

WDCS Comments on Pew's Third Whales Commission. January 2009



On behalf of WDCS, the Whale and Dolphin Conservation Society, I would like to thank the Pew Charitable Trusts for its invitation to participate at the Third Whales Commission as an expert observer, and for the opportunity to provide these written comments in advance of the meeting.

As Pew notes in its Project Outline of the Third Whales Commission, it is unclear whether the process that the IWC has embarked upon - to negotiate a solution to a suite of polarizing issues - will succeed or not. In this time of such uncertainty about so many issues, including myriad threats facing our planet, WDCS commends Pew for seeking solutions to secure the future of whale conservation and offers these comments with the aim of being constructive and practical; the same values that I intend to bring to the meeting. We hope that our observations, based on WDCS's many years of experience in whale conservation both inside and outside the IWC, will help the Third Whales Commission succeed where the IWC may not – “in advancing measures to permanently and significantly curtail commercial whaling operations”.

The following comments arise from WDCS' longstanding concern that previous efforts to address the polarization between pro- and anti-whaling interests have only drawn from a limited 'toolkit' of options available *within* the IWC. That is, they have only considered management or conservation measures that are mandated by (or have been interpreted as mandated by) the ICRW, such as sanctuaries, catch limits, the Revised Management Scheme etc. WDCS believe that the IWC's tools, no matter how they have been arranged (in the Irish Proposal; the Friends of the Chair package; the deal currently under consideration under the 'Future of the IWC' discussions, etc), are simply too limited in their legal scope to replicate contemporary best practice in wildlife conservation or fisheries management; too outdated to respond to our growing understanding of the special qualities and vulnerabilities of whales; and too unsophisticated to resolve the political issues that confound the effective conservation of whales today.

We are concerned that none of the efforts discussed so far (for example “to bring commercial whaling back under the control of the IWC” (the Irish Proposal) or “to arrive at a consensus solution to the main issues [the IWC] faces and thus to enable it to best fulfil its role with respect to the conservation of whale stocks and the management of whaling” (terms of reference of the Small Working Group)), have looked 'outside the box' and taken into consideration the wider political, social and economic context of commercial whaling, the motivating factors and the whaling countries themselves.

WDCS is also concerned that the current negotiations at the IWC, like their predecessors, focus too narrowly on addressing Japan's scientific whaling programme in Antarctica (JARPA). Over the last two decades, NGOs have been effective in using the scale of this hunt, the dishonesty of its description as scientific research, and its holding 'hostage' of 50 humpbacks, to focus public opposition to whaling mainly on Japan. And Japan has helped; its aggressive behaviour at the IWC, its solicitation of support for whaling through aid programmes and its perpetuation of myths about whales as voracious predators threatening global food security, have contributed to Japan, and JARPA in particular becoming an easy political target. As a result, both private/bilateral and public/multilateral discussions of whaling over the last ten years have aimed almost exclusively at reaching a deal with Japan to reduce JARPA (including, recently, to drop the humpbacks), and attempts at reform of the IWC have focused on bringing scientific whaling back under control.

WDCS believes this focus is wrong. It not only underestimates the threat that whaling under Objection and Reservation (currently undertaken by Norway and Iceland) pose to the effective regulation of whaling, but it suggests that scientific whaling is acceptable if practiced on a smaller

scale (for example in the JARPN hunt) or on 'less popular' species. Focusing too intently on dealing with Japan also overlooks the fact that Norway and Iceland are seeking new commercial markets for their whale products, both domestically and overseas, and have no legal barriers to expanding their whaling in the future to meet new demand. It also ignores the interest of other nations in resuming, or commencing, commercial whaling. We believe that a limited focus on Japan's Antarctic whaling today will result in a 'solution' that is incomplete, unenforceable or unsustainable – in the longer term.

The Third Pew Commission

WDCS is delighted that the Third Whales Commission will draw together a group of distinguished individuals with no vested interest in the details or the outcome of the IWC's negotiations, but with unrivalled diplomatic, political, economic, scientific, and legal experience. We commend Pew for mandating this group to “**evaluate diplomatic remedies**” and believe that the Third Whale Symposium would most effectively harness the skills of its eminent participants by facilitating them to seek solutions, not within the paradigm of the IWC, but in the 'real world', the politics of which they know so much better.

WDCS encourages the Third Whales Commission to take a longer and broader view than the IWC and Pew's first two Commissions – and to seek a solution beyond the inevitable and decade-old formula to control whaling where only the quantities change; giving [...] whaling in coastal waters + [...] sanctuaries or protection for whales on the high seas, + [...] level of Monitoring, Supervision and Control, in return for agreement by Japan to reduce its scientific whaling by [...].

We urge Pew to steer the participants at this Third Commission meeting to use their considerable skills and experience to consider how, by addressing the following issues *outside the IWC*, we might be able to bring an end to commercial whaling for good.

The relevance of whaling in the 21st Century

The long and infamous history of commercial whaling, has demonstrated that it is impossible to ensure that commercial hunts are properly regulated, sustainable and humane. Even after 60 years of research and restrictions by the IWC and huge public interest in whales, there remains no humane way to kill a whale at sea, no mechanism (that the whaling nations are willing to accept) to ensure compliance with effective regulations, and no scientific certainty about the ability of whale stocks to withstand hunting in the face of growing environmental threats including climate change. Considering these factors, the unique vulnerability of whales to over-hunting, and the fact that commercial whaling meets no pressing nutritional need in the three developed countries still conducting it, is it not time to consign this practice to history?

