

Report of the fourth meeting of the Small Working Group (SWG) on the Future of the IWC

St. Pete Beach, Florida, USA, 2-4 March 2010

1. INTRODUCTORY ITEMS

The SWG met in St. Pete Beach, Florida, USA from 2-4 March 2010. A list of participants is given as Annex A. The meeting was to have been chaired by Cristian Maquieira, Chair of the Commission. Unfortunately, Ambassador Maquieira was unable to attend the meeting because of important duties he had following the earthquake that hit Chile on 27 February. He sent his apologies to the meeting and asked Anthony Liverpool, Vice-Chair of the Commission to chair the meeting in his place.

The SWG extended its sympathies and condolences to Ambassador Maquieira and the people of Chile at this difficult time.

1.1 Introductory remarks

The Chair welcomed participants and observers to the meeting and on behalf of the SWG thanked the USA for its generous help in holding the meeting.

He stressed the importance of the work being done to address the future of the IWC and more importantly the conservation and management of whales. He recalled that the SWG was established at IWC60 in Santiago in 2008 to assist the Commission to arrive at a consensus solution to the main issues it faces with a target of presenting a package or packages to the Commission at IWC61 in Madeira in 2009 for review. He noted that while the SWG had not achieved the stated goal for IWC61, progress was achieved and the Commission had agreed by consensus to extend the SWG's mandate for a further year (Resolution 2009-2) and to modify it slightly, including: (1) establishing a Support Group to help the Chair of the Commission to prepare material for the SWG; and (2) opening the SWG to observers.

The Chair recalled that the initial intention was to have the SWG meeting in December last year. However, because the Support Group had needed more time to develop material, it had been necessary to postpone the SWG meeting. He noted that he and the Chair of the Commission were very appreciative of the patience of SWG members in this respect.

The Chair reported that based on the discussions of the Support Group, the Chair of the Commission had developed a draft Consensus Decision to Improve the Conservation of Whales contained in his report to the SWG (Document IWC/M10/SWG 4). Stressing that this draft Consensus Decision was strictly a draft that had been developed on the firm understanding that *'nothing is agreed until everything is agreed'*, he believed that the document should be used as the basis for discussions and outlined his plans for how discussions should proceed. He proposed that initial discussions should focus on the overall concept proposed in the draft Consensus Decision followed by discussions of a more technical nature before developing proposals on further work required to prepare for IWC62 in Agadir in June 2010. He indicated that representatives from non-governmental organisations (NGOs) would be allowed to address the meeting with comments on both the overall concept in the draft Consensus Decision as well as on more technical issues and that these opportunities would be given after Contracting Governments had spoken. The SWG **agreed** with this approach.

1.2 Reporting

Resolution 2009-2 committed the SWG to developing a final report to the Commission at least five weeks prior to IWC62. Given the need to maximise the time available for discussion at the present meeting, it was **agreed** that the Chair of the meeting would develop a draft text as soon as possible after the conclusion of the meeting for circulation to the members for comment. A consolidated draft based on any comments received would be prepared and circulated well before the five week deadline (see Item 4). The question of any subsequent work outside the SWG on this issue prior to IWC62 is given under Item 4 of this report.

1.3 List of documents

The list of documents available to the meeting is given as Annex B.

2. ADOPTION OF AGENDA

The Chair drew attention to the draft agenda. Japan requested that it be allowed, under Item 5, to give a short presentation regarding the acts of harassment and interference against its research vessels by the Sea Shepherd Conservation Society during its research activities this austral summer. The SWG **agreed** to this request

The agenda adopted is given as Annex C.

3. REPORT FROM THE CHAIR OF THE COMMISSION

3.1 Presentation of the Report

3.1.1 *Presentation by the Chair of the meeting*

On behalf of the Chair of the Commission, the Chair of the meeting gave a presentation of the work of the Commission on the Future of the IWC (see Annex D). He stressed that discussions arising out of the very different views on whales and whaling of member countries have dominated the Commission's time and resources for almost a quarter of a century to the detriment of its effectiveness. The SWG's task is to assist the Commission to arrive at a consensus solution to the problems it faces so that the IWC can be a relevant, credible, effective conservation and management body. Since the meeting in Anchorage (June 2007) when the Commission formally agreed on the need to address its future, the Commission has held nine intersessional meetings, including subgroups. Initial focus was on reforming the working procedures and atmosphere of discussions to reflect greater mutual respect of differing views and perspectives. A total of 33 (sometimes overlapping) issues was developed that Contracting Governments believed were important to be addressed in any consideration of the organisation's future. The SWG established at IWC60 in Chile built upon these developments and tried to develop a package or packages for consideration by the Commission at IWC61. Considerable progress was made in several areas, and in particular in categorising the large list of issues into two categories:

Category (a) – controversial issues that if not addressed in the short-term may fail to alter the status quo or perhaps result in an irreparable break in the system via withdrawal from the convention; and

Category (b) - non/less controversial issues (primarily scientific and/or administrative) that if left unresolved in short-term would not prevent a package(s) for category (a) issues *provided* that a mechanism existed or could be established.

The SWG also agreed that potential packages must: provide for long-term sustainability of stocks; provide for the recovery of depleted or endangered stocks; be perceived as balanced by all parties; and provide procedures for reviewing and where necessary improving governance practices.

Although these extensive efforts failed to lead to an agreement by IWC61 in Madeira, the progress made, including the idea of a two-staged approach put forward as part of a proposal by the then Chair of the Commission (William Hogarth) and the outside expert brought in to chair the SWG (Ambassador De Soto), encouraged the Commission to pass a consensus resolution (Resolution 2009-2) authorising one more year's work.

As part of the process, the concept of 'miniaturisation' introduced early in the process was extended to include the formation of a Support Group (balanced in terms of views, geography and economy) to assist the Commission Chair in developing material for the SWG. The members comprised Antigua & Barbuda, Australia, Brazil, Cameroon, Germany, Iceland, Japan, Mexico, New Zealand, St. Kitts & Nevis, Sweden, USA (Norway observed at the final meeting). The group worked extremely hard at three meetings held in Santiago (October 2009), Seattle (December 2009) and Honolulu (January 2010) with wide-ranging and productive discussions. The result was the development by the Chair of the Commission of a *draft* Consensus Decision (IWC/M10/SWG4). The meeting Chair noted that this document contains important input from all Support Group members, and some pain for all as any fair and balanced agreement must. Most importantly it holds out the prospect of major benefits for conservation and management. However, it must be remembered that the Support Group discussions, and all other discussions under the Future of the IWC process, are *ad referendum* to Governments. Consequently, the document is a draft and not agreed – the significant progress it represents was made on the understanding that 'nothing is agreed until everything is agreed' and that nothing in it prejudices the legal positions of members regarding the Convention. Finally, the Chair noted that the Support Group was still engaged in discussing the critical issue of catch limits.

The draft Consensus Decision begins with a short vision statement for the future work of the IWC:

'The IWC will work co-operatively to improve the conservation and management of whale populations and stocks on a scientific basis and through agreed policy measures. By improving knowledge of whales, their environment and the multiple threats they face, the Commission will strive to ensure that whale populations are healthy and resilient components of the marine environment.'

The document covers all of the 33 issues originally raised via a two-phase approach i.e. an interim 10-year arrangement (and five-year review) without prejudice to countries principles with respect to conservation and management, along with a commitment within that period to address the complex issues of principle (e.g. with respect to the question of Article VIII and special permit whaling, the moratorium, objections/reservations). The document provides a process on how the vision statement might be achieved in terms of:

- conservation (e.g. focus on recovery of depleted stocks and environmental threats including action to assist in this via conservation management plans, the establishment of a South Atlantic Whale Sanctuary);
- management of non-lethal use of whales such as whalewatching;
- strengthened whaling management including bringing all whaling under IWC control (with a cap on whale catches well below sustainable levels according to the best available scientific advice) and a strong monitoring and compliance mechanism to ensure that limits are not exceeded (international observers, a vessel monitoring system and a DNA register/market sampling scheme);
- mandatory collection of animal welfare information to verify that the best killing methods are used and to provide for a continuous improvement of methods;
- strengthening of the work of the Scientific Committee in a number of areas;
- revised governance including biennial Commission meetings, establishing speaking rights for non-governmental organisations, the establishment of four committees (the Scientific Committee, a new Conservation Programme Committee, a new Management and Compliance Committee, and a Finance, Administration and Communication Committee) and a Bureau (to *inter alia* support the Chair, to propose and monitor progress on four-year strategic plans to the Commission and to advise the Secretariat) comprising the four Committee chairs, the Chair and Vice-Chair of the Commission and two additional Commissioners;
- provisions for enterprise and capacity building for developing countries;
- development of a workplan to address major long-term issues during the interim period.

The Chair noted that the above measures are intended to provide a period of stability during which Commission can undertake a review of other matters (e.g. special permit research, objections/reservations, commercial whaling moratorium) and further work on improving the work of the IWC. Notwithstanding this, he stressed that the moratorium would remain in place during the interim period.

