

A briefing on the position of the European Community at the 61st meeting of the International Whaling Commission, June 2009

May 2009

The Wildlife and Countryside Link (Link) Whales Working Group is composed of Non-Governmental Organisations with a range of concerns. These include organisations whose mandate relates purely to conservation issues, organisations whose mandate relates purely to welfare issues and organisations that are concerned about both conservation and welfare.

Link brings together 38 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together, our members have the support of over 8 million people in the UK.

This document is supported by the following organisations:



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Introduction

On 2nd March 2009, the Council of the European Union established a position (Council Decision 7146/09) to be adopted on behalf of the European Community (EC) for the next three annual meetings and the related intersessional meetings of the International Whaling Commission (IWC).¹ We recognise and welcome that the EC’s primary motivation in this common position is promoting the protection of whales, as occurs in EC waters.² However, we are concerned that certain elements of the position afford member states considerable flexibility of interpretation and that some interpretations could lead to the acceptance of proposals to legitimise ‘scientific’ whaling and approve coastal whaling at the IWC’s 61st annual meeting in June 2009. Whilst we acknowledge that such moves may be taken in pursuit of improving the situation for whale

conservation, we counter that any ‘package’ likely to be considered would fall far short of meeting the EC’s requirement to *guarantee* an improvement on the status quo and instead would lead to an irreversible weakening of existing protection for whale species.

This briefing explains our rationale that the EU members of the IWC should not support any proposal which would approve quotas for commercial whaling, or introduce a new type of whaling (coastal, small-type, community-based, or otherwise), and explains the many pitfalls that the adoption of such proposals would face.

We also present information regarding the likely discussion and vote to award Greenland a quota of ten humpback whales and our rationale that EU members of the IWC should vote against such a request.

We cannot stress enough the importance of the EU members’ votes at this critical meeting and trust that you will do all in your power to ensure that any vote meets the expectations of the European public as well as existing European legislation.

¹ We note that the common position applies only to proposals for amendments to the International Convention on the Regulation of Whaling (ICRW) and its Schedule. The EC members do not, therefore, have to reach a Common Position on issues which require a simple majority at IWC meetings including, for example, amendments to the rules of procedure and nomination of a new Chair and Vice Chair.

² Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive).

Background – the future of the International Whaling Commission

Since the early 1990s the whaling nations – most notably Japan – have been pushing hard for the IWC to lift the international moratorium on commercial whaling. A ‘loophole’ in the International Convention for the Regulation of Whaling (ICRW) allows Japan (and, in the recent past, Iceland) to self-award quotas in the name of science. Escalation in scientific (or ‘special permit’) whaling over the last two decades has been used by Japan as a bargaining tool to achieve its objective of a resumption of commercial whaling.

At its 60th meeting in June 2008, the IWC elected to begin a process to decide on its future. This process has been sensationalised by the whaling nations into a ‘make or break’ situation, creating the false notion that the IWC is dysfunctional, at the point of collapse and requiring urgent resolution at whatever cost. The IWC as a whole is not dysfunctional – in spite of disagreement over whaling under special permit and objection – and is carrying out a range of wholly functional and critical conservation work, essential for the global management and protection of whales. The aspects of the IWC which *are* dysfunctional are the result of a dedicated long-term campaign by the whaling nations to undermine the IWC’s decisions, particularly the moratorium, de-rail attempts to negotiate reasonable regulations, including the Revised Management Scheme (RMS), for commercial whaling, and hold the Commission hostage with hollow threats of leaving and establishing an alternative whaling body.

Nevertheless, we believe that this process to evaluate options for the IWC’s future has the potential to be extremely valuable and positive. The IWC could modernise itself in tune with the science, needs and values of the 21st century; focussing its considerable expertise on the proper conservation of whales, including for example the orderly development of the global whale watching industry and effective international regulation of aboriginal subsistence whaling. It can only do this if its EU member countries adopt this

long-sighted conservation approach, and reject compromises which offer short term, non-binding and superficial gains at the expense of legitimising scientific whaling, institutionalising coastal whaling and undermining the credibility of the IWC.

