied in Paragraph 10(e) of the Schedule to the ICRW 1946, to set all commercial catch limits to zero (the so-called commercial moratorium) for an indefinite period. We believe that commercial whaling methods are unacceptably inhumane, that all depleted whale populations must be given the chance fully to recover, and that fragmented ecosystems in which the whales played an important role be restored. Commercial whaling can play no significant part in achieving food security for humans. We reject the specious arguments made by some interests, supported by fake science, that recovering whale populations pose significant threats to global or regional catches of fishes for human consumption.

In these circumstances, ASOC believes the time has come to move forward in accord with changes in public perception of the whaling issue, and improvements in knowledge about whales, that have taken place in the twenty-seven years since passage of the moratorium. Those changes include the perfection of non-lethal methods of research on whales, and the world-wide growth of non-lethal uses of whales, such as by whale-watching. We also hold that in that period other threats to the survival and well-being of whales have multiplied and intensified so that elimination of the stress to these species caused by continued commercial whaling has become more pressing. The new threats

include: entanglement and asphyxiation in fishing gears (bycatch); commercial exploitation and over-fishing of the organisms on which whales feed; intensified maritime traffic resulting in injury and death by collisions; changes in the ocean climate, especially in polar regions; global pollution and contamination, especially by persistent organic chemicals; and interference with the whales' communication and navigation systems by intense sound and ultra-sound.

Principles

In the light of the above considerations, events and trends ASOC holds that the IWC must now move fast toward **a complete cessation of all whaling under objections to IWC decisions, all whaling in sanctuaries, and all whaling under Article VIII Special Permits.** Neither "scientific" whaling nor whaling under objections makes any sense from a conservation or economic perspective. They are seriously detrimental to the rule and development of international law in the oceans, a need that is generally perceived as increasingly urgent. Neither is necessary for the basic livelihoods of rural communities, for spin-off benefits to whale populations, and few if any of current whaling operations are economically sustainable without significant direct or indirect subsidies from governments. As the IWC's own Scientific Committee pointed out two years ago that not a single one of the specified objectives of Special Permit whaling had been met in two decades since it began on a large scale.

Any moves to end unregulated whaling must be equitable to all parties. They should, in any interim phase-out period, be non-discriminatory with respect to the few nations still engaged in commercial whaling. It is not acceptable that countries that have throughout 27 years failed to abide by IWC decisions should be "rewarded" for their intransigence. Thus a move towards ending commercial whaling must pay due respect to those countries that had been engaged in commercial whaling in 1982 and which decided to cease their operations when the 1982 decision came into force in 1986 - Brazil, Chile, Peru, Republic of Korea, Spain, USSR, even at the time Iceland). A three-year delay in implementation incorporated in the 1982 decision was evidently sufficient for those countries to make the necessary economic and social adjustments and such a delay would be more than adequate for acceptance of a global end to all unregulated of commercial whaling by countries still whaling today, by 2012-13 at the latest.

Phase-Down and Phase-Out

The moratorium implementation delay from 1982 to 1985 was agreed on the understanding that any resumed whaling would be regulated in a way that utilized the best modern science, was suitably precautionary and properly monitored and ensured full compliance with regulations. The scientists faithfully performed the tasks set to them but the Commission has abandoned its efforts to complete a Revised Management Scheme (RMS) ensuring compliance with law, including the Law of the Sea as it relates to the conservation of marine mammals and the management of highly migratory species. It is clear that 27 years after the pause in commercial whaling was adopted, the IWC is now further than ever before from establishing a secure scheme to ensure full compliance with all pertinent regulations both in waters under national jurisdictions and on the high seas. Even this week one national administration is trying to claim that it has the right to permit killing any "highly migratory" whale that happens to stray into its EEZ because it is "owned" by the its people. This portends international chaos in managing human use of the ocean.

This dismal failure to agree on enforcement and compliance measures comes at a time when more information is coming to light and being published about falsification of catch data from past whaling operations, including not only Soviet pelagic whaling but also Japanese coastal whaling. A senior member of the Norwegian delegation has even said publicly that all that is in the past and could not now happen. So the leopard really has changed its spots?

But there must be no return to the disastrous practice, in the IWC's earlier years, of setting

arbitrary catch limits, as the Small Working Group appears to have proposed. The dangers of such an approach, as a form of compromise, have been fully explained in a recent publication by the Royal Society of London in a paper by three scientists active for many years in the Scientific Committee, including the author of the agreed Revised Management Procedure algorithm.² Any catch limits that are decided for application during a short phase-down and phase-out period must be such that there is negligible chance of their causing further stock depletions. No new commercial whaling operations would be begun, no additions made to whaling fleets, and catches of all exploited stocks must be no more than the catches during the 2008 and 2008/2009 seasons. Additionally there must be no whaling of any kind or under any pretext on species and stocks that were classified as Protection Stocks under the NMP at the time – 1986 – that Para. 10(e) came into force, or that are listed in Appendix I of CITES.

ASOC further insists that if there is to be any whaling, temporarily, under the regulation of the IWC, there must be transparency in all whaling operations and that unofficial independent observers be allowed to see land-station operations, small-type whaling operations, and any that are continuing to involve factory ships. Fundamentally, no further Special Permits under Article VIII should be issued by any Member State after July 1, 2009.

ASOC maintains that no temporary whaling should be authorized for any Member State before it has withdrawn any objections it still has to IWC decisions, or to listings of species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This includes, especially, Japan's objection to Paragraph 10(e) of the Schedule and, with respect to minke whales, to the Southern Ocean Whale Sanctuary (Para. 7(b)); Norway's objection to the classification, determined in 1985, of the minke whales in the Northeast Atlantic as a Protection Stock in accordance with Para 10(c), and to Paragraph 10(e); and Iceland's "reservation" to Para 10(e), the validity of which has in any case been formally questioned by seventeen Member States of the IWC.

Finally, ASOC suggests that the short phase-down and phase-out period proposed be used positively by all Parties to the ICRW 1946 to resume the diplomatic process begun in the 1970s, then abandoned, to negotiate a new convention to replace the ICRW or to bring it into line with modern concepts of managing the use and protection of the renewable resources of the ocean and marine biodiversity. These include provision for the conservation of all cetaceans, and bringing management into conformity with the current Law of the Sea including an ecosystem approach to management.

The Small Working Group has asked that its mandate continue in the coming intersessional period. ASOC suggests that if the Commission decides in favour of that option, the mandate of the SWG (as given in the Annual Report of the IWC 2008) be modified in such a way as to instruct it to consider the policy outlined above, including providing advice on the conduct and purposes of a re-negotiation process for the ICRW 1946. Consideration should also be given, in assessing the future of the IWC, to preparing the conduct of a long-term programme of scientific research to examine the natural restoration of ecosystems from which cetaceans have been largely removed, and to provide a better understanding of the new threats to the well-being of cetacean populations.

² Cooke, J. Leaper, R. & Papastavrou, V (2009) Science should not be abandoned in a bid to resolve whaling disputes *Biol. Lett. Roy. Soc. Lond.*