

January 2009

## THE FUTURE OF THE INTERNATIONAL WHALING COMMISSION: A CALL TO ACTION

### INTRODUCTION

With the agreement of the moratorium on commercial whaling in 1982, the International Whaling Commission (IWC) became a world leader in applying the precautionary approach. Since then, the IWC has unfortunately become an example of international decision-making gridlock – a forum where looking back to an era long past threatens the way forward. For too long, the impasse over 'whether to whale or not' has impeded serious dialogue around how to modernise the institution itself so that it is responsive to the reality of our oceans in the 21<sup>st</sup> Century. Action must be taken to bring about real change in the IWC that will secure the future health of whale populations across the world's oceans.

The International Whaling Commission was established in the 1940s because unsustainable use had driven the overexploitation of whale populations across the world's oceans. This is specifically recognised in the Convention, which begins:

*"Recognizing the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks;*

*Considering that the history of whaling has seen over-fishing of one area after another and of one species of whale after another to such a degree that it is essential to protect all species of whales from further over-fishing "*

While the world today may be a very different place from that of the 1940s, the concerns expressed in the preamble to the Convention, and which motivated its adoption, remain the same. The whaling industry in the 20th century devastated whale populations, driving the biomass of whales in the Antarctic down to 5% - 10% of its pristine level. Yet despite the fact that the IWC was formed because of the problems caused from the overexploitation of whale populations, it has been unable to stop them. Whaling carried out under the IWC's authority in fact oversaw some of the worst excesses of the whaling era, depleting one population after another. Most populations of whales worldwide are still depleted as a result. Once bountiful populations of whales and dolphins have been reduced to remnants. Some great whales, such as the Western Grey whale and Northern Right whale teeter on the verge of extinction, as do many smaller cetaceans, like the vaquita. Even those that are recovering remain well below their pre-commercial hunting levels. Only the moratorium on commercial whaling brought some relief from these serial management failures.

In addition, whale populations, still recovering from the impacts of excessive hunting, face a range of new and additional threats. These direct and indirect threats—including climate change, noise pollution, ship strikes, toxic pollution, habitat destruction and entanglement in

fishing nets—interact in complex and often unpredictable ways to threaten both individual species and entire ecosystems. It is estimated that 300,000 cetaceans are killed annually as a result of entanglement alone. These threats, and the interactions among them, must be taken into account if the IWC is to ensure the future survival of these species.

**Greenpeace believes that it is time for the IWC to end attempts to find a way to resume commercial whaling and instead to turn its energies to ensuring that whales survive in the oceans and return to their natural abundances:**

The IWC must in effect transform itself into the International WHALES Commission—a truly multilateral environmental agreement that applies science, precaution and an ecosystem approach to safeguard the world’s whales, great and small.

### **IWC REFORM: SEIZE THE MOMENT BEFORE IT IS TOO LATE**

We have a clear opportunity to reform the IWC, but unless action is taken now by those who have engineered the current deadlock, the process is certain to end in failure.

To be successful in responding to the current challenges facing cetaceans and ensuring the application of current principles of international law, a more holistic approach based on the ecosystem approach and precautionary principle must be adopted. The starting point for any discussion on reform for the IWC has to be the current state of the global oceans, including the impact of issues such as climate change and overfishing. The most recent United Nations General Assembly Resolutions on Oceans and the Law of the Sea and Sustainable Fisheries, as well as the most recent Decisions of the Convention on Biological Diversity on oceans issues will be very instructive on such matters. These Resolutions and Decisions could also be informative as to the current state of global oceans governance and the basic principles that any reformed IWC should adhere to.

In particular, these include the:

- Use of the best available scientific information;
- Consideration and adoption of measures to ensure the long-term sustainability of the marine environment and its biological diversity, such as through marine reserves;
- The sustainable and equitable use of marine life and marine genetic resources for the benefit of present and future generations;
- The undertaking of comprehensive and public prior environmental impact assessments, including the assessment of cumulative impacts.