The Chair recognised that the ideas expressed in the draft Consensus Decision presented challenges for all and that this was inevitable if the outcome is to be fair and balanced. He noted the key role of catch limit numbers to the whole process and to the overall balance of the document and the need to finalise these. He repeated the premise that 'nothing is agreed until everything is agreed'. Despite the difficulties, he believed that the draft is an excellent basis for discussions. While he expected and wanted a full discussion of the document and its ideas and concepts, he emphasised that 'cherry picking' only the parts that a particular government or group of governments liked could alter the delicate balance required if an equitable final outcome is to be achieved. The progress made thus far had only been possible with the change of attitudes from confrontation to mutual respect and peaceful collaboration. A continuation of this and not a return to the acrimony of the past is the only way forward. He urged the SWG to remember that while respecting individual national interests, all must recognise that a future of good, international conservation and management of whales requires collective responsibility.

3.1.2 *Comments from the Chair of the Support Group*

After the Chair's presentation, the Chair of the Support Group, Sir Geoffrey Palmer, addressed the meeting (see Annex E for the full text). He noted that during the Support Group discussions he had stepped aside as the New Zealand Commissioner. He commented that the meetings were truly cordial and constructive and that the atmosphere of trust and cooperation that had developed was all too rare in earlier IWC discussions. The process had demonstrated the advantages of miniaturisation (with all of the diverse points of view of the IWC being represented in a group of a manageable size).

He noted that early in discussions, the Support Group had concluded that to move forward in the short term would necessitate the use of Schedule amendments, made at IWC62 in Agadir, to achieve a binding agreement rather than attempting to rewrite the International Convention for the Regulation of Whaling. Obtaining the agreement necessary, within the immediate future, to alter the treaty itself was assessed to be a remote possibility given the long history of mistrust and division. The Support Group recognised that some of the critical issues could only be solved by amending the Convention notably Article VIII, which deals with special permit whaling.

The Support Group Chair explained its discussions had been guided by a set of principles including co-operation (a shared vision for IWC's future), conservation (more focus on this common goal), certainty (for all parties), compromise (any interim agreement needs to include something for all) and transparency (providing for greater involvement of NGOs). He recognised that initial focus on the draft Consensus Decision has been on the elements that would take immediate effect and those operating over the interim 10-year period, but stressed that just as important to the package is the commitment to address, during the interim period, the difficult issues that lie at the heart of the ideological divide between the Commission's members and that would require amendment of the Convention, that is whether any level of commercial whaling should be allowed and, if so, on what conditions; whether the scientific whaling provision in Article VIII of the Convention can be modified or deleted; and whether or not parties to the Convention should be allowed to opt out of management measures adopted by the Commission. He believed that if these problems could be solved, the IWC could move forward with confidence.

The Support Group Chair stressed the incomplete nature of the draft Consensus Decision (or 'collage'), particularly in relation to the number of whales to be killed. However, incomplete as it is, he believed that it can reduce catch levels significantly, bringing all whaling under IWC control. He also believed that despite the notable gaps relating to numbers, members should try to capitalise on all the effort exerted and push hard to reach a consensus if at all possible. He recognised that because the 'collage' is a compromise, it would not satisfy any nation - everyone will have to bear some of the pain.

Turning to problems that some may have with the 'collage', the Support Group Chair re-iterated that it does not mean the abandonment of the commercial whaling moratorium. Rather what is proposed is a general suspension of the current categories of whaling (including under objection, reservation and scientific permit) during a 10-year period during which the long term issues that have been isolated in the SWG process will be analysed and addressed. Subsistence whaling by indigenous people would, however, continue under existing management procedures. He was aware that some feared that one or more of the whaling countries might use provisions under Article V of the Convention and object within 90 days to a consensus decision of the Commission, and thus not be bound by it. While understanding these concerns, he believed they are not well founded and stressed his firmly-held conviction that all countries involved in the Support Group's discussions have participated in good faith and that if a consensus is reached, none of the whaling countries will lodge an objection. He also sought to reassure members that any catch limits allocated during an interim arrangement would be underpinned by sound scientific advice and well within limits of sustainability. With respect to criticisms that the current collage does nothing to prevent international trade in whale products, the Support Group Chair noted that the reason for this is that trade matters are the domain of CITES and the WTO, not the IWC. He did recognise however that, as negotiations are ongoing, it may be possible to develop some further safeguards to address these concerns.

Again re-iterating that 'nothing is agreed until everything is agreed', the Support Group Chair believed that change within IWC is within reach. He recognised that while significant difficulties remained, if efforts were not made to resolve these difficulties no further attempts would be made for 20 years as Governments would not again be prepared to commit the significant resources that have gone into the present exercise. He believed that if members did not succeed with negotiations on this occasion, *'the IWC would fall back into the slough of despond that has characterised its activities for many years'*. He thought this would be a tragedy.

3.2 Discussion

There was considerable discussion of the Chair's Report, with SWG members being invited by the Chair to comment on the overall concept of the draft Consensus Decision and on the more technical details contained in its Appendices.

The SWG also received oral statements from a number of the NGOs present¹. A summary of their contributions is given as Annex F.

Many countries expressed their appreciation for the hard work of the Support Group and the effort that they and their Chair had put in to provide support for the Chair of the Commission in developing the draft Consensus Decision. While recognising that the draft Consensus Decision was incomplete (particularly in relation to the number of whales that would be killed under the proposed 10-year arrangement) and stressing that their fundamental positions with respect to whale conservation and management had not changed, many countries considered that the document represented progress and that it could be used as the basis for further discussions that could hopefully be finalised at IWC62 in Agadir. The concept of establishing a period of stability (or practical arrangement) during which time longer-term issues could be addressed was considered sensible by many. While some countries were relatively comfortable with the overall balance of proposals in the draft Consensus Decision (although they stressed that further clarity is needed in some aspects and that without numbers in Table 4 nothing is yet agreed), others expressed concern that the proposals do not do enough to conserve and protect whales. In this regard, Australia tabled a nine-point proposal designed to address key issues of importance to a range of members (see document IWC/M10/SWG 5). Two countries (Japan and New Zealand) submitted written statements (see documents IWC/M10/SWG 7 and 8).

The SWG developed a comprehensive list of issues (Table 1) encompassing the comments that had been raised by individual SWG members. It noted that these warranted further consideration in any revision of the draft Consensus Document, although there was insufficient time to develop any additional or modified text.

During the discussion of the provision of scientific advice on catch limits, the SWG noted that the Support Group had instituted a Scientific Assessment Group (SAG), the consensus report of which was made available as IWC/M10/SWG6. The SAG comprised scientists from Australia, Brazil, Germany, Iceland, Japan, Mexico, Norway and the USA, as well as the Secretariat and an invited participant. Its task was to provide a concise scientific review on whether it believes that any proposed catches are such that the **long-term** status of the populations concerned will not be negatively affected, recognising that there will be an RMP *Implementation* or *Implementation Review* during the interim period, as outlined in a draft schedule of relevant work of the Scientific Committee.

The SWG **agreed** that it was appropriate for the report of the SAG to be reviewed by the Scientific Committee for clarity and completeness. It was also agreed that the scientific aspects of the draft Consensus Document should also be reviewed by the Scientific Committee. At the end of the SWG meeting, a small group was asked to develop draft terms of reference for the review by the Scientific Committee to ensure that the review was undertaken as efficiently as possible. The terms of reference were agreed by correspondence after the meeting and are given as Annex G to this report².

¹ Representatives from the following NGOs addressed the meeting: Alaska Eskimo Whaling Commission (AEWC); Instituto de Conservacion de Ballenas (Argentina) including on behalf of other Latin American NGOs Asociacion de Biologica Marina (Guatemala), Centro de Conservacion Cetacea (Brazil and Chile), Comité Ballena Azul (Nicaragua) and Sociedad Mundial para la Proteccion Animal, Latinoamerica y et Caribe; Antarctic and Southern Ocean Coalition (ASOC) including on behalf of Global Ocean and Ocean Sentry; Pew Environment Group; IWMC World Conservation Trust; World Society for the Protection of Animals (WSPA); Environmental Investigation Agency (EIA); Whale and Dolphin Conservation Agency (WDCS); Animal Welfare Institute (AWI); Greenpeace; and the International Fund for Animal Welfare (IFAW).

² At the meeting of the Support Group held on 5 March and when commenting on the draft SWG report, Australia noted its concern regarding the decision at the SWG meeting to table the report of the Scientific Assessment Group (IWC/M10/SWG 6) without the prior agreement of all of the Support Group (see p 3 of the SAG report). It has written to the Chair of the Commission outlining its concerns. Given this, Australia has indicated that it is not in a position to agree to the terms of reference and guidance in Annex G believing the matter needs careful consideration within the Support Group at its April meeting.

