
**Small Working Group on the Future of the IWC
Elements/Issues of Importance**

Comments submitted by the Government of Australia

3. Bycatch and infractions

Bycatch represents perhaps the greatest current non-whaling threat to global cetaceans. The Australian proposal for Conservation Management Plans (Issue No. 10) is designed to direct efforts toward managing and mitigating such threats, and is linked to this issue.

A broader component of bycatch and infractions that would benefit from focused attention and a cooperative approach is the establishment of improved reporting of bycatch events and a rapid and simple processes to share data and samples (for example genetics samples).

4. Climate Change

The nature, extent and predicability to which climate change affects global cetaceans is a pressing issue for the IWC. This important issue links directly to Australia's proposal for regional research partnerships (Issue No. 12) which are intended to collect the type of data to, among other things, assess and measure the relationship between climate change and whales. It also links to Australia's proposal for Conservation Management Plans (Issue No. 10) which focuses on non-whaling threats such as climate change.

The future for the IWC must include a priority focus on climate change and whales.

6. Coastal Whaling (within EEZ)

Japan has requested (IWC/60/9) that discussions on the future of the IWC address the Japanese proposal for small-type coastal whaling of minke whales from the Okhotsk Sea-West Pacific Stock. There are a number of issues that remain unclear in IWC/60/9, clarification of which would assist the discussions of the Small Working Group:

- It is unclear in Japan's proposal how a catch quota would be determined, or under what form of RMP/RMS the small-type coastal whaling would be conducted.
- There is already significant concern about the viability of minke populations in the North-West Pacific given: existing 'scientific' whaling under JARPN II; increases in bycatch and entanglements in recent years; and the risk of the threatened J-stock being taken in any small type coastal whaling programme. It is therefore essential to hear from Japan:
 - Whether and how Japan intends to address bycatch and entanglement issues associated with J-stock and other populations that would be subject to small type coastal whaling.
 - How the proposal relates to allocations already granted to the four whaling communities from the JARPN II programme.
 - How the proposal relates to already allocated national quotas of small cetaceans, such as Baird's beaked whales, false killer whales, pilot whales and dolphins.
- Although the IWC Scientific Committee has designated minke whales from the Okhotsk Sea as 'O-stock' and those from the Sea of Japan as 'J-stock', there remains substantial

uncertainties around the real genetic structure of minke whales in this region, the movements of these populations between breeding and feeding grounds and the abundance and trends of each population. Without a more comprehensive assessment of these populations and in all likelihood additional data, making determinations of conservation risks is difficult. Therefore greater clarification of how these key areas of uncertainty should be addressed is required.

7. Commercial Whaling Moratorium

The moratorium on commercial whaling remains critical to the recovery of global whale populations.

Paragraph 10(e) states that “by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of the moratorium on whale stocks and consider modification of this provision...” The Scientific Committee is far from completing the comprehensive assessment primarily because of lack of defensible data and the fact that whaling has never ceased so a true assessment of the recovery of global whale populations cannot be undertaken.

There continues to be considerable concern about the viability of the world’s whale populations. The overwhelming factors are a serious lack of scientific certainty about the status and trends in whale numbers, the slow recovery of many species after years of overexploitation, and emerging non-whaling threats to species’ recovery. The zero catch limits implemented under the moratorium remain an important and appropriate tool for conservation and management of the species.

To date, no whale population has fully recovered from past exploitation, and some species are still at less than 2% of pre-exploitation numbers.

Today, commercial whaling is not required to meet essential human needs. There is a clear economic case for the moratorium, because people world-wide are increasingly recognising and benefiting from the non-consumptive use of whales, such as whale watching. The ethical case is also compelling: even with modern improvements, whale killing methods continue to involve an unacceptable level of cruelty.

The IWC of the future must see the continuation of the moratorium on commercial whaling. There must also be practical and effective action to promote the ongoing recovery of vulnerable cetacean species and/or regional populations and this should include the development of conservation management plans as envisaged under Issue No. 10.

9. Conservation Committee

An assessment of the five years of history of the Conservation Committee clearly indicates that the Conservation Committee has established itself as an important and effective mechanism of the Commission and one which, for some member states, remains divisive. The primary reservations regarding the Conservation Committee are associated with the original establishment of the Committee and its Terms of Reference.

In 2004 these issues were addressed by the ‘Small Working Group on the Conservation Committee’ (*Ann. Rep. Int. Whaling Comm.* 2004:103), which concluded that the Commission has agreed to the importance of addressing conservation and that Resolution 2003-1, which established the Conservation Committee, is a legal fact. It was further recognised by this Small Working Group that it is necessary to move beyond the combative nature of discussions within

the IWC and look toward “building bridges” within the Commission. The conclusion of this Small Working Group was very clear that “*further discussions on the expectations of the work of the Conservation Committee should be continued under the responsibility of the IWC or its Chair to ensure that all views will be taken into account in the further discussion*”.