**Below are six “action points” for change at the IWC that Greenpeace believe could begin to secure the future for whales, big and small, across every ocean:**

#### **1. Act in Good Faith, Halt the source of tension**

In International law, where a situation of seemingly irresolvable conflict arises, there is a lack of trust and hostilities arise. The first act of a mediator is to get the Parties to agree to

a temporary ceasefire, then a cessation of hostilities and thereby create the circumstances for the negotiation of long-term peace based on good faith, mutual understanding and ultimately, trust. It is impossible to negotiate a peace agreement when one party continues to undertake activities which aggravate tension or maintain a situation of mistrust such that the other Party (or Parties) does not believe that good faith is being exercised. Similarly, in the case of whaling, a significant degree of good faith needs to be exercised by all Parties so that conditions for the discussion of a meaningful, long-term resolution of the whaling issue can be reached.

These conditions can only be created if there is an immediate end to special permit whaling within IWC designated sanctuaries and an end to the practice of paying the dues and expenses of other IWC member states to create a voting bloc. It will also be important to have the constructive cooperation of all IWC members in the Conservation Committee.

## **2. A New Mandate, for a New Century**

The IWC needs to reform its constitution and procedures to incorporate all elements of modern international legal governance, including efficient and participatory decision-making processes, no opt-out provisions, the capacity to ensure compliance and enforcement of its decisions, mechanisms for international co-operation between States and among international agencies, transparency, consultation, participation, and dispute resolution mechanisms, and the use of the best available scientific information.

Greenpeace proposes that all members of the Commission agree to move quickly to halt *all* further lethal study and exploitation of whales. Once this has occurred, the Commission should devote all of its efforts to the non-lethal study of whale populations, and to devising and implementing strategies for the recovery of all whale populations to pre-exploitation levels over one cycle of the RMP: 100 years.

This is not an excessive request. The whaling nations are currently pressing for quotas under the RMP, which operates over a 100 year span; and the lifetime of large whales, such as the fin whales currently being hunted in the Antarctic is 80-90 years.

## **3. Exercising Precaution**

To move forward, the IWC needs to hold at its core one of the fundamental principles agreed to by nations in numerous multilateral forums: the precautionary principle. It is elaborated clearly in Principle 15 of the Rio Declaration on Environment and Development (1992)<sup>1</sup> and has been applied in the marine context in, among others, Article 6 of the 1995 United Nations Fish Stocks Agreement.

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<sup>1</sup> *“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”*

Instead of continuing down the current path of disagreement and deadlock, the IWC should change direction to address the recovery of endangered populations of cetaceans and ensure that no further populations of cetaceans are put at risk of becoming endangered. In particular, the Scientific Committee should therefore shift effort away from developing or implementing plans aimed at setting quotas and instead adopt as its top priority the preparation of comprehensive recovery plans for the most endangered species and populations of cetaceans. Furthermore, there should be an end to attempts to repeal the moratorium or to abolish sanctuaries.

#### **4. Recognising Differences & Finding Common Ground**

The long-term conservation and sustainable management of whales cannot be effected without taking into account the ecosystems in which whales exist. The loss of marine biodiversity across the oceans is drastically reducing the ocean's ability to produce seafood, resist diseases, filter pollutants and rebound from stresses such as overfishing and climate change. The IWC must adopt and apply the ecosystem approach which recognises the interrelationships of associated and dependent species as part of the decision-making process.

The members of the IWC must recognise that at the core of their disagreement lies a difference in values: in the way in which whales are viewed. This difference should be accepted as such. No more effort should be expended on trying to change our different values. Rather than an endless discussion over the differences between the Parties on values, all Parties should be able to come together and agree on applying the ecosystem approach and precautionary principle as the cornerstones of the Convention – principles on which they have agreed repeatedly in international environmental fora and negotiations.

#### **5. Focusing on the Issue at Hand**

Whales have become caught in the broader discussion about oceans governance and it is argued by some that decisions on whales will 'spill over' into other fisheries management issues – that what is decided about whales now will be used as the basis for decisions on other fisheries issues in the future. Yet while governments aligned with both sides continue to talk past each other, the threats to the future of the world's whales continue to grow. It may benefit the discussion and break the current impasse if, whilst taking account of the numerous threats that our oceans now face, it were agreed that decisions on how to secure the future of whales does not necessarily set a precedent for the governance of other marine species.

