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## Whale Conservation and Management: A Future for the IWC

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*This paper outlines a strategy to advance the improvement and modernisation of the International Whaling Commission (IWC).*

*With this contribution, Australia reinforces its commitment to the IWC. This paper suggests ways in which IWC members should build on recent conservation and management successes to manage the full range of human impacts on whale populations and to adapt the IWC to the circumstances of the 21<sup>st</sup> century. The IWC should ensure that human interactions with cetaceans are managed in a way that follows world's best practice in conservation and management.*

*This paper proposes actions to expand the current suite of management tools available to the IWC to allow the Commission to address the future conservation and management needs of cetaceans, and to address those current practices that are incompatible with modern ecosystem-based management principles.*

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### Executive Summary

Australia regards the IWC as the primary international body with the responsibility to conserve and manage cetaceans (whales, dolphins and porpoises) on a global basis and to ensure their recovery. As cetaceans can travel thousands of kilometres annually, they are truly a global concern and demand responsible collective management.

Australia is strongly committed to addressing complex global problems through multilateral fora and has a long record of contributing to modern ocean conservation and management. These commitments guide Australia's continuing support for the IWC and underpin our willingness to work with all members of the Commission to make the IWC a more effective organisation.

Although the IWC in its initial decades presided over the systematic over-exploitation of cetaceans, the modern era has brought successes that include:

- a moratorium on commercial whaling;
- establishment of whale sanctuaries;
- better management of aboriginal subsistence whaling quotas; and
- consideration of emerging environmental issues.

IWC members need to build on these successes to bring the IWC into line with modern ocean management practices, equipping the Commission to effectively address contemporary environmental challenges.

The Commission's current challenges include:

- the capacity for countries to 'opt-out' of responsible collective management;
- dramatic expansion of special permit scientific whaling;
- lack of a robust compliance and enforcement framework;
- lack of a coordinated mechanism to fill gaps in scientific knowledge; and
- disagreement over the competency of the IWC on issues such as animal welfare and the management of small cetaceans.

Any discussion of the future of the IWC must acknowledge these failures and in turn respond to the major changes in oceans management, human uses and the conservation status of whales since the International Convention for the Regulation of Whaling (ICRW) was concluded.

Most crucially, unilateral decisions to grant scientific whaling permits, and attempts to justify these permits under Article VIII of the Convention, undermine the collective work of the Commission and its members. The result is significant tension and procedural difficulties that hamper constructive moves towards modernising the IWC.



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If the Commission is to work more cooperatively and effectively, the issue of special permit scientific whaling needs to be addressed.

Whilst the Commission has developed approaches for the management of whales through whaling quotas, management options under the ICRW are not sufficient for contemporary needs. At present the IWC's management approaches do not include objectives other than hunting whales, and there is no framework in which to address non-consumptive uses. Action to address specific non-whaling threats to vulnerable populations has been inadequate. Action to address real emerging threats to cetaceans such as climate change, fishery activities, marine pollution, poorly regulated whale watching industries, ship strikes and habitat disturbance remains aspirational.

Australia suggests that the IWC can begin to address these shortfalls by:

- **developing internationally-agreed, cooperative conservation management plans**, taking into account all whale-related issues and threats;
- **launching regional, non-lethal, collaborative research programs** to improve management and conservation outcomes for cetaceans; and
- **reforming the management of science** conducted under ICRW and IWC auspices, including agreed priorities and criteria for research, and an end to unilateral 'special permit' scientific whaling.



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### 1. Australian values regarding whales

Three arguments underpin the Australian Government's opposition to commercial and scientific whaling.

*The economic case:* commercial whaling is not required to meet essential human needs. In the past, the commercial exploitation of whales almost led to the extinction of many whale populations. There now exist viable substitutes for all whale products. People world-wide are increasingly recognising and benefiting from the sustainable non-consumptive use of whales, such as responsible whale watching and eco-tourism – and many regard whale watching as the only appropriate commercial use of whales.

*The ecological and scientific case:* Australians value whales intrinsically and for their role in marine ecosystems. On-going non-lethal research is showing that whales, and other key predators, have an important function in maintaining healthy marine ecosystems, and thus should be protected rather than consumed. As whales are highly migratory, their conservation and management is a common concern for humanity and requires responsible, collective management methods.

*The ethical case:* even with modern improvements, whale killing methods continue to involve an unacceptable level of cruelty. International reviews of whale killing methods have raised serious concerns about whale-killing practices. The size of whales and the characteristics of their physiology and nervous systems mean that there is no truly humane method of killing whales.