The task before the Small Working Group on the Future of the IWC is to ensure that the Commission moves beyond the acrimonious nature of the discussions of the past and adopts a modern approach to IWC discussions. The Conservation Committee, which fulfils an important role for the Commission, presents an excellent opportunity to put this into practice and it is proposed that:

- The Commission needs to agree the Terms of Reference for the Conservation Committee and it is proposed, as previously agreed, that the Chair of the Commission facilitate this process;
- All members of the Commission agree to participate in the Conservation Committee, as a fully endorsed Sub-Committee of the Commission;
- The ongoing Agenda and workplan of the Conservation Committee continue to be agreed by the Commission.

Australia’s proposal (IWC/60/15) that the IWC develop Conservation Management Plans to manage non-whaling related threats to cetaceans provides an ideal focus for the Conservation Committee and its interactions with the Scientific Committee and the Commission.

10. Conservation Management Plans

It is understood that future threats to recovering cetacean species/populations will not be limited to directed take, which has been the primary concern of existing IWC management tools. Rather, additional threats are expected to range from global problems – such as climate change and marine pollution – to localised issues including fishery activities, shipping, habitat disturbance and unregulated wildlife tourism. IWC/60/15 introduced a proposal for the IWC to develop conservation management plans, tailored to support the recovery of vulnerable cetacean species or regional populations and to address the wide range of threats that they face.

This proposal gained wide support at IWC60 and the challenge now is to embark on this process. Australia proposes to host a workshop early in 2009 to examine the next steps for this process. A number of issues will be addressed, including:

- What are the key elements of a conservation management plan?
- What are the criteria that may be used to assess the merits of a proposed conservation management plan? Such criteria may include: does the plan address a recognised need; does the plan coordinate a direct efforts to improve conservation outcomes; are the objectives focused and measurable; does the plan add value by leveraging resources and marshalling expertise; and does the plan deliver direct and rapid mitigation actions.
- How might the IWC develop conservation management plans? Work on conservation management plans would fit within the existing mandates of both the Scientific Committee and the Conservation Committee and would draw upon their work to date, however the process for developing plans needs to be agreed.

11. Convention, Purpose of

The IWC has evolved since 1946. The IWC cannot remain frozen in time any more than the many other international organisations founded in the 1940s which remain indispensable for addressing a broad range of global concerns.

The Commission must continue to adapt to a changing world. Its structure and operations should reflect the scientific understanding and norms which define human interactions with whales in the 21st century. Since 1946 we have seen:

- A dramatic decrease in whale populations due to commercial whaling;
- New threats to whale populations such as fishery bycatch, over-fishing, marine pollution, cetacean diseases, climate change, poorly regulated whale-watching industries, ship strikes and habitat disturbances;
- The rise of new economically valuable non-consumptive uses of whales such as whale-watching; and
- An overwhelming shift in public opinion in favour of whale conservation in many parts of the world.

Oceans management has also changed, especially through the growth of a network of international law and institutions to govern human impacts on the seas. In addition, a large body of normative principles and commitments has accumulated, especially from the United Nations Conference on Environment and Development, the Rio Declaration and Agenda 21. Concepts of integrated ecosystem-based management, the precautionary approach, intergenerational equity and common concern have become the standard, modern basis for oceans management.

The ICRW has proven to be a flexible instrument, able to adapt to changing circumstances by interpretation, and not a static instrument of unchangeable rights and duties. The object and purpose of the Convention has been modified over time and the Convention should be read in line with modern principles of conservation and sustainability outlined in the above instruments.

The Small Working Group should examine the role of the IWC in the context of contemporary oceans management and conservation with a view to the identifying those elements that would support the better functioning of the Convention.

12. Collaborative Non-Lethal Research Programmes

At IWC60 Australia introduced a proposal that is intended to assist the modernisation the IWC's research framework and to further improve cooperation between IWC member states. This proposal called for interested parties to cooperate in the development of formalised 'regional non-lethal cetacean research partnerships' aimed at coordinating and optimising the research of IWC members against agreed priorities and outcomes in key areas of interest.

It was agreed at IWC60 that a Southern Ocean research partnership will be developed as a model for this concept. Australia proposes to host the planning meeting for this research partnership in early 2009 to establish participation, agree objectives and develop a research plan. It is proposed that the research plan developed at the planning workshop be reviewed by the Scientific Committee during IWC61 so that the initial implementation of the Southern Ocean research partnership will commence prior to IWC62.