#### **6. Defining Sustainability**

The Commission remains deeply divided over its most recent management plan, the RMP. And there are two very different interpretations of the words 'sustainable use' that are bandied about by both sides, each claiming that what they are preaching is the whole truth. The IWC must expand the concept of sustainable use so that it accords with its modern-day application and recognise that sustainable use now includes non-lethal use (as agreed at its 59<sup>th</sup> meeting). Furthermore, what is "sustainable" must be based on the needs of the ecosystem as a whole, not simply the target species. It must take into account the full array

of threats facing both the species and the system as a whole. It is no longer appropriate to consider wildlife use of any kind in isolation of its broader environmental context. Lethal use, if it is to occur, must be deferred until all whale populations, not merely those of interest to the whalers, have fully recovered.

### **Conclusion- Safeguarding future whale generations: A leap of faith**

The 20th century saw decimation of the world's whale populations. The 21<sup>st</sup> century should be a century of recovery. If the IWC can deliver to the citizens of the 22<sup>nd</sup> century a worldwide population of whales near pristine abundance, then our descendants can decide what form of sustainable use they wish to pursue and the Commission will have entered history as a farsighted body that rose above initial failure to secure the future of the whales.

In the annex attached, we have provided suggestions on key points from the list of 33 issues included in the IWC Chair's Summary of the Outcomes of Discussion on the Future of the IWC. While these issues are very important, to solve the problems of the IWC requires more than simply working through a list of concerns. It requires goodwill and a leap of faith. If the whaling side does not make the good faith gestures outlined above, then we fear the process will fail, probably at the 61st meeting.

## ANNEX

### The 33 Point Plan: Greenpeace's proposals for ensuring real change

The IWC Chair listed 33 issues/elements in the Summary of the Outcomes of Discussions on the Future of the IWC. These points can be divided loosely into "big picture issues" and "detailed management issues". In particular they can be divided by time as well as by those issues that need to have long term durability/sustainability, stand the test of time, because they are about principles or fundamentals, and those that will change possibly annually because of new information.

Greenpeace believes that the points laid out above provide the overarching elements for the way forward for the IWC and ICRW that are the essential cornerstones of any agreement. Point by point, however, we believe the key topics contained in the '33 points' should be addressed in the following ways in order to ensure that the action points listed above are effectively reflected in the reform process:

#### 3. Bycatch and infractions

If any form of commercial whaling were permitted (which Greenpeace strongly opposes) the bycatch and infractions must be covered within the Revised Management Scheme (RMS). Bycatch must be deducted directly from any quotas. Strong compliance measures, including withholding of quotas, are needed to deal with infractions and IUU whaling. [See item 8].

#### 4. Climate change

Global climate change is widely recognised as the most serious challenge facing humanity and our planet. Global temperatures are expected to rise, with associated changes particularly in the polar areas which are critical habitat for many species of cetaceans. Loss of ice cover will reduce habitat and is likely to also affect the food supply for some species.

It is possible that loss of ice cover in polar regions and other effects of global climate change will lead to drastic declines in populations of some cetaceans. If these populations survive, they may go through a 'bottleneck', in which only a few members of the species survive to repopulate the habitat if it returns to normal or a new equilibrium which can support the species. The IWC should intensify its research into the expected impacts of climate change on whales, especially species that spend their entire life cycles in polar regions. No polar species should be subjected to commercial whaling.

Greenpeace supports the 2009 workshop on the impacts of climate change on cetaceans and believes the IWC should pursue ongoing work in this area. In addition, any work done by the IWC has to begin to take account of such projected impacts in accordance with the findings of the Intergovernmental Panel on Climate Change.

#### 5. Civil Society

The IWC is one of the least progressive international conservation agreements where civil society is concerned. NGOs should be allowed to request the floor and speak in plenary sessions, committees and sub committees. The rules of procedure on the engagement of

observers must be changed to accord with those of the most progressive multilateral environmental agreements.