Australia is strongly committed to addressing complex global problems through multilateral fora and has a long record of contributing to modern ocean conservation and management. Australia will continue to engage constructively in the IWC because it is the primary international body capable of conserving, managing and ensuring the recovery of whale populations worldwide.

Australia recognises that some IWC members hold different views in relation to commercial and lethal scientific whaling. But we believe that through an open and constructive engagement, there are a number of vital whale conservation and management policy issues where the IWC can achieve significant improvements on the basis of consensus.

We must collectively ensure that the Commission maintains its past successes while becoming better equipped to address the challenges of whale conservation in the twenty-first century.



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## 2. Current status of the IWC

### 2.1 Management of Whale Populations – IWC Successes

The IWC in its initial decades presided over the systematic over-exploitation of cetaceans. However, the modern era has brought successes that include:

- a global moratorium on commercial whaling;
- establishment of whale sanctuaries;
- management of aboriginal subsistence whaling quotas; and
- consideration of emerging environmental issues.

The 1982 moratorium on commercial whaling is widely credited with saving many heavily-exploited whale populations from extinction. Since the moratorium came into force, it has allowed some whale populations to begin to recover. However, given the severity of depletion differed across whale species and populations, the quantum of recovery has also varied. For long-lived mammals with relatively slow reproductive rates, a few decades of protection is generally too short for substantial recovery.

A majority of IWC members support the moratorium on commercial whaling and consider it to be one of the body's most resounding whale management successes.

During the moratorium, the IWC has successfully developed and implemented greatly improved management procedures for Aboriginal and Subsistence Whaling (Aboriginal Whaling Management Procedures: AWMPs).

In recent years, the IWC has also established a Conservation Committee to broaden the range of issues considered by its members and potentially give members the opportunity to consider conservation threats beyond the limited perspective of whaling.

Despite its successes, the IWC is not performing satisfactorily in its core function of conserving and managing cetaceans in the 21<sup>st</sup> century. The most critical failures are:

- the capacity for countries to 'opt-out' of responsible collective management;
- dramatic expansion of special permit scientific whaling;
- lack of a robust compliance and enforcement framework;
- lack of a coordinated mechanism to address gaps in scientific knowledge; and
- lack of action to protect populations of endangered small cetaceans.

Any effective discussion of the future of the IWC must include a dialogue on how to resolve these failures.



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Most importantly, any future direction for the IWC should include management objectives and priorities beyond the current single-fishery paradigm. These should encompass emerging environmental threats that threaten whales specifically and those associated with the overall ecological health of the oceans such as climate change.

### **2.2 Where are we now? The situation in the IWC**

While the IWC has achieved important successes in the past two decades, it has also been polarised on a range of major policy issues and characterised by combative working methods.

The conduct of scientific whaling has created significant tension at the Commission, undermining cooperative work and the collective management measures adopted by IWC members. The Commission's collective work is also undermined by the unilateral declaration of annual quotas for commercial whale kills under objection to the moratorium.

The unilateral killing of whales under Article VIII of the Convention and under objection to the moratorium poses a fundamental dilemma for the Commission and its members. It remains the greatest impediment to moving the Convention forward into the future. Australia believes steps must be taken to address issues around scientific whaling, achieving practical conservation outcomes in the short to medium term whilst support is built to permanently remove Article VIII and the capacity for members to opt out of the collective work of the Commission.

Australia emphasises that neither the differences that exist in the Commission, nor its working methods, mean that the IWC has become unstable or unable to make decisions. The IWC continues to function, and members should work together towards addressing its shortcomings and finding ways to better conserve and manage whale populations.

### **2.3 Where to from here? The need for reform.**

The original signatories of the ICRW adopted "a Convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry." The IWC's primacy in the management of cetaceans has been reaffirmed by the international community several times since, even as whaling has ceased to be the main human interaction with whales.

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.



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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 21<sup>st</sup> 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. This includes:

- the UN Convention on the Law of the Sea and its implementing agreements;
- the Convention on International Trade in Endangered Species;
- the Convention on Migratory Species;
- regional fisheries management organisations; and
- the Antarctic Treaty System.

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.

We now have the opportunity to build on the IWC's successes and position the Commission for the future, bringing it into line with modern ocean management practices. Modernising the IWC will ensure that its objectives of whale conservation, management and recovery are achieved, continued and enhanced. In doing so, the Commission should aim wherever possible for consensus. While there remain major differences among IWC members, there are also vital whale conservation and management policy issues in which the Commission can achieve significant improvements through consensus.

Notwithstanding Australia's resolute opposition to commercial whaling, we recognise that it is possible that a three-quarters majority of IWC members may wish to allow the resumption of some form of commercial whaling in future. While Australia will never support commercial whaling, we would not stand aside from any future debates concerning whale management in the Commission.