The ability of other MEAs to address other threats to whales

Although the IWC has a conservation mandate and a Scientific Committee tasked with considering threats to whales, the IWC's ability to *mitigate* threats to all cetaceans is constrained both legally and politically. For example, although the IWC can create sanctuaries, these are essentially just areas closed to whaling and do not offer the range of benefits of a true Marine Protected Area, such as comprehensive management plans or appropriate monitoring and reporting of environmental indicators. In contrast, other conventions (most notably the Convention on Migratory Species), while they have no mandate to manage whaling, have a greater ability than the IWC to actually address non-whaling threats to cetaceans, are well networked with other biodiversity MEAs through joint programmes of work, and are responsive to the biodiversity conservation targets established by the international community through the Convention on Biological Diversity. The participants might consider the future role of the IWC in ensuring the effective conservation of all cetaceans in the context of a suite of other international or regional

agreements. Should the IWC be more responsive to the established biodiversity conservation targets? Should the IWC establish cooperative relationships with other MEAs that are active in cetacean conservation?

Governance / good faith issues

Resource extraction under the guise of 'scientific research', or under Objection or Reservation to regulations or limits, occurs in other Multilateral Environmental Agreements. However, it is not practiced elsewhere on a scale comparable to Japan's scientific whaling or Japan and Norway's commercial whaling. Perhaps the participants could consider the issue of Norway, Iceland and Japan's lack of good faith in a broader global context than just whaling; including their leadership roles on the international stage on other matters, including, ironically, environmental protection and sustainability. It might be useful to consider why all three whaling nations resoundingly reject the same Monitoring, Supervision and Control measures for whaling that they commit to in numerous regional fisheries agreements, such as vessel monitoring, catch documentation schemes and enforcement provisions. The participants might also consider Japan's acknowledged strategy of using fisheries and other aid incentives to obtain votes for whaling within the IWC and its increasing use of the strategy at CITES where disruption of the whole meeting on issues relating to cetaceans has become the norm.

Political relationships on other issues

The whaling nations' relationships with the international or regional powers that oppose whaling (USA, Australia, EU etc), are complex and constantly evolving. So are the issues that shape them, and they extend far beyond whaling. Could the participants consider these relationships and issues and discuss how they might provide leverage on the whaling issue. For example, what would each of the whaling nations consider to be a sufficiently important 'win' in another arena to persuade it to forsake whaling (e.g. access to trade/ preferences; positioning in the UN etc)? How might the objectives of the last G8 summit, which focussed on environmental issues, and growing concerns associated with climate change, be used to garner support for a change in attitudes towards whaling?;

Economic issues.

All current commercial whaling operations are economically non-viable and reliant upon their governments' multiple direct and indirect subsidies as well as exemptions from relevant domestic and international regulations. To secure the future of their whaling operations, the whaling countries need to develop new markets for whale products (new products as well as new trading partners) and to lift the current ban on international trade in whale products imposed by CITES. Do the participants have any suggestions to stop protectionism in the whaling industry and inhibit international trade in whale products? For example, through FAO, WHO, WTO or WCO restrictions on food, cosmetic, industrial or pharmaceutical products originating from whales?

Does the current global crisis offers new opportunities to persuade the whaling nations to call it a day on financial grounds without losing face politically?

Domestic Public health issues

Is there a way to reduce demand / markets for whale meat on the grounds that whale meat is not a healthy food source and, in many cases, is contaminated beyond levels safe for human consumption? For example, can the participants suggest ways to persuade (legally, diplomatically or otherwise) the government of Japan to enforce its (otherwise rigorous) health regulations, issue the appropriate advisory notices to its consumers about the health risks of consuming whale meat, and stop providing whale meat to school lunch programmes? How might we persuade the authorities in other whaling nations to take this public health issue more seriously?

Food security issues

Can the participants suggest, or help advance, diplomatic mechanisms to counter the erroneous and over-simplistic argument that commercial whaling can provide protein to countries with poor food security, and help alleviate poverty? For example, could this be addressed by the UN through its relevant agencies and/or through human relief organisations?

Can the participants suggest, or help advance, new diplomatic mechanisms to counter the equally erroneously and over-simplistic claim that whales are destroying fish stocks and should be culled to ensure human food security?

Ethical issues

Whaling cannot be conducted in a manner which is guaranteed to be humane, nor is it even remotely in accordance with other forms of commercial meat production where stringent slaughter standards are the norm. In addition, growing understanding of the social complexity within certain cetacean populations and the roles of certain individuals may have repercussions for removals that are not accounted for in the more traditional methods for determining what is sustainable for a population.

Potential uncertainty from a scientific perspective and the cruelty inherent in modern whaling practices raise significant ethical issues that must be accounted for in any possible solution to the whaling problem; it is WDCS's view that simply applying the principles of Reduction, Refinement and Replacement (the 3Rs) to scientific whaling will be insufficient to address the wider ethical implications of whaling.

In conclusion:

WDCS recognizes, of course, that the Objectives and terms of reference of the Third Whale Commission have been agreed, and are unlikely to change significantly. However, we hope that Pew will give consideration to our appeal to broaden the agenda and will give the participants flexibility to do more than simply consider options to address the 33 'elements/issues' contained in document IWC/60/24 and other similar documents. We hope instead that they will consider the context of whaling in much broader terms and produce 'real world' recommendations based on their unique and impressive experience in public policy and diplomacy.

I look forward to working with Pew and the other Commission participants next month.

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