The EC’s Common Position states that all Member States should “endeavour to participate constructively in all discussions [on the Future of the Commission], taking account of the objective to ensure an effective international regulatory framework”. This objective is, however, qualified in that any amendments to the ICRW and its Schedule must be consistent with the objectives of European Community policies and legislation on whales. It is, therefore, not enough for the EC to be satisfied that a proposal under the Future of the IWC simply ensures effective international regulation of whaling; in positioning themselves on the future of the IWC members of the European Community must aspire towards progressive conservation objectives for whales, not just the regulation of hunting. Many indirect threats, such as climate change, habitat destruction and ship strikes, impact significantly on whale populations. The IWC’s future conservation of whale populations requires all such matters to be comprehensively addressed, and prioritised over any members’ aspirations to resume commercial whaling.

Votes at IWC61

The only two proposals likely to be tabled as Schedule amendments at the forthcoming 61st annual meeting are a proposal on the ‘Future of the IWC’ and a request from Greenland for a quota of 10 humpback whales annually. We have the following comments on the application of the EC’s Common Position to these proposals.

Comments on application of the EC's position on the 'future of the IWC' proposal (and probable vote)

At its Rome intersessional meeting in March 2009, the IWC received a paper which incorporated the 'Chairs' suggestions for the future of the IWC'.³ These suggestions focus exclusively on Japan's so-called 'scientific' whaling and a proposed trade off to limit 'scientific' whaling in exchange for awarding Japan a coastal whaling quota. The suggestions included no details on quotas or accompanying regulations, or even what is meant by key terms like 'coastal' or 'local consumption', but it was agreed that the Small Working Group on the Future of the IWC (SWG) would progress the plan towards possible adoption by Schedule amendment at IWC61 in June. The report and full proposal of the SWG is due for release on 18th May 2009.

We seriously question the legitimacy of Japan's persistent request (for over 20 years) for an 'emergency interim quota' for four coastal communities that it claims suffered economic hardship and cultural disintegration as a result of the moratorium. The IWC actually knows very little about the circumstances in these four communities. Recent research and interviews conducted by WDCS and Japanese colleagues in the four towns reveal that only two towns have any real history of the 'small type minke whaling', and only Ayukawa still has the infrastructure of a whaling town. Abashiri no longer has a whaling vessel and Taiji and Wada have more interest in hunting small cetaceans than large whales.

Furthermore, because the four towns currently participate in the coastal component of Japan's scientific whaling programme in

³ IWC/M09/4. Available at www.iwcoffice.org/_documents/commission/future/IWC-M09-4.pdf

the North Pacific (JARPNII) on a commercial basis, they would actually be worse off taking minke whales under any new proposal which restricted them to non-commercial product use.

Although EU IWC members have roundly rejected Japan's coastal whaling requests for many years, the language in the EC common position clearly contemplates the EU's approval of a new type of whaling, provided that four conditions established in Clause 2b of the Annex to Annex 1 of Council Decision 7146/09 are satisfied. Such proposals must:

- a) involve only local consumption;
- b) foresee a role for scientific advice by the IWC;
- c) guarantee a significant improvement in the conservation status of whales in the long term; and
- d) bring all whaling operations by IWC members under IWC control.

Also relevant to any package on the future of the IWC is Annex to Annex I(e), namely:

- e) support proposals aimed to end the conduct of "scientific whaling" outside IWC control

We have the following comments and recommendations about how the EC could interpret and exercise its mandate on these issues:

a) Local consumption

The EC's definition of 'local consumption' in this context is extremely important, but not yet clear. It could mean local to the town, or region in which the whales will be caught, or, as per the interpretation in use by Greenland, it could mean that consumption on a national (non-export) level would qualify. Clearly the regulatory implications of the two definitions are quite different. We believe that the EC's definition should be conservative, interpreting local consumption to mean consumption only in the region/prefecture in which the whales were caught.