## **6. Coastal whaling**

Coastal whaling has great potential to damage whale populations which rely on these waters to calve and nurse their young. Japan has repeatedly requested a new category of coastal whaling but this brings with it the danger that, as well as damaging the depleted minke populations off Japan, it would serve as a precedent to allow other nations to set up similar operations, resulting in a revived global whaling industry based on coastal populations. Coastal populations of whales face an array of anthropogenic threats including ship strikes, entanglement in fishing gear, habitat degradation, pollution and over-exploitation of their prey. Given that the conditions for lifting the moratorium on commercial whaling have not been met, no form of commercial whaling, including coastal whaling, should be considered.

## **7. Moratorium**

The moratorium on commercial whaling was a bold environmental step, years ahead of its time. Under no circumstances must it be repealed. The uncertainty as to abundance of whale populations and emerging environmental threats on them precludes consideration of the lifting of the moratorium. The conditions for lifting the moratorium have not yet been met with the combined impacts of growing threats to whales from pollution, noise, bycatch, ship strikes and climate change clearly showing that now is not the time to consider lifting the moratorium.

## **8. Compliance and monitoring and 26. Sanctions**

Any compliance measures proposed for the RMS must be transparent and meet current international standards of best practice, including 100% independent observers on ships, centralised Vessel Monitoring Systems, DNA registers, etc. Sanctions must include effective penalties to ensure compliance such as loss of quota.

## **9. Conservation Committee**

The creation of this body was an important step in moving the IWC toward a new role as a body concerned with the conservation of all whales, not simply conservation of exploited populations. This role should be expanded. All IWC member states should attend and work in good faith to progress and expand the work of this committee.

## **10. Conservation management plans**

The IWC should instruct its Scientific Committee to shift effort away from developing or implementing plans aimed at setting quotas and instead to prepare comprehensive recovery plans for the most endangered species and populations of cetaceans as a top priority. An emphasis on conservation and recovery now is the only possible way that any form of sustainable exploitation will be possible in the future. Future generations can decide what form they want that exploitation to take, but without immediate action possibilities will be lost forever with the extinction of species.

### **11. Convention (purpose of)**

The IWC was founded in response to the rapid disappearance of whale populations because of whaling. Despite the clear recognition of the problem the IWC has been unable to 'protect all species of whales from further over-fishing', and only the moratorium brought an end to the serial depletions of whale populations carried out under IWC authority in the last century.

The ICRW's preamble also includes the statement:

*'Having decided to conclude a convention to provide for the proper conservation of whale stocks'*

We believe that this objective, 'proper conservation of whale populations', should now become the main objective of the IWC and that the work of the organisation should shift to conservation and non-lethal use of whales.

### **12. Cooperative non lethal research programs.**

Non-lethal research programmes have already been proposed by Australia and we strongly support them as a way to set the IWC on a new course that emphasises recovery, conservation and non lethal use of whale populations.

### **13. Data provision**

Failure to provide data required for the RMS should carry penalties including loss of quota. All data used in preparation of papers submitted to the Scientific Committee should be made publicly available instead of only being available under very restrictive conditions, as it is now.

### **14. Developments in oceans governance**

Sector-based and single species management has not been effective in reducing the threats to ocean biodiversity and has largely been rejected as a management approach. The importance of adopting an ecosystem-based and precautionary approach to the management of human activities on the oceans is current best practice and should be replicated by the IWC.

The cumulative impacts of human activities on ocean biodiversity, including whales needs to be addressed. The IWC also must be more flexible in responding to the new and increasing threats to cetaceans, by widening its scope and adopting the principles of precaution and ecosystem-based management where associated and dependent species are considered as part of the comprehensive whole and where such ecosystems are not manipulated to adjust to human impacts after the fact.

A core part of this move towards the application of the ecosystem approach will be the need for much greater coordination and cooperation with all relevant bodies. Therefore, the IWC must ensure that it is much more integrated with other organisations that are involved in oceans issues. Whales are only one part of a marine ecosystem and therefore measures cannot be introduced or agreed without understanding their role within a wider context.

The IWC must therefore widen its scope to take into account other relevant processes and decisions - including the deliberations and outcomes of biodiversity-related treaties such as the CBD as well as the ongoing discussions at the General Assembly of the United Nations through its ad-hoc Open-Ended Working Group on marine biodiversity in areas beyond national jurisdiction.