Table 1

Issues arising from discussions of the draft Consensus Decision to Improve the Conservation of Whales that require further consideration prior to IWC62

General conceptual issues

- Limiting whaling operations to those members who currently take whales
- The acceptance of special permit whaling and the perceived legitimisation of commercial whaling during the 10-year period
- The occurrence of whaling in the Southern Ocean and Southern Ocean Sanctuary
- Whaling on 'populations of concern' – related to scientific advice on catch limits
- Scientific Committee guidelines for national and co-operative research programmes
- The perceived undermining of IWC-agreed scientific procedures
- Consideration of issues raised in the Australian proposal (IWC/M10/SWG5)
- The challenge of assessing the viability of the draft arrangement in the absence of numbers in Table 4

Specific issues

- Catch limits in Table 4, Appendix A:
 - Scientific procedures used as basis for setting catch limits – the report of the Scientific Assessment Group (IWC/M10/SWG6) and the role of the Scientific Committee (see text)
 - Mechanism for how catch limits would be lowered (and clarification of meaning of terms such as 'significant event', 'sufficiently severe' and 'appropriate'):
 - (1) as a result of an RMP *Implementation* or *Implementation Review*;
 - (2) if there is a 'significant event' that negatively affects the status of a stock; or
 - (3) if (Appendix A, paragraph 35) a Contracting Government has failed to implement and apply 'sufficiently severe' sanctions or to take 'appropriate' enforcement action.
 - Monitoring, control and surveillance (MCS) provisions:
 - Review measures as a whole to ensure no 'gaps'
 - Reference to deterring IUU whaling
 - Costs of MCS and how apportioned among Contracting Governments
 - International Observer Scheme:
 - (1) provision to allow Contracting Governments to veto candidates;
 - (2) allowing a whaling vessel to depart if through no fault of the Contracting Government or whaling operation an observer is not available.
 - DNA registers and market sampling:
 - (1) Level/nature of oversight;
 - (2) Submission procedure for samples/DNA profiles for comparison with registers (possibility of submission by others than Contracting Governments).
 - South Atlantic Sanctuary - clarity of proposed draft Schedule paragraph
 - IWC Co-operation Programme
 - Speaking rights for observers and how this is handled
 - Biennial or Annual Meetings (if and when)
 - Implications of the arrangement on workload of the Secretariat and necessary expertise
 - Clarity on timetable and mechanism during 10-year period regarding addressing *inter alia*:
 - commercial whaling moratorium
 - Article VIII and whaling in the Southern Ocean
 - objections and reservations
 - dispute settlement procedure
 - small cetaceans
 - review of financial contributions scheme
 - other category (b) issues
 - Relationships with other Conventions
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4. PREPARATION FOR IWC62

As noted above, there was insufficient time for the SWG to finalise any possible proposals for IWC62 in Agadir. It therefore developed the timetable in Table 2 for the intervening period to maximise progress. The SWG **endorsed** this approach.

Table 2

Timetable for further work on the Future of the IWC

5 March 2010	Support Group Meeting
10 March 2010	Draft report of Florida SWG meeting circulated to SWG members for comment and approval. Comments to be sent to the Secretariat by Friday 26 March 2010.
31 March 2010	Chair incorporates comments to the draft SWG report and the final SWG report is circulated to Commissioners and Contracting Governments and placed on the IWC website.
1 April 2010	Formal proposed text changes to the Consensus Decision due at the Secretariat
9 April 2010	Secretariat circulates proposed text changes
11-15 April 2010	Support Group Meeting to consider proposed changes and the issues outlined in Table 1 of this report and provide support to the Chair on any new/revised text
22 April 2010	Deadline for proposed Schedule amendments – circulation to Commission and Contracting Governments and placed on the IWC website
16-17 June 2010 (1.5 days allowed)	Discussions on the Chair's report/proposed Schedule amendment prior to the Commission Plenary

It was **agreed** that the SWG will have fulfilled its mandate under Resolution 2009-2 with circulation of its report on 31 March 2010 (well before the 5-week deadline). This timetable is also consistent with the 60-day advance notice requirement of Rule of Procedure J.1 regarding proposed Schedule amendments.

5. OTHER MATTERS

Japan gave a presentation, including video footage, of the acts of harassment and interference against its research vessels during the recent austral summer research under JARPAII by the Sea Shepherd Conservation Society vessels, the *Steve Irwin* (registered in The Netherlands), the *Ady Gill* (registered in New Zealand) and the unflagged *Bob Barker*. It noted that their activities, which threaten safety at sea have actually resulted in a collision, and that this group has started using more powerful and more harmful weapons to attack the Japanese crew and the research vessels, including lasers, improvised weapons to shoot glass bottles at the crew, strengthened wires and ropes to entangle the propellers of its vessels; arrows were discovered afloat after the collision with the *Ady Gill*.

Japan reminded the Commission that such activities have been carried out against its vessels for a number of years in spite of consensus Resolutions adopted by the Commission in the past³ and the consensus statement issued at the March 2008 intersessional meeting of the Commission⁴. Japan reported that it has raised this matter at the International Maritime Organisation and that it is also pursuing domestic action against several activists. It also reported that it had contacted the relevant flag and port States before and after the latest JARPA II cruise requesting that they take measures to prevent such violent protests and thanked those nations who were able to provide assistance. It believed that unlawful activities such as those conducted by the Sea Shepherd Conservation Society can never be condoned and as in previous years, noted that if IWC member countries are unable to stop such acts it may reflect badly on the outcome of the ongoing discussions on IWC's future. Japan requested those countries concerned to impose more resolute measures in future.

Australia, New Zealand and The Netherlands, in their capacities as port (Australia) or flag States, reported on the present status of investigations/action in their countries. All countries who spoke in the discussion reiterated

³ Resolution 2006-2 on the Safety of Vessels engaged in Whaling and Whale Research-related Activities (*Ann. Rep. Int. Whaling Comm 2006*: 69) and Resolution 2007-2 on Safety at Sea and Protection of the Environment (*Ann. Rep. Int. Whaling Comm 2007*: 91).

⁴ IWC/60/7 Chair's Report on the Intersessional Meeting on the Future of IWC, Renaissance London Heathrow Hotel, UK 6-8 March 2008.

their strong views about respect for the right to peaceful protest, but also the unacceptability of violent protests that might damage human life and property and threaten the marine environment.

6. CONCLUSIONS AND PRESS RELEASE

The Chair thanked all of the participants in the meeting, delegates and NGOs, for their constructive approach and co-operative attitude. He recognised that considerable work remains to be done and urged all to continue their efforts to reach a fair and balanced solution by Agadir; he hoped that the work of the Support Group and others between now and Agadir would prove fruitful. The future of the IWC as an effective, co-operative body working for good conservation and management was a vital goal and a return to the days of division and acrimony would help neither whales nor the IWC. The Chair also thanked Sir Geoffrey Palmer and the Secretariat for the great support he had received during the meeting. Finally, he thanked the interpreters for carrying out their difficult task with efficiency and care. The SWG rose in appreciation for the masterly way in which the Vice-Chair of the Commission had chaired meeting at such short notice. A press release for the meeting can be found on the IWC's website: <http://www.iwcoffice.org/meetings/swg0310.htm#press>.

Annex A

Meeting of the Small Working Group on the Future of the IWC
St. Pete Beach, Florida, USA, 2-4 March 2010

List of participants

Antigua & Barbuda

Anthony Liverpool (C)

Argentina

Mario Oyarzabel (AC)

Miguel Iniguez (AC)

Australia

Donna Petrachenko (C)

Zena Armstrong (AC)

Paula Watt (AC)

Sandy Hollway

Pam Eiser

Belgium

Alexandre De Lichtervelde (C)

Brazil

Fabio Pitaluga (C)

Fabia Luna

Cambodia

Nao Thuok (C)

Cameroon

Baba Malloum Ousman (C)

Costa Rica

Eugenia Arguedas (AC)

Ricardo Meneses-Orellana

Denmark

Ole Samsing (C)

Amalie Jessen

Ane Hansen

Nette Levermann

Finland

Esko Jaakkola (C)

France

Stephane Louhaur (C)

Martine Bigan (AC)

Germany

Thomas Schmidt (AC)

Monika Roemerscheidt

Iceland

Tomas H. Heidar (C)

Kristjan Loftsson

Japan

Jun Yamashita (AC)

Joji Morishita (AC)

Toshinori Uoya

Hideaki Okada

Daisuke Kiryu

Dan Goodman

Yasuo Iino

Yoko Yamakage (I)

Kiyomi Ito (I)

Korea, Republic of

Choi-Woo Lee (C)

Dae-Yeon Moon (AC)

Zang-Keun Kim (AC)

Mexico

Lorenzo Rojas-Bracho (C)

The Netherlands

Marie Josée Jenniskens (C)

Peter Bos (AC)

New Zealand

Geoffrey Palmer (C)

Jan Henderson (AC)