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### 3. The IWC into the Future – What can we do?

The IWC was established for both the proper conservation of whale stocks *and* the orderly development of a whaling industry. Yet the objectives and controls of the Commission's current management tools are limited to adjustments in the number of whales killed in whaling operations.

AWMPs and the RMP consider causes of human-related mortality beyond whaling and are designed to discount these from total quotas. However, it remains the case that the objective of these procedures is to maximise the number of whales killed against a set of pre-specified conservation rules. The AWMPs and RMPs therefore do not facilitate management based on non-consumptive objectives. They do not address non-whaling threats to whale populations, nor are they designed to apply to substantially depleted populations. As such, the existing management tools alone are not sufficient to address contemporary threats to whales.

At present, whale management through the IWC is limited to setting commercial catch quotas to zero (the moratorium and sanctuaries) or to those populations subjected to aboriginal subsistence whaling (currently only five populations). These tools do not include conservation and management options to achieve outcomes such as:

- the reduction of bycatch;
- the regulation of whale watching;
- the recovery of whale populations; and
- the establishment of effective sanctuaries.

These outcomes should drive the development through the IWC of an expanded set of management and conservation options that can be tailored to particular populations and threats.

Further, a large and growing proportion of whale kills currently takes place without sufficient international scrutiny or regulation. Of the approximately 2700 whales killed annually, only 460 are directly and collectively regulated by the IWC – in those cases through AWMPs. A further 1052 whales are currently earmarked for commercial killing annually under objection to the moratorium, and the remaining animals are killed under provisions for special permits (scientific whaling). This growing number of unilaterally-allocated and insufficiently-scrutinised whale kills directly undermines the collective, cooperative work of the Commission and the management measures it has adopted.



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### 3.1 Conservation Management Plans

The Commission should develop conservation management plans to improve the conservation and management of whale populations. The objectives of such plans should address threats other than whaling, including through the mitigation of bycatch and the regulation of whale watching. They should be tailored to support the recovery of particular cetacean populations.

In order to be effective, the plans would need to link to, and augment, actions under other relevant international arrangements. Support from member governments in other relevant international bodies would also be required to manage effectively some threatening processes such as fisheries bycatch or ship strikes.

The Commission should adopt plans that focus on particular species and populations and on threats that affect multiple species. As the focus of these plans is beyond whaling, they could also legitimately be designed for small cetaceans that face a variety of threats already known to be unsustainable. In some cases, plans should take the form of an international 'species recovery plan' including an assessment process, and the development of actions to address identified threats. Such international plans can provide coordinated and enhanced support and leadership for national efforts.

Examples of some possible conservation management plans might be:

- *Recovery plan for South Pacific humpback whales:* Several populations of humpback whales in the South Pacific remain at very small proportions of their pre-whaling abundance. A recovery plan process would review available information, define research needs, and where defined, mitigate threats.
- *High-latitude whales and climate change:* An improved understanding of the population dynamics of unexploited whale populations in Arctic and some Antarctic ecosystems in the face of the rapid rate of climate-related change might provide valuable information about the nature and extent of ecological change, and thereby add power to forecasting and mitigation models that address management objectives.
- *North West Pacific gray whales:* This critically-endangered population is subjected to unsustainable levels of fishery bycatch and substantial industrial threats to its feeding grounds. A conservation management plan for this species would establish measurable objectives around possible population trajectories and the scale of reduction of threats as well as specify mitigation actions around performance criteria. The direct engagement and support of the range states would be critical for such an approach, as would the integration of the plan into other international efforts.



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Effective modern management planning requires substantial effort in setting priorities and assessing populations, threats and issues. By committing to develop conservation management plans, the IWC would develop a strong and improved capacity to respond to pressing conservation and management concerns for cetaceans globally. This would include a framework for monitoring and review.

This approach would add substantial value to the work of specialists who attend IWC meetings and frame the more difficult debates within a positive contribution to modern and emerging issues in cetacean conservation.

### **3.2 Regional Non-Lethal Collaborative Research Programs**

The proper conservation and management of cetaceans requires effective management actions underpinned by a rigorous scientific framework. The Scientific Committee of the IWC has been successful in providing this framework through mechanisms like the Comprehensive Assessments, but whale science and research can still be improved in a number of ways.

Firstly, the Scientific Committee lacks a coordinated mechanism to prioritise and address known knowledge gaps. While the Comprehensive Assessment might identify what we currently know, it neither prioritises research needs, nor provides a co-ordinated mechanism to ensure members work cooperatively to address identified gaps. The absence of such a mechanism hampers the efficient and credible advance of reliable science, and has instead been used by some countries to support arguments concerning the need for ‘scientific whaling.’