### **15. Ecosystem based approach to management.**

The term 'ecosystem based management' is widely used to refer to management of fisheries in such a way as to make protection of the ecosystem the primary consideration with the production of commercially valuable fish a secondary consideration. This might typically

involve setting catches of a target species lower than the Maximum Sustainable Yield (MSY) in order to allow for predation on the target species by other members of the ecosystem such as other fish, birds and marine mammals. When this term is used by supporters of whaling it refers to the opposite approach - an attempt to manage the ecosystem itself in order to increase the yield of the target species by culling other species that are perceived as competitors for the target species.

The majority of marine scientists reject the idea of manipulating the ecosystem and instead concentrate on managing human activities that impact the ecosystem, making allowances for the needs of associated and dependent species when setting catch limits for target species. This indeed is how the ecosystem approach is conceptualised in Article 5 of the UN Fish Stocks Agreement.

The IWC should agree that, in accordance with international law, the ecosystem approach means the application of the precautionary principle with protection of the ecosystem being the primary consideration, and does not mean managing/manipulating the ecosystem in an attempt to increase yields of a target species.

### **16. Environmental threats to cetaceans**

Anthropogenic effects continue to severely affect whale populations worldwide which continue to be impacted and threatened by bycatch, marine dead zones, large scale marine pollution, habitat degradation, ship strikes, overfishing, anthropogenic noise and many other human impacts on the oceans, the long term effects on whales and the marine environment of which are unknown. The IWC should focus on protecting whales from these threats and not on the potential of commercially exploiting these populations.

### **19. Frequency of meetings**

The IWC was established with annual meetings because of the need for quota renewal, which was based on data from whaling operations. Modern methods of calculating quotas, such as the Revised Management Procedure (RMP), which has been accepted by the Commission do not use data from whaling operations (the RMP was designed not to be dependent on such data) and operate over a longer time scale and so are not dependent on yearly assessments.

Yearly meetings of the IWC are therefore no longer necessary even if commercial whaling were to be resumed. The IWC should move to having one plenary meeting every second

year. The first opportunity to do this would be after the 61<sup>st</sup> meeting in Madeira. Any savings in the IWC budget could be used to increase the amount of conservation work being done by the Scientific Committee.

## **20. Marine protected areas (MPAs) and 27. Sanctuaries**

MPAs, including marine reserves, are a core element of the application of the ecosystem approach. In 2002, the WSSD Johannesburg Plan of Implementation, and then in 2004 at the CBD COP, countries committed to establishing a global network of MPAs by 2012. Cetaceans occupy large habitats, and so therefore effective programmes to conserve cetacean habitat will include the protection of very large areas including a wide variety of species, ecosystems and ecosystem processes through a global network of MPAs. Given the importance of MPAs for cetaceans, the IWC should ensure it participates and gives input into these processes.

IWC whale sanctuaries should encompass this ecosystem approach, and wherever possible the whole ecosystem should be protected as well as the whales. Discussions and activities to set up high seas MPAs and marine reserves are happening in a number of different national, regional and international processes. Many scientists consider that to be effective marine reserves will need to cover between 30% and 50% of the world's oceans.

The right of the IWC to create and maintain sanctuaries is provided for under Article V 1 (c)

*'The Commission may amend from time to time the provisions of the Schedule by adopting regulations with respect to the conservation and utilization of whale resources, fixing (a) protected and unprotected species; (b) open and closed seasons; (c) open and closed waters, including the designation of sanctuary areas; ...'*

Although some contracting governments claim that sanctuaries are contrary to the Convention if they apply irrespective of conservation status of the whale populations, this is demonstrably false. When the IWC was founded, its schedule included a sanctuary that covered ¼ of the Antarctic and its stated purpose was to safeguard a reserve supply of whales. A scientific finding that a population of whales is not depleted is just as valid a reason for creating a sanctuary as a finding that a population is depleted.

The fact that sanctuaries can be created to protect healthy populations of whales was even recognised by the governments of Dominica, Grenada, St. Lucia, St. Vincent and the Grenadines, Norway and Japan when, at the 46<sup>th</sup> IWC, in efforts to avoid the creation of the circumpolar Southern Ocean whale sanctuary, they proposed a sanctuary that applied 'irrespective of the conservation status of baleen and toothed whale stocks in the waters of the sanctuary extending southward from the Indian Ocean sanctuary between 30E and 130E'.