Gerard van Bohemen (AC)

Michael Donoghue

Karena Lyons

Norway

Ole-David Stenseth (AC)

Lars Walløe

Hild Ynnesdal

Petter Meier

Republic of Palau

Vic Uherbelau (C)

Peru

Doris Sotomayor (C)

Saint Kitts and Nevis

Timothy Harris (C)

Daven Joseph (AC)

Saint Lucia

Jeannine Compton (C)

Spain

Carmen Asencio (AC)

Ana Tejedor

Sweden

Bo Fernholm (C)

Stellan Hamrin (AC)

UK

Richard Cowan (C)

James Gray (AC)

Sarah Archer (AC)

USA

Monica Medina (C)

Douglas Demaster (AC)

Roger Eckert

Ryan Wulff

Robert Brownell

Lisa Phelps

Allison Reed

Mike Gosliner

DJ Schubert

Michael Tillman

Rollie Schmitten

Earl Comstock

Kitty Block

Doug Tedrick

Mike Smith

Jessica Lefevre

**INTERGOVERNMENTAL
ORGANISATION
OBSERVERS**

European Union

Irene Plank

**NON-GOVERNMENTAL
OBSERVERS**

American Cetacean Society
Cheryl McCormick

Animal Welfare Institute
Susan Millward

**Antarctic and Southern
Ocean Coalition**
Sidney Holt

BlueVoice Org
Hardy Jones
Deborah Cutting

**Centro de Conservacion
Cetacea**
Elsa Cabrera
Jose Palazzo

**Cetacean Society
International**
Jessica Dickens

**Comité Ballena Azul
Nicaragua**
Yanina Luna

Cousteau Society
Clark Lee Merriam

Dolphin Connection
Deborah Adams

**Eastern Caribbean Coalition
for Environmental
Awareness (ECCEA)**
Gerardo Palacios

**Environmental Investigation
Agency**
Jennifer Lonsdale
Sam LaBudde
Alan Thornton

ExxonMobil
Bruce Tackett

Global Ocean
Sidney Holt

Greenpeace
Phil Kline

**Guatemalan Association of
Marine Biology (ABIMA)**
Lucia Gutiérrez

**Humane Society
International**
Patricia Forkan

**Instituto de Conservacion de
Ballenas**
Roxana Aida Schteinbarg

**International Fund for
Animal Welfare**
Patrick Ramage
Vassili Papastavrou

**IWMC World Conservation
Trust**
Eugene Lapointe
Gavin Carter

**Natural Resources Defense
Council**
Taryn Kiekow

Ocean Sentry
Sidney Holt

Pew Environmental Group
Susan Lieberman
Duncan Currie

The Varda Group
Rémi Parmentier

**Whale & Dolphin
Conservation Society**
Sue Fisher
Niki Entrup
Kate O'Connell

Windstar Foundation
Nancy Azzam

**World Society for the
Protection of Animals**
Claire Bass
Joanna Toole
Marcela Vargas

WWF International
Leigh Henry

SECRETARIAT
Nicky Grandy
Greg Donovan

Annex B
List of Documents

- IWC/M10/SWG
- 1 Draft agenda
 - 2 List of Participants
 - 3 List of Documents
 - 4 Chair's Report to the Small Working Group on the Future of IWC
 - 5 The Future of the International Whaling Commission: An Australian Proposal
 - 6 Report of the Scientific Assessment Group
 - 7 Statement on the Future of the IWC by the Government of Japan
 - 8 Summary of statement by the Government of New Zealand on the Chair's Report to the SWG (Document IWC/M10/SWG4)
- (The above documents are available on IWC's website at:
<http://www.iwcoffice.org/meetings/swg0310.htm>)

Background documents:

- IWC/61/
- 6 Report of the Small Working Group (SWG) on the Future of the International Whaling Commission, 18 May 2009
 - 7rev [Revised] Chair's Report of the Intersessional Meeting of the Commission on the Future of IWC, FAO, Headquarters, Rome, 9-11 March 2009
 - 10rev Consensus resolution on the extension of the Small Working Group on the Future of the IWC until the 62nd Annual Meeting of the Commission

The above documents are available on IWC's website at:
http://www.iwcoffice.org/_documents/commission/IWC61docs/iwc61docs.htm)

Annex C

Agenda

1. INTRODUCTORY ITEMS
 - 1.1 Introductory remarks
 - 1.2 Reporting
 - 1.3 List of documents
2. ADOPTION OF THE AGENDA
3. REPORT FROM THE CHAIR OF THE COMMISSION
 - 3.1 Presentation of the report
 - 3.2 Discussions
4. PREPARATION FOR IWC62
5. OTHER MATTERS
6. CONCLUDING REMARKS

PowerPoint presentation on the discussions on the Future of the IWC by Anthony Liverpool

4th Meeting of the SWG on the Future of the IWC, Florida, 2-4 March 2010



Why are we here?

The very different views re: whales and whaling have dominated the Commission's time & resources for almost a quarter of a century to the detriment of its effectiveness

We are here:

- to assist the Commission to arrive at a consensus solution to the problems it faces so that...
- the IWC can be a relevant, credible, effective conservation and management body



The Future of IWC the IWC: from Anchorage to Agadir

- A huge task given the differences of views and the difficulties in previous discussions
- A huge investment of money, time and people
- A huge amount at stake - not just for the future of the organisation but primarily for good conservation and management
- Progress **HAS** been made if not full agreement reached



Effort: Nine intersessional meetings

2007	June	IWC 59, Anchorage
2008	March	Intersessional, London
	June	IWC 60, Santiago
	September	SWG, Florida
	December	SWG, Cambridge
2009	March	SWG, Rome; IWC Intersessional
	June	IWC 61, Madeira
	October	Support Group, Santiago
	December	Support Group, Seattle
2010	January	Support Group, Honolulu
	February	SWG, Florida
	June	IWC 62, Agadir



The Future.....

..... a short history!



IWC 59: Anchorage 2007

- Formally agreed on the need to address the future
- Established a small Steering Group to plan for an intersessional meeting of the Commission
 - Chile, Japan, New Zealand, Palau, USA
- For the first time involved outside experts with expertise in addressing other difficult international issues
- To everyone's delight, the meeting was held at Heathrow Airport, London



March 2008 Intersessional

- Focussed on improving the process and the conduct of negotiations before 'substance'
- Also highlighted a number of issues including:
 - Role/purpose/future of IWC & 'ripeness' or readiness to discuss difficult issues
 - The role of science
 - Improving participation
 - Improving relationships with other IGOs
 - The role of the media



IWC60, Chile, 2008

Agreed follow-up in three areas:

- Reformed working procedures
 - Mutual respect notwithstanding different views and perspectives with increased dialogue between those of different views
 - Consensus the aim – voting the last resort – NO surprises
 - New working languages (French & Spanish)
- Issues related to the Scientific Committee
 - Established the Intersessional Correspondence Group (ICG)
 - Looked at *inter alia* separation of SC from Commission meeting, participation of scientists from developing countries, invited participants, capacity building
- A new negotiation process
 - Identified 33 issues of importance for IWC's future
 - Established the Small Working Group (SWG)



The Small Working Group

Membership:

- Not that 'small' - over 30 countries
- Representative (views, geography, economy)

Objectives: simple to say but difficult to achieve

- to assist the Commission to arrive at a consensus solution to the main issues it faces.....
- to make every effort to develop a package(s) for review by the Commission at IWC61

Mantra:

'nothing is agreed until everything is agreed'



SWG 2008: Florida (Sept) & Cambridge (Dec)

Allocated the 33 issues to 2 categories:

- Category (a) – controversial issues
 - If not addressed in short-term may fail to alter the *status quo* or perhaps result in an irreparable break in the system via withdrawals
- Category (b) - non/less controversial
 - Primarily scientific and/or administrative
 - If left unresolved in short-term would not prevent a package(s) for category (a) *provided* a mechanism exists/can be established

Initiated discussions on elements that could be included in a **core package(s)**



Category (a) issues

1. Animal welfare	8. Scientific permits
2. Bycatch & infractions	9. RMP
3. Coastal whaling	10. RMS
4. Commercial whaling	11. Sanctuaries
5. Compliance & monitoring	12. Small cetaceans
6. Convention (purpose)	13. Whalewatching/non-lethal use
7. Objections & reservations	

Succinct descriptions of issues arising under each were developed



Category (b) issues

1. Advisory/standing committee	11. Ecosystem approach
2. Animal welfare	12. Environmental threats
3. Bycatch & infractions	13. Ethics
4. Climate change	14. Financial contributions scheme
5. Civil society	15. Meeting frequency
6. Conservation Committee	16. MPAs
7. Conservation Management Plans	17. Procedural issues
8. Co-op non-lethal research	18. Sanctions
9. Data provision	19. Science – role of
10. Developments in ocean governance	20. Secretariat – implications
	21. Socio-economic implications
	22. Trade restrictions

Provided an indication of how issues already being addressed or could be addressed



Developing a package(s)

SWG **agreed** potential packages must:

- Provide for long-term sustainability of stocks;
- Provide for the recovery of depleted or endangered stocks;
- Be perceived as balanced by all parties;
- Provide procedures for reviewing and where necessary improving governance practices.