As well as improving science for conservation and management, cooperative research contributes to shared understanding between nations and increased capacity at national and local levels. It also assists in building trust and good faith between whale-related stakeholders including research bodies, governments, local communities, non-government organisations and private enterprises such as whale-watching companies.

There will be regional variation in the levels of knowledge and the requirements for data applicable to addressing particular threats. Australia therefore proposes the development of regional, non-lethal, collaborative research programs that address agreed knowledge gaps identified as priorities in the IWC.

As a first and significant step toward this goal we propose the development of a model for such programs; in this case a cooperative international ‘Southern Ocean Whale Research Partnership.’

The existing efforts and coordination of the IWC’s ship-based Southern Ocean Whale and Ecosystem Research (SOWER) program and the Australian Antarctic Division’s aerial surveys seek to provide a reliable estimate of the abundance of minke whales within the pack ice around Antarctica. SOWER has been supported by the IWC Scientific Committee and provides an example of good collaborative research within



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the IWC. These efforts provide an ideal foundation for a 'Southern Ocean Whale Research Partnership.'

A 'Southern Ocean Whale Research Partnership' would build upon the SOWER model while broadening the collaborative research goals and the range of countries involved. We propose to develop possible research objectives, performance measures and methodological approaches for discussion at IWC 60 in June 2008.

Collaborative research partnerships of this type will strengthen the performance of the IWC as well as improve whale conservation, management and recovery.

### 3.3 A reformed approach to science

Special permit scientific whaling is currently the most controversial issue within the IWC. Under Article VIII of the Convention, Contracting Governments may grant permits to their nationals to kill, take and treat whales for scientific purposes. Current practice requires a government to submit plans for scientific whaling permits to the IWC Scientific Committee for review (with participation from the proponents) however there is no basis on which the IWC can prohibit a take under special permit.

Since the commencement of the moratorium on commercial whaling, over 10,500 whales have been taken under the provisions of Article VIII. Whale kills under scientific permits are now occurring at ten times the rate of scientific whaling kills prior to the moratorium.

The IWC has adopted over 30 resolutions calling for an end to scientific whaling and for all further scientific research to be conducted using non-lethal techniques. These resolutions reflect an understanding that the information required for managing and conserving whale species can be gained using non-lethal techniques.

A majority of the current members of the International Whaling Commission oppose the use of Article VIII in the form of commercial-scale 'scientific whaling' and most of these would not support an immediate resumption of any form of commercial whaling. However, this majority does not necessarily translate into a capacity to amend Article VIII of the Convention. To amend the Convention requires the convening of a diplomatic conference and the agreement of all parties to any changes to make them effective. This is unlikely to occur in the short to medium term.

At IWC 59 the Scientific Committee agreed a new procedure for the review of new proposals for lethal scientific research, and in principle, for the periodic and final review of data from existing permits. Key features of the new procedure are a specialist workshop to review proposals for and results from 'special permit' research, which would include an independent panel to review the research against specific criteria.



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The Commission adopted this new procedure, agreeing that the report from the specialist workshop would be discussed at the Scientific Committee, with a report provided to the Commission. This is considered a significant step toward the proper review and assessment of scientific whaling programs. However, it does not yet provide for appropriate actions following recommendations of the specialist workshop.

Australia proposes that scientific research under ICRW and IWC auspices should be brought under the direct scrutiny and authority of the Commission.

Firstly, all such scientific research should be linked to agreed priority research needs of the Commission, ensuring a coordinated international effort to address those knowledge gaps and scientific questions that most urgently require answers.

Secondly, the IWC should agree criteria to which all such scientific research should conform. These criteria might include:

- quantifiable measures of success;
- use and availability of non-lethal methodologies;
- peer review; and
- a transparent and open process.

Thirdly, all governments should commit not to issue special permits under Article VIII except with the approval of the Commission. The Commission should assess all permit proposals from governments and decide whether the Commission approves the proposal, in strict accordance with agreed research priorities and criteria for the conduct of research.

These measures would ensure that any scientific activity under ICRW and IWC auspices would be agreed, would have strong scientific underpinnings, and would respect the other conservation and management measures which have been adopted in the Commission.

While Australia will continue to support amendment of Article VIII of the Convention in the long run, the measures outlined above could be undertaken immediately by agreement of governments within the Commission. This would be a practical first step towards ending the loophole under which special permit whaling can proceed without agreement in the Commission, without rigorous scientific review and without due regard for the conservation and management measures adopted by the Commission. These measures would strengthen the Commission by increasing collaboration on science and would remove the most serious source of tension that presently impedes the Commission's work.