

## WHALES SYMPOSIUM

### **Intervention by Rob Hepworth, Executive Secretary, UNEP Convention on Migratory Species (CMS), Session 2, 12 April 2007. (Expanded Version)**

IWC activists need to look honestly and fully at the existing international legal infrastructure. In doing so we also need to bear in mind the broad tendency of the UN, reflecting the views of the overwhelming majority of Governments, is to focus on streamlining, synergy and effective implementation of existing global treaties affecting the environment, rather than creating new ones.

In this context I have to advise you very strongly that if there are proposals to negotiate a new or substantially expanded successor to IWC as a UN treaty, it will be pointed out as soon as you step into the building outside that there already exists a global UN Convention which covers whales rather comprehensively, with all the standard apparatus of a modern Multilateral Environmental Agreement (MEA). The convention is called CMS !

CMS is administered by UNEP, and now has 102 Parties, substantially more than IWC, and which has grown by about 20% over the last 3 years. Several further Parties are in the pipeline including Palau and Costa Rica, illustrating the increasing popularity of CMS and its broad appeal within the spectrum of views on whaling. When these two new Parties accede to CMS later this year, 45 of the 73 IWC members will also be CMS Parties. There are of course some important gaps, notably Japan, Brazil and the US. However that with the exception of the latter 2 countries, all the key members of the Like Minded Group are also CMS Parties. Norway is also a CMS Party.

There are extensive listings of great and small cetacean species on the CMS appendices. Importantly for IWC, there are no disputes, whatsoever, within CMS about the legal vires of the Convention to cover small cetaceans.

The requirements on Parties for species, including great whales, listed on Appendix I of the Convention repay scrutiny. Under Article III, Range State Parties (which included flagged vessels) are required to conserve and restore whale habitats...prevent adverse activities or obstacles to their migration ... and above all prohibit the taking of all listed whales with specified content-and-time limited exceptions for science, propagation, and traditional subsistence users. A more extensive list of whales, including many small cetaceans, are on Appendix II of the Convention, for which range state parties are required to try to conclude (regional) agreements. There are already three CMS regional agreements for cetaceans in force : (i) ASCOBANS, covering Baltic and North Seas Small Cetaceans, and whose area is set to expand later in 2007 to cover Atlantic waters around Ireland and western Iberia; (ii) ACCOBAMS covering all cetaceans in the Mediterranean and Black Seas and (iii) the new agreement (in MoU form) for the conservation of cetaceans and the habitats in the Pacific Islands Region concluded under CMS in partnership with the regional seas agreement, SPREP (copies of the Agreement to be tabled on Friday).

Negotiations on a 4<sup>th</sup> CMS regional Agreement, in the Eastern Atlantic (West Africa), perhaps covering all marine mammals, will open at a crucial meeting in the Canaries in October 2007.

CMS is already , *de facto* and *de iure* , the major global convention for the conservation of small cetaceans. Virtually all small cetaceans are migratory; CMS is a UN organisation, addressing the issues in all parts of the world. In 2005 CMS (with UNEP) published the current major scientific encyclopaedia of all small cetaceans species; in the current year, 2007, UNEP/ CMS with our supportive partners the Whale And Dolphin Conservation Society (WDCS), our commercial sponsors TUI, and with further support from ACCOBAMS, ASCOBANS and UNESCO, is running a highly successful international awareness and action campaign “*Year of the Dolphin*”. It was instructive that the IWC Secretariat through no fault of their own, was unable to accept an invitation to participate actively in the *Year of the Dolphin*, for reasons which will be obvious to this audience.

Whatever the future organisation for great whales, it is arguably not in the conservation interest for small cetaceans that they should continue to form a negotiating chip or political football for the two sides involved in the primary IWC disagreement over (great) whaling. LMG should consider formally acknowledging the reality on the ground ie that CMS is the lead, global Inter-governmental body for small cetaceans. The approach of CMS to small cetaceans is conservation-oriented, whilst not excluding sustainable use, and actively promoting non-lethal use such as safe wildlife watching under the Addis Ababa principles adopted by all Governments under CBD.

For great whales and whaling , I believe that this is an argument that belongs to IWC and should continue to be discussed and eventually settled there. This is IWC’s core business and it should concentrate on it as long as it remains a major international controversy. However we need to ensure in future that the effects of the controversy do not freeze, deter, delay or divert resources from, the programmes which the Parties to CMS and its regional agreements have agreed to pursue internationally and regionally for the conservation for whales, and particularly small cetaceans for whom direct hunting is generally a secondary and receding threat in the 21<sup>st</sup> century.

RH