SWG: Rome, March 2009

- Chairs' (Hogarth and DeSoto) warning:
 - *Failure to find broad agreement on IWC's nature, purpose and future course could compromise its continued relevancy and credibility as an effective conservation and management body at a time of growing need for enhanced international co-operation*
- Driving force behind 'Chairs' suggestions
 - Their responsibility but based on SWG work
 - Focused on Category (a) issues
- 'Snapshot' of work in progress



Chairs' Suggestions

Despite important differences, stressed that there are also important commonly-held views:

- Recognition of IWC as primary international body with responsibility for global conservation and management of whales
- Strong belief in maintaining healthy whale populations and restoration of severely-reduced populations
- Acknowledgement of Scientific Committee as world's foremost authority on cetacean biology, ecology and management science



Chairs' Suggestions (cont)

Two-stage approach:

- Short-term solutions to some key category (a) issues be agreed at IWC61 and last for a 5-year interim period (Stage 1)
- During interim period, development of long-term solutions/approaches on governance and functioning of IWC [category (a) and (b)] to be put in place at end of the interim period when (Stage 2) begins
- Details not summarised here as superseded later



Intersessional Commission Meeting, Rome, March 2009

Primary work involved

- Review of Chair's Report on SWG especially:
 - Chairs' suggestions
 - Handling of category (b) issues
- Review of ICG report on issues related to the Scientific Committee
- Provide directions to SWG for further work

In addition, the meeting:

- Held an NGO session to receive views



Rome review of SWG

- Welcomed improved atmosphere of debate
- General support for a staged/phased approach - need for long-term solutions not just 'quick fixes'
- Varied views on details of the suggestions
- Importance of category (b) issues:
 - Many scientific issues already being addressed
 - Others referred back to SWG
- Future – SWG instructed to continue its work and to draft Schedule language where possible and detail work on category (b) issues



IWC61, Madeira, June 2009

SWG report to the Commission *inter alia*

- Identified achievements although goal not reached:
 - Significant progress on both (a) and (b) issues
 - Greatly improved atmosphere and mutual respect
 - Common sense of urgency
- Recommended that work should continue for a further year



IWC61 consensus resolution - the IWC will, through its reconstituted SWG:

- intensify its efforts to conclude a package(s) by IWC62;
- ensure that any package must be seen as fair and balanced
- reaffirm that nothing is agreed until everything is agreed;
- build upon SWG progress and idea of two-phase process;
- Discuss the core issues without prejudice to the principles held by individual countries;
- *modus operandi* to include:
 - Balanced-composition Support Group to assist Chair (and thus SWG)
 - SWG open to observers
 - Report at least five weeks prior to IWC62



Here ends the history lesson...

.... as we move onto the **Support Group's work**

Membership:

- Balanced (views, geography, economy)
- Antigua & Barbuda, Australia, Brazil, Cameroon, Germany, Iceland, Japan, Mexico, New Zealand, St. Kitts & Nevis, Sweden, USA
- Norway observed at final meeting

Three Meetings:

- Santiago (October 2009); Seattle (December 2009); Honolulu (January 2010)



The Support Group

- Focused on a set of not-mutually-exclusive 'themes':
 - A shared vision for the IWC
 - Addressing problems *within* the Convention
 - An interim period approach, an acceptable package
 - Conservation and sustainability, healthy whale populations, exploitation and protection
 - Special permit whaling, small-type coastal whaling, aboriginal subsistence whaling, benefit sharing
 - Commercial whaling moratorium, sanctuaries, trade
 - Monitoring, compliance, animal welfare, accountability
 - Whalewatching, small cetaceans, bycatch, human impacts
- reservations and objections
- Governance mechanisms of the IWC



The Support Group and the draft Consensus Decision

- Contains:
 - important input from all Support Group members, and....
 - some pain for all as any fair agreement must
 - benefits for conservation and management
- But remember:
 - It is a draft and not agreed - significant progress was made on the understanding that:
 - Nothing is agreed until everything is agreed
 - Nothing prejudices the legal positions re the ICRW
 - The critical issue of numbers is not yet resolved



What is the draft Consensus Decision?

Begins with a short vision statement:

The IWC will work co-operatively to improve the conservation and management of whale populations and stocks on a scientific basis and through agreed policy measures. By improving knowledge of whales, their environment and the multiple threats they face, the Commission will strive to ensure that whale populations are healthy and resilient components of the marine environment.

Then discusses how this might be achieved....



Achieving the vision

- Retains a two-phase approach, but the timing and content differs from the Hogarth/de Soto 'Suggestions'
- To be implemented after IWC62 for a 10-year period with a review after 5 years
- Sets objectives/priorities for:
 - Conservation
 - Management
 - Science
 - Governance of the organisation
- Identifies a future work programme that includes other issues of importance



For Conservation

- Focus on recovery of depleted stocks
- Take actions (e.g. via Conservation Management Plans) on key issues, e.g.
 - bycatch and ship strikes
 - Environmental threats (e.g. Pollution, habitat)
 - climate change
 - Priorities based on immediate need and likelihood of success
- Establish a South Atlantic Whale Sanctuary



Conservation (contd)

- Establish a 'Conservation Programme Committee'
 - Would replace the current Conservation Committee
 - All members would participate
 - Further details later under 'Governance'



For Management

- Of non-lethal use of whale resources:
 - Whalewatching to be recognised as a management option for coastal states
 - Related scientific, conservation and management aspects of whalewatching to be addressed
- Of whaling.....



Strengthened whale management

- Draft Schedule text drafted (see Appendices) for interim period
- All whaling by all members brought under IWC control
- Limit operations to those currently taking whales
- Cap on whale catches based on scientific advice
- Notwithstanding the above interim period arrangement, the moratorium remains in place
- Strong measures to ensure catch limits not exceeded (monitoring and compliance)
- Aboriginal subsistence whaling renamed indigenous subsistence whaling



Catch limits

- Not yet agreed but below current levels
- Non-indigenous whaling
 - Whaling under special permit or objection/reservation will be suspended for period
 - Limits to be set **below** safe sustainable levels determined by best scientific advice (5-year review)
 - RMP primary tool but provisional measures for some species/areas until RMP Implementations completed
- Indigenous subsistence whaling
 - to continue under existing management measures (AWMP, interim advice)
- Provision to lower catch limits on scientific advice



Monitoring, control and surveillance: rules obeyed and seen to be obeyed

	Non-indigenous whaling	Indigenous subsistence whaling*
National inspectors	Yes	Yes
International observers	Yes	-
VMS	Yes	-
DNA registers & market sampling	Yes	-
Infractions and sanctions	Yes	Yes
Animal welfare considerations	Yes	Yes
Scientific information	Yes	Yes
Operational information	yes	-

* Given conditions under which ISW conducted, MCS necessarily different



MCS key points

Licensing

- Vessels must be licensed (specifying areas, whale stocks, time periods for operations)
- Information on licences must be provided to Secretariat prior to whaling season
 - Copies provided to governments on request

Infractions & sanctions

- Examples of appropriate enforcement measures provided



MCS key points (cont.)

International observers

- Based on earlier detailed work on RMS
- Criteria for acceptable observers
- On all but smallest boats (trips < 24 hours)
- At all points of landing

VMS

- On all boats
- Autonomous & tamper proof



MCS key points (cont.)

DNA registers and market sampling (MSS)

- Follow best practice (draft developed by a specialist group for the RMS to be reviewed by Scientific Committee to ensure up-to-date)
- National registers with international oversight
- All whales potentially on market included (whaling, bycatch, stranding, ship strikes etc)
- Unlike catch documentation scheme cannot 'cheat'
- Market sampling to check no illegal whales



MCS key points (cont.)

Whale killing methods & welfare issues

- Collection and reporting of data mandated through inclusion in the Schedule
 - to verify that best methods are used and to provide for continuous improvement of methods
- Requirements more extensive for non-indigenous whaling than indigenous subsistence whaling in recognition of nature of those hunts



For Science

- Sound scientific advice essential to the Commission
- Scientific Committee's work internationally recognised as providing the best available knowledge on conservation and management of whales
 - Strong tradition to continue
- SC to
 - take account of the conservation status of and threats to stocks in priority setting
 - Incorporate ecosystem considerations and range of tools to help mitigate threats (CMPs, MPAs)



For Governance

- Commission the governing body
 - Meets every two years from 2011
 - Chair and Vice-Chair serve four-year terms
- Supported by four Committees.....
- Bureau created to support Chair.....
 - Replaces the Advisory Committee:
 - Chair, Vice-Chair, 4 Committee Chairs and 2 Commissioners nominated by Chair for approval by Commission
- Other:
 - Improved speaking rights for observers
 - Include emphasis on safety at sea



The Bureau (NEW)

- Supports the Chair;
- Proposes four-year strategic plans to the Commission based on contributions from the four Committees and monitors implementation of approved plans;
 - Each Committee develops work plan to implement these plans
- Assists and advises Secretariat on administrative and financial matters between Commission meetings;
- Helps co-ordinate the business of the Commission;
- May undertake other tasks entrusted to it by the Commission.