The IWC should clearly declare that sanctuaries can be created for any purpose, including the protection of healthy populations of whales. There should be further agreement that no exceptions to the moratorium apply in areas that have been declared sanctuaries or protected areas.

**21. Objections and reservations.**

The IWC's failure to control whaling so that populations were not over exploited is largely due to its provision for allowing objections. This provision should be removed. Any renewal of commercial whaling with the objection procedure in place will simply repeat the tragic mistakes of the past.

**23. Research under special permit**

"Scientific" whaling is the most divisive issue within the IWC and must be ended or brought under control of the Commission. No voluntary scheme or external review is acceptable as a form of control. No scientific permits should be issued unless there is consensus by the Scientific Committee that the permit is necessary for whale conservation.

**24. Revised Management Procedure (RMP)**

The RMP was accepted by the IWC at its 46<sup>th</sup> meeting as a precautionary means of setting quotas but has never been incorporated into the Schedule. There are ongoing efforts by some members to make it less precautionary, conducted under the guise of 'modernising' it, so that it will give larger quotas. One member claims to be using it, but in a modified form and without the RMS. The IWC should refuse to amend the RMP from its specification at the 46<sup>th</sup> meeting.

**25. Revised Management Scheme (RMS)**

The RMS is a set of rules for ensuring that the quotas set by the RMP are adhered to. RMS control measures must reflect best practice from other international monitoring and surveillance schemes and include international observations, catch verification, a DNA register (held by the Secretariat and accessible to all), compliance and enforcement mechanisms and real time vessel monitoring systems. Completion of the RMS must be a prerequisite to any consideration of commercial quotas and in no way linked to them.

**28. Science – role of science and functioning of the Scientific Committee**

The bulk of the Scientific Committee's work currently relates to the assessment of populations and preparations for setting quota on them. With the exception of aboriginal subsistence whaling this should cease and the Committee's effort should be redirected toward areas having to do with the conservation and recovery of whales, especially developing recovery plans for the most endangered species and populations.

**30. Socio-economic implications**

The economic future of whales and the IWC lies with non lethal use, especially whale watching. In our view this is the only sustainable use of whales.

**31. Small Cetaceans**

Small cetaceans include some of the most critically endangered populations of cetaceans. Although some IWC members argue that the IWC does not have competence over small cetaceans there is no reason that it should not. The Scientific Committee regularly discusses small cetaceans and the IWC has passed numerous resolutions concerning them. No other international organisation has the ability, expertise or resources to ensure the conservation of small cetaceans or that they are protected from hunting. The IWC and its Scientific

Committee should continue to provide management and conservation advice regarding small cetaceans, including recommendations to scale down or eliminate anthropogenic takes.

### **32. Trade restrictions**

Despite the statements of some members, the IWC is competent to regulate the international trade in whale products. If quotas are set in the future, they must be accompanied by a prohibition in international trade of all products produced.

### **33. Whale watching/non lethal use**

At the 2007 meeting agreed a resolution which recognised the benefits of non lethal use of cetaceans, and recognised it as a legitimate management strategy.

Statements made on the floor of the 2008 plenary session indicated that worldwide 100 million people have been whale watching and that whale watching rates worldwide are now about 10 million people a year. Income estimates are over 1 billion US\$ a year. Many of the Latin American countries had success stories about rapid growth of whale watching.

In the same plenary session the Scientific Committee's Chair reported that there is evidence that poorly regulated whale watching can be harmful to populations of whales. Many countries took the floor to say that whale watching was a major source of revenue, was by far the most important economic and cultural use of whales, and that they shared concerns about impacts of whale watching and so the IWC should focus more on this problem.

Given that the IWC has agreed that non lethal use is a legitimate management strategy and its importance economically, culturally, as well as the threats to the sustainability of whale populations if this activity is poorly regulated, the IWC should devote increased scientific effort to understanding and quantifying these threats and developing management measures to alleviate them.