13. Data Provision

The close monitoring of all cetacean research and whaling activities, the assessment of accurate scientific data, transparency of all collected data and rigorous peer review of outcomes, is essential to facilitate improvements in the management and conservation of cetacean populations.

It is therefore essential for the future of the IWC that member states commit to making all scientific data and samples relevant to the conservation and management of cetaceans freely available in a timely manner for peer review and assessment.

15. Ecosystem-based approach to management

Effective management and conservation of global cetaceans can best be achieved with an understanding of ecological linkages and processes. Australia supports management approaches that account for the ecosystem, with clear objectives of minimising impacts on ecosystems. For example, in fisheries, Australia supports ecosystem-based management that aims to set fishery quotas at levels that limit the downstream affects on dependant predators.

Some nations interpret ecosystem-based approaches to management to include proposals that intend to manipulate ecosystems with a desired outcome of improving a fishery yield (e.g. by culling predators). Such proposals are ecologically dangerous, lack any scientific basis and are antithetical to conservation. Australia would strongly oppose the introduction of such approaches to the IWC.

21. Objections and reservations

The objection and reservation procedures in the IWC effectively give members the capacity to opt out from IWC rules, thereby undermining the collective work of the Commission. Australia is particularly concerned that objections and reservations have been used by members to opt out from fundamental elements of the Convention, including the prohibition on commercial whaling in agreed whale sanctuaries. Australia would support the elimination of these loopholes to ensure that members work together to better conserve and manage whale populations.

- If the future of the IWC is to be one of consensus and cooperation and based on the principles of modern oceans management, is it appropriate for member states to choose to 'opt out' of the IWC rules?
- Is it possible to ensure that objections and reservations do not undermine the work of the IWC or must they be eliminated?

23. Research under Special Permit

Whaling under Special Permit is the most controversial activity in the IWC. Substantially more whales are killed in this category of whaling than any other, and the continued increase in quotas and species taken since the moratorium on commercial whaling came into effect (currently more than 11,000 animals in total) is the single largest obstacle to efforts to move to a more consensus-based organisation. 'Scientific whaling' must be brought under the authority of the Commission and the unilateral issuing of permits under Article VIII must end if we are to constructively progress our current discussions on the future of the IWC.

In order to progress such discussions a number of issues require resolution:

- How can the IWC best ensure that it develops a consensus-based approach to determine key knowledge gaps and priorities for research needs that are relevant to the ICRW. A

consensus-based approach to science would presumably see member countries directing research efforts towards these agreed priorities?

- What consensus-based approaches, that are relevant to the IWC and its objectives, can be developed for assessing 'scientific whaling' proposals?
- How can the IWC ensure that all forms of whaling conducted under the ICRW (including that conducted under special permit) are regulated under agreed rules and procedures (e.g. RMP, AWMP)?

27. Sanctuaries (also 20. Marine Protected Areas)

The ICRW includes provision for fixing open and closed waters, including sanctuary areas under Article V(1)(c). In a formal sense, sanctuaries are required to assist in carrying out the purpose of the Convention (a key objective of which is to 'provide for the proper conservation of whale stocks') and the areas proposed are to be based on scientific findings. The first international whale sanctuary was established in the Antarctic in 1938, but this pre-IWC sanctuary was only intended to maintain unexploited stock levels for potential future whaling, and came to an end in 1955 when it was opened to whaling.

Sanctuaries have been the subject of much recent discussion at IWC meetings, not only when new sanctuaries have been proposed but also in reviewing the two existing sanctuaries – the Indian Ocean Sanctuary and the Southern Ocean Sanctuary. Some members of the IWC argue that sanctuaries are not relevant to the future of the IWC, and are unnecessary given the moratorium on commercial whaling. But provisions for sanctuaries have always formed part of the Convention, and are a key conservation tool of the IWC. The moratorium is a complementary measure, not an alternative to, whale sanctuaries.

- If the future of the IWC is to be one of consensus and cooperation and based on the principles of modern oceans management, is it appropriate for member states to choose to 'opt out' of the IWC rules and continue whaling operations in agreed whale sanctuaries?
- IWC sanctuaries are effectively 'no-take zones', however even this limited management tool has been ignored in some instances. Should sanctuaries be considered more broadly as part of a modern oceans management regime, such as part of a conservation management plan, rather than as simply no-take zones?
- The IWC's approach to cetacean management, particularly those activities related to sanctuaries, would benefit from analysis of the work being undertaken globally on the establishment of marine protected areas (MPAs). Assessment of the potential of networks of MPAs across critical migratory routes to contribute to existing IWC sanctuaries and better conservation management outcomes for cetaceans should be a priority.