Committees (overview)

- Each Committee elects a Chair and Vice-Chair
 - Serve four-year terms
- 1) Scientific Committee
- 2) Conservation Programme Committee
 - Replaces current Conservation Committee
- 3) Management and Compliance Committee
 - Absorbs responsibilities of Infractions Sub-committee
 - ISW Sub-committee (was ASW) reports to MCC
- 4) Finance, Administration and Communications Committee
 - Replaces current F&A Committee



Scientific Committee

- in addition to existing role it will:
 - Provide advice to regional research partnerships on cetacean issues;
 - Provide prioritised management advice on whaling using established methods and management procedures based on the timetable for work provided in Appendix B;
 - When providing conservation advice on cetacean populations, include coordination and cooperation with the Conservation Programme Committee on the development of conservation management plans;
 - Provide advice on priorities for funding from relevant special funds within the Commission



Conservation Programme Committee (NEW)

Will inter alia

- Identify conservation problems and priorities;
- Cooperate with the Scientific Committee, including in prioritising and developing effective Conservation Management Plans;
- Recommend and facilitate establishment of subsidiary bodies as necessary, including, for example, by developing terms of reference for a Bycatch Mitigation Working Group



Management & Compliance Committee (NEW)

Will inter alia:

- submit reports and recommendations on management and compliance, including guidelines on whalewatching
- Review and report on:
 - progress of the implementation of agreed management procedures;
 - the compliance of whaling operations with the Schedule and penalties for infractions;
- Report on infractions and their seriousness and advise what actions, if any, should be taken;
- Review information available with a view to providing advice on whale killing methods and associated welfare issues;
- submit reports and recommendations on options for implementation of conservation measures associated with whaling, taking into account advice of the Scientific Committee;
- Recommend and facilitate establishment of subsidiary bodies as necessary, including, for example, the Whale Killing Methods Working Group.



Finance, Administration & Communication

Will *inter alia*:

- Advise the Commission on financial and administrative matters;
- Develop a communications plan for the Commission;
- Review the provision of services, including for simultaneous interpretation and translation of documents, and for the website;
- Recommend and facilitate establishment of subsidiary bodies as necessary, including one for contributions that will review the Financial Contributions Scheme and make a recommendation to IWC63 on how the contributions scheme might be revised



Timeline & Future Work Plan

2010 (IWC62)

- Adopt Schedule amendments (Appendix A)
- Implement new measures described for 10-year period, with 5-year review
- Begin to initiate work in other areas, e.g.
 - Category (a) issues: special permit research, moratorium, objections/reservations, small cetaceans
 - Category (b) issues: animal welfare, bycatch, oceans governance, IWC co-operation programme (Appendix E), ethics, socio-economic implications, international trade, sharing benefits from use of whales



Future Work Programme (cont.)

2011 (IWC 63) & 2010 (IWC64)

- Review progress and continue work

2015 (IWC 65) – the Five-year review

- Bureau reviews progress on key issues & implementation of the 'arrangement', identifies further work & prepares a report for the Commission

2017 (IWC 66) & 2019 (IWC 67)

- Commission begins to consider new Schedule amendments to replace Chapter VII (Appendix A)

2020 (IWC 68)

- Schedule amendments in Appendix A expire.



Summary

- The draft Consensus Document is not agreed but comprises a series of ideas for the future functioning of the IWC
- It provides for the possibility that at IWC 62 mechanisms could be put in place to allow the Commission, if it wished, to:
 - Focus on recovery of depleted stocks and take action on key issues (bycatch, climate change....)
 - Bring whaling by all members under IWC control
 - Reduce catches significantly



Summary (cont.)

- Limit whaling operations to those currently whaling;
- Establish caps of takes within sustainable levels for 10-year period
- Enhance monitoring and control measures and animal welfare aspects of whaling operations
- Recognise whalewatching as management option
- Create a South Atlantic Whale Sanctuary
- Provide mechanism for enterprise and capacity building for developing countries
- Strengthen governance



Summary (cont.)

- It proposes that new measures are implemented for a 10-year period with a 5-year review
 - Provides period of stability during which Commission can undertake review of other matters (e.g. special permit research, objections/reservations, commercial whaling moratorium) and further work on reform of IWC
 - Notwithstanding this, the moratorium remains



Closing remarks

- Ideas in draft present challenges for all;
- Inevitable if outcome is to be fair and balanced - the Chair believes the draft is an excellent basis for reaching such an outcome
- Expect full discussion of the document and its idea and concepts
- Recognises the key role of catch limit numbers to the whole process and the need to finalise these – 'nothing is agreed until everything is agreed'



Closing remarks (cont.)

- 'cherry picking' only the parts we like will not lead to an equitable final outcome
- the *status quo* is not an appropriate option – indeed may not be possible
- Continued peaceful collaboration, not a return to the acrimony of the past, is the way forward
- We must remember that whatever our national interests, the future of good, international conservation and management **IS** at stake



Annex E

Statement by the Chair of the Support Group, Sir Geoffrey Palmer

As the facilitator of the Chair's Support Group it may be helpful if I make some comments on the approach the Group took over the three meetings it had. These meetings were truly cordial. They were constructive. They generated an atmosphere of trust and cooperation – rare qualities in the IWC in my experience. The process demonstrated the advantages of miniaturisation: that is to say, all the diverse points of view of the IWC being represented in a group of a manageable size.

The first conclusion we reached – and this is implicit rather than explicit on the face of the document – was that we would use the tools at the IWC's command – Schedule amendments. We would not attempt to rewrite the International Convention for the Regulation of Whaling except to the degree that can be accomplished through changing the Schedule. The reasons for that position were essentially pragmatic. Obtaining the agreement necessary, within the immediate future, to alter the treaty itself was assessed to be a remote possibility given the long history of mistrust and division. The significance of that decision, however, needs to be spelled out. Some of the critical issues can only be solved by amending the Convention notably Article VIII, that deals with Special Permit whaling.

So we are in the situation that the best we can achieve here is a binding agreement that can be implemented through a Schedule Amendment made at Agadir. Notice of the contents of that amendment must be given by April 22, 2010. That is not far away. That fact should concentrate the minds here.

The Group began its discussions by imagining what a properly functioning IWC would look like. This process produced a set of principles which guided the rest of our discussions. These included the 'four Cs':

- **Cooperation:** establishing a shared vision for a future of this organisation in which we could all work together towards achieving a better future for whales in an atmosphere of collaboration, trust and mutual respect for the differing, but deeply-held views of IWC member countries - in other words we worked to find things we could agree upon.

- **Conservation:** all members of the Commission share the common goal of whale conservation. We thought the Commission should focus more on this common goal, particularly in the view of emerging threats to whales that could not have been in the minds of the drafters of the ICRW;

- **Certainty:** a properly functioning IWC will require certainty for all parties; this will require improved systems for monitoring and accountability, and needs to be durable and sustainable for whales and whalers alike;

- **Compromise:** for the IWC to function properly, any interim agreement needs to include something for everyone; and should not prejudice anyone's baseline position or principle. It should address issues around both the exploitation *and* the protection of whales, whaling by indigenous peoples, and the needs of developing countries, particularly with regard to capacity-building.

In particular, we immediately needed to deal at a practical level with the thorny issues of scientific whaling and small type coastal whaling.

Finally, any arrangement would need to be **transparent**, and provide for a greater engagement by NGOs than has previously been the case.

There has been an understandable focus on the elements of the draft proposal that will take immediate effect and those that will operate over the interim period.

It is important to remember that just as important to the package is the commitment to addressing, during the interim period, the hard issues that lie at the heart of the ideological divide between the Commission's members:

- whether any level of commercial whaling should be allowed and, if so, on what conditions;
- whether and if the scientific whaling provision in Article VIII of the Whaling Convention can be permanently closed;
- whether parties to the Whaling Convention should be allowed to opt out of management measures adopted by the Commission.

If we can solve those problems, which will require amendment of the Convention if agreement can be reached, we will really be able to move forward with confidence. If we cannot, no-one should assume that we will simply revert to the *status quo ante*. What would be the purpose in that after all this effort?

We are far from an agreement yet. What is front of you is an incomplete document. It is not agreed by any nation at this stage. It is a work in progress.

The most notable gap relates to the numbers of whales to be killed. Some of us want no whales to be killed for commercial purposes. Others of us want to go commercial whaling on a substantial basis. The talks we had revealed that neither of these agendas could be satisfied if an agreement was to be forthcoming. Compromise was going to be required. That meant suffering pain. Or to put it another way, often used in domestic New Zealand politics – both sides would have to swallow a dead rat - never a happy event – and one calculated to disturb digestion.

The principle that seemed to the conservation side of the house to be the most attractive was to reduce the total number of whales being killed. These figures have increased substantially in recent years. Whaling quotas have risen despite the moratorium. In 1990, non-indigenous whaling quotas totalled just over 300 whales. In 1995 they were around 500. In 2000 they were around 1000. By 2005 there were around 2000. Now in 2010 the quotas are set at more than 3000. A key issue that emerged from the discussions was whether it would be possible to cap or internationally curtail by agreement the exercise of Article VIII rights. The issue was regarded by many in the negotiation as a critical one. The current rules of the IWC have not provided an effective way to limit or stop this whaling.

The package in front of you, incomplete as it is, can reduce catch levels significantly if the numbers are agreed. Obviously these numbers are critical to any package being accepted. The agreement will limit the opportunity of those who take whales now within the convention. That amounts in my view to a method of international control by IWC over scientific whaling - a first. The significance of this agreement will be that it closes for a 10 year period, a provision that renders the IWC powerless to control the numbers of whales killed as matters stand. There are other significant changes as well;

- proper functioning of the Conservation Committee of the Commission
- adherence to proper scientific standards rather than self-appointed catch limits
- the establishment of a management and compliance committee with processes for national inspectors, international observers, a vessel monitoring system, a DNA registry and market sampling scheme
- significant changes in governance.

Among the governance proposals are:

- biennial meetings
- a new committee structure
- establishment of a Bureau, an institution that is common in many international organisation
- greater opportunities for participation by NGOs.

The collage, as the document itself suggests, represents a paradigm shift. It will, for a period of 10 years, set aside the difference between members and allow the IWC to function. The IWC does not properly function as an international organisation because it has been riven by deep splits and divisions.

We need to hear at this meeting what the members of the Small Working Group think of the work so far. What are its strengths? What are its weaknesses? How should it be changed? Certainly the collage will not satisfy any nation. It cannot. It is a compromise. It will remain a compromise – a negotiated compromise. Everyone will be grumpy, even if the package succeeds which is most definitely not assured.

I want now to address some points about some of the problems people may have with the collage.

Firstly, let me reiterate that the draft prepared after much lengthy debate within the Support Group does not mean the abandonment of Paragraph 10(e) of the Schedule. Neither does it legitimise commercial whaling. The Support Group is proposing a suspension of the current categories of whaling during a 10-year period. During that period the long term issues that have been isolated in the SWG process will be analysed and addressed.

As has been said many times during this process, to obtain a durable settlement everyone will have to bear some of the pain. Whaling under objection and reservation, as well as Special Permit whaling - as categories – will go. The only non-indigenous whaling that can happen will be that set out in the numbers in the Table. The Table will need to deliver significant reductions in the numbers of whales killed each year. That is at the heart of the

proposal. These numbers have not been finalised yet. But it is clear to me as the facilitator of the Support Group that unless the numbers of whales taken annually are significantly reduced, then there will be no consensus and no deal. It is my earnest hope that over the next few days we will be able to get much closer to finalising the proposals that will be further considered in Agadir.

There has also been much talk of the objection provisions available under the ICRW, and suggestions that one or more of the whaling countries might object within 90 days to a consensus decision of the Commission, and thus not be bound by it. I understand these concerns. But they are not well founded.

As Chair of the Support Group, I can report to you that it is my firmly-held conviction that all countries involved have participated in good faith. We all understand the significance of the discussions we have been holding. I am in no doubt whatsoever that IF we reach a consensus, none of the whaling countries will be lodging an objection. That is what consensus means. Blocking consensus is not easily undertaken by one country. If they do, it would simply provoke objections from the other side – as is provided for in the Convention – and would wreck any carefully-crafted compromise. It would put us back where we were at the start of this process and in an even worse frame of mind because the success achieved collectively will have been snatched from us by unilateral action.

Comments have also been made that quotas allocated under an interim arrangement would not be based on sound scientific advice. I want to reassure you all that ultimately, all quotas will be based on the RMP⁵. It is true, of course, that for some of the stocks under consideration, the Scientific Committee does not have adequate data to implement the RMP. For those stocks, collection and analysis of high-quality data for implementation of the RMP will be a priority. In the interim, quotas will be precautionary, and at a level that is well within the limits of sustainability according to the best available scientific information. Should a future implementation of the RMP generate a higher permissible level of take, quotas will nonetheless remain at the precautionary levels developed in the current process.

A further criticism that has been made is that the current collage does nothing to prevent international trade in whale products. The fundamental reason for this, of course, is that this is not the role of the IWC. Trade matters are the domain of CITES and the WTO. However, our negotiations are ongoing, and it may be possible to develop some further safeguards to address these concerns.

Nothing is agreed until everything is agreed. We all know that I believe that the Support Group has made great progress in bringing us out of the trenches and silos that characterised much of the time that I have spent at the IWC during my 8 years. At present, we may be in a no-man's land. The options are to move forward towards an armistice, or retreat back to the trenches. I urge you all to enlist your collective energies in reaching out for a settlement.

We have been climbing this Mount Difficulty for quite some time. There have been many attempts at scaling its peak. Each time we have had to abandon our expedition and return to our respective encampments. We are now at another point of decision. Do we try again for the summit or go home defeated?

Change is within view, and within reach. Behind us rests the certainty of the deadlock we have enjoyed for decades. Our previous expeditions up this Mount Difficulty have failed. We can return to the comfortable acrimony of our established positions. However, just ahead of us awaits the uncertainty of new life for this organisation, a life where parties can cooperate to advance their common interests.

Let us not rename Mount Difficulty Mount Impossible just yet.

If we do not scale this peak, I confidently predict no further attempt will be made for 20 years. Governments will not be prepared again to commit the significant diplomatic resources that have gone into the present exercise. Politicians will not be prepared to give time and energy to an issue that has proved so intractable and which, while important, is far less demanding of their attention than the many other issues with which they have to grapple. So unless we succeed the IWC will fall back into the slough of despond that has characterised its activities for many years. That, I believe, would be unfortunate.

⁵ Except for catches of North Pacific sperm whales and Antarctic fin whales for which proposed catches are expected to be extremely low compared with present estimated population size.

Annex F

Summary of the statements made by non-governmental organisations

The representative from the AEWC indicated its support in principle for the draft Consensus Decision and proposed way forward but stressed the importance of: (1) treating aboriginal/indigenous subsistence whaling on its own terms, i.e. separate from the management of commercial whaling; (2) including reference to terms related to indigenous subsistence whaling previously adopted by the Commission, including the definition of aboriginal subsistence whaling; and (3) the marine environment to Alaskan Eskimos. It agreed that current management procedures used for indigenous subsistence whaling should continue to be used as described in Schedule paragraph 13. The AEWC was anxious for the IWC to make a positive contribution to the management of ocean habitats at a time when multiple and competing uses are increasing.

The Instituto de Conservacion de Ballenas, speaking also on behalf of other Latin American NGOs (see main text), was very critical of the draft Consensus Decision which it considered simply to be a continuation of 'business as usual' that would benefit a few to the detriment of many. It was particularly critical that whaling in the Southern Ocean Sanctuary would continue without a deadline to its cessation. While it could understand (but did not agree with) the legitimizing of some whaling in countries' own national waters, it did not believe that it would be possible to adequately address other issues of importance properly while whaling in international waters and in sanctuaries by distant nations was unresolved. It was committed to work against the approval of this package at IWC62 in Agadir and hoped that a different proposal would be available.

The ASOC coalition also found any endorsement of any whaling in the South Ocean as unacceptable and viewed the setting of 'arbitrary' catch limits elsewhere to satisfy the 'needs' of whaling countries as a lamentable return to the IWC practice of pre-1964. It also expressed concerns regarding the scientific basis that would be used for setting quotas and believed that any numbers agreed should be derived from calculations made by the Scientific Committee using the originally agreed version of the Revised Management Procedure. ASOC believed that any decision that effectively rewards those members that continued whaling (under objection/reservation or special permit) for their persistence in doing so, cannot be said to be fair to those states that abided by the commercial whaling moratorium. Finally, ASOC found unreasonable the assumption that the situation regarding the Southern Ocean will be essentially unchanged in ten years from now, or even in five years given *inter alia* concerns over prey availability and rapid environmental changes.

The Pew Environment Group recognized the hard work and efforts of the Support Group and noted a number of positive elements contained in the draft Consensus Decision. However, it was also disappointed that the document effectively legitimizes whaling in the Southern Ocean Sanctuary by proposing a quota for Japan that does not go to zero in an agreed timeframe. It asked Japan whether it will adhere to the principle that whaling should not take place within sanctuaries, and that research within them should be non-lethal. It stressed that a final package address the international trade in whale meat, including reservations under CITES. It remained committed to finding a way forward in this process and welcomed Australia's suggestions for improvement of the package.

The IWMC noted that its initial optimism when the draft Consensus Decision was released dampened by the subsequent release of Australia's alternative proposal. It believed other IWC members were making commitments to the ongoing 'future' and urged Australia to play a strong role within the IWC. It generally supported the draft Consensus Decision but considered that the restriction of whaling to those members currently taking whales could in future jeopardize the cultural traditions of others. On a more detailed level, while welcoming improved speaking rights for NGOs, it believed that providing appropriate balance between the different views would be difficult to manage. It recommended that the IWC develop in line with other intergovernmental organizations.

WSPA had significant concerns over various aspects of the process, including the lack of civil society transparency, but recognized that it had the potential to result in an improvement on the *status quo*. It applauded the aspiration to reduce the overall numbers of whales killed but believed that short-term benefits would not outweigh damage caused in the mid- to long-term. It did not believe that IWC's future is dependent on the adoption of a new proposal and believed that the current proposal would legitimize and resuscitate the few remaining commercial whaling industries, which it found highly undesirable. It welcomed the Australian proposals. It considered that the solution to stopping whaling lies outside of IWC through changes in public and political opinion and expressed its commitment to work with other NGOs to this effect. WSPA considered that the draft Consensus Decision had sidestepped ethical issues. It believed that there is no humane way to kill whales at sea and that whaling therefore has no place in the 21st century. It noted that the banning of certain treatments of animals on welfare grounds is not a new phenomenon. WSPA believed that the 'user pays' principle should be employed for any monitoring and control system introduced.

The WDCS noted that it had several serious concerns with the draft Consensus Decision, as identified by other NGOs, but focused its comments on its concern that international trade is not part of the proposed package. While recognizing that trade is within the mandate of CITES and that until now CITES and IWC have agreed to synchronize their management measures, WDCS believed that setting quotas under the proposed package would be received as a green light by CITES towards the resumption of trade. It therefore proposed that the package should include commitments that: (1) all countries holding reservations to CITES Appendix I listing to lift them; and (2) an unambiguous statement that any establishment of quotas by IWC under the arrangement does not affect the IWC's previous advice to CITES that the moratorium remains in place.

The EIA endorsed the need for clarity with respect to the mechanism(s) for how catch limits to be included in the Consensus Decision would be lowered under certain circumstances (see 'Specific issues' in Table 1). It also believed that the Commission should remove the current incentive for Contracting Governments to issue special permits for primarily commercial purposes. It suggested that this could be done by disallowing the commercial sale and trade of products derived from special permit catches and including a paragraph to this effect in the Schedule.

Greenpeace agreed that trust, co-operation and compromise are needed and supported the comments made by EIA with respect to whaling under special permit. It also believed that all whale sanctuaries should be respected and that whaling in sanctuaries should cease as soon as possible.

The AWI referred to a collective detailed and critical analysis of the draft Consensus Decision produced by a number of NGOs. It noted that although the draft decision's "Vision Statement" promises conservation, the Schedule amendments do not contain any meaningful conservation. In summary, the analysis concluded that the draft decision: depoliticizes commercial and special permit whaling - without ending either; legitimizes whaling for at least a decade effectively rewarding, not penalizing the whaling nations; and ignores the scientific evidence demonstrating that special permit whaling is not necessary for knowledge or management of cetaceans. AWI believed that the proposal represents a step backwards, not forwards, for the IWC, that will eliminate or degrade decades of positive change, albeit achieved in small increments, for whales.

IFAW noted that it is firmly opposed to the draft Consensus Decision and that it also has problems with the Australian proposal. It focused its comments on the participation of civil society in IWC. It noted that the restriction of speaking rights for NGOs within IWC has not been conducive to constructive debate and has in fact encouraged attention grabbing headlines in the press. It noted that the practices for NGO involvement of other intergovernmental organisations such as CITES encouraged more responsible contributions and urged IWC to move to similar approaches.

Annex G

Terms of Reference and guidance for the Scientific Committee's work with respect to the Future of the IWC discussions⁶

(1) Review of the scientific aspects of the draft in the Chair's Report to the SWG (IWC/M10/SWG 4)

The Scientific Committee shall review, for clarity and completeness:

- (1) Annex {DNA} – DNA registry and market sampling scheme (this is based on the work of an earlier specialist group (IWC/55/COMMS 3) and the objective is to ensure that it remains up-to-date and complete, representing a cost-effective, robust, independent and transparent system in conjunction with the other monitoring and control measures).

In particular the review of the proposed mechanism (for national schemes with international audit) will ensure that the technical specifications

- under Section 1 (specifications for the establishment/maintenance of a diagnostic DNA register/tissue archive) remain adequate, suggesting improvements if necessary, including the clarification of details, including appropriate auditing mechanisms, such that appropriate auditing can begin during the first season of an interim arrangement; and
 - under Section 2 (specifications for the establishment/maintenance of market sampling schemes) remain adequate, and in particular that a process to allow effective market sampling to occur at the start of the interim period is established, recognising, as stated under Item 2.1 that this will be an iterative process.
- (2) Annexes {SI} and {OI} – Scientific information and operational information (this is again based on earlier work of the Scientific Committee and the objective is to ensure that it remains up-to-date and complete)
 - (3) Appendix B – the potential workplan for the Scientific Committee's assessment work on non-indigenous whaling for the period up to 2020 (the workplan comes from the report of the scientific assessment group (SAG), see below)
 - (4) The SAG report will be reviewed when there are numbers in Table 4 (see below).

(2) Review of the SAG report (IWC/M10/SWG 6)⁷

As part of the process on discussions on the Future of the IWC, a scientific assessment group (SAG) was established comprising scientists from Australia, Brazil, Germany, Iceland, Japan, Mexico, Norway and the USA and one invited participant. The consensus report of that Group is given as IWC/M10/SWG 6. Its terms of reference are given in detail in Annex B of that report and can be summarised as to:

*'provide a concise scientific review on whether it believes that any proposed catches are such that the **long-term** status of the populations concerned will not be negatively affected. This evaluation will recognise that there will be an RMP Implementation or Implementation Review during the interim period, as outlined in a draft schedule of relevant work of the Scientific Committee (modified as Table 5 of this report). The SAG may undertake its own analyses in addition to those presented in proposals.'*

The SAG noted that it was not appropriate for its report to provide a fully documented scientific analysis for each stock as would be the case for a full Scientific Committee report; the primary objective was to provide the Support Group with concise advice on either proposed short-term catches for the period before the full RMP would be implemented or the results of RMP runs where practical.

⁶ At the meeting of the Support Group held on 5 March and when commenting on the draft SWG report, Australia noted its concern regarding the decision at the SWG meeting to table the report of the Scientific Assessment Group (IWC/M10/SWG 6) without the prior agreement of all of the Support Group (see p 3 of the SAG report). It has written to the Chair of the Commission outlining its concerns. Given this, Australia has indicated that it is not in a position to agree to the terms of reference and guidance in Annex G believing the matter needs careful consideration within the Support Group at its April meeting.

⁷ See footnote 6.

For cases where there is no RMP *Implementation*, the SAG **agreed** that it would examine all the available information and provide an integrated, common-sense view on whether the proposed short-term catches are likely to negatively affect the long-term status of the stock, given that such short term catch limits will only be used until an RMP *Implementation* has been completed and implemented and that the full RMP *Implementation* will take into account any catches between now and the RMP *Implementation* in determining new catch limits.

The SAG had recognised that there are a number of different approaches to evaluating short-term catches; it did not try to develop a single method - indeed there is a wide range of catch levels that may meet the general criterion of not negatively affecting the long-term status of the stock, given that they will only be used until an RMP *Implementation* has been completed and the RMP implemented. In such cases, the SAG's conclusions are general and based on its cumulative overview of the available information.

In providing the general advice given in its report, the SAG **had stressed** that the future efforts of the full Scientific Committee should focus on completing RMP-related work as soon as possible rather than re-examining any advice on short-term catches.

Terms of reference for the Scientific Committee

The SWG **requests** that the Scientific Committee reviews the report of the SAG at its meeting in Agadir. In undertaking this review, the Scientific Committee shall follow the terms of reference of the SAG (IWC/M10/SWG, Annex B), recognising (a) the need to be concise; (b) the fact that there are a number of different approaches to evaluating short-term catches and no single method will be appropriate in all circumstances; and (c) that the report should provide an integrated, pragmatic view on whether or not the proposed short-term catches (i.e. before the RMP can be used) are likely to negatively affect the long-term (i.e. RMP simulation framework timeline of 100 years) status of the stock *given* the timetable for RMP work. The SWG **agrees** that the Chair of the Scientific Committee shall ensure that the time spent on this review should be such that it does not interfere with the Committee's focus on completing RMP-related work as soon as possible.