In addition to the location of use of products, the EU must also concern itself with the commerciality of any new whaling categories. Clause 2a of the EC common position stipulates 'Support the maintenance of the moratorium on commercial whaling in the Schedule;'. It follows that any new type of whaling which involved the killing of whales for commercial purposes would fall under Article 10e of the Schedule (the moratorium). It is extremely unlikely that any proposal for coastal whaling that included a strict limitation of non-commercial use would be acceptable to Japan and others. EU IWC members cannot support any proposal which envisages commercial sale of the products as this would contradict clause 2a.

b) The role of scientific advice

We are concerned by the vague nature of the EC's condition to "foresee a role for scientific advice by the IWC". We believe that this language reflects a growing disregard for the IWC's Scientific Committee, and specifically, some of the mechanisms it has taken years to agree and which are the subject of agreement by the IWC. The Revised Management Procedure (RMP) is the mechanism accepted by the IWC in 1994 as the best available mathematical specification for the calculation of catch limits for baleen whales; it is the result of years of development and testing by experts in the Scientific Committee.

The proposal, briefly discussed at the March intersessional, to award interim quotas for minke whales in Japanese coastal waters based on 'ad hoc' (in place of RMP) advice from the Scientific Committee would undermine the IWC as a credible body led by science, and would set a dangerous precedent. Attempting to tailor science in the form of 'interim advice' to meet quota demands would be a return to the IWC's pre-moratorium days of arbitrary quotas, when the only "enlightened" policy was to prevent economic extinction. We call upon EU IWC members to ensure that science informs management advice, not the other way around.

Aside from the problems with the principles of interim/ad-hoc advice, awarding Japan a

quota for minke whales in its coastal waters presents significant and demonstrable conservation problems due to the presence of the endangered 'J stock' of minke. Under the current state of knowledge of the population structure and abundance of North Pacific minke whales, the Scientific Committee would not be in a position to assure the long-term sustainability or impact of any quota for minke whales in Japanese coastal waters. Although Japan has claimed that J-stock catches could be limited by preventing whaling close to shore, Japan's own data (IWC/SC/59/NPM5) shows that even at 50 nautical miles offshore (close to the day-trip limit for a small-type whaling vessel) one in ten minke whales caught are endangered J-stock animals. Furthermore the J-stock is already threatened due to high levels of by-catch in Japanese and Korean coastal waters and significant catches of J-stock animals in JARPNII 'scientific' hunts. Given all of these concerns, and the fact that Japan continues to refuse to submit genetic data to the Scientific Committee so that it can evaluate the true extent of J stock removals, any proposal to award a quota which would unquestionably *further deplete* the J-stock is in direct opposition to the precautionary principle and IWC Small Working Group's aim to '*provide for the recovery of depleted or endangered stocks...*'.

c) Guarantee a significant improvement in the conservation of whales in the long term

From a conservation and animal welfare perspective this is the most important and directive condition. We find suggestions, such as those as proposed in IWC/M09/4, to institutionalise and sanction coastal commercial whaling to be deeply flawed. Such proposals would be extremely likely to lead to a greater number of whales being killed in the mid to long-term, whilst also failing to enact binding controls to scientific whaling or whaling under objection in the short-term (see also sections d and e).

Awarding a quota to a country in recognition of the 'unique circumstances that exist for four [Japanese] coastal communities'⁴ is an ambiguous exercise which sets an extremely

⁴ IWC/M09/4

dangerous precedent. Any country with an interest in whaling could reasonably expect to have their own, self-defined 'unique circumstances' recognised; indeed South Korea proved this by stating its interest in receiving coastal whaling quotas in an intervention at the IWC's Rome Intersessional. Furthermore, establishing community-specific coastal whaling quotas is not permitted under Article V(2c)⁵ of the ICRW – catch limits cannot be restricted by nationality.

A move to legitimise coastal whaling would exacerbate poorly or un-regulated whaling and erode - if not entirely destroy - the moratorium. Such coastal whaling would exploit populations of whales already most at risk from anthropogenic harm (e.g. pollution, by-catch, habitat destruction, noise, climate change). We reiterate in the strongest possible terms our call that EU IWC members should not support any proposal which would endorse and enable coastal whaling, since this would be tantamount to lifting the whaling ban. Such an action would be entirely contrary to the EC's mandate to guarantee a significant improvement in the conservation of whales in the long term.

d) Bringing all whaling operations by IWC members under IWC control

The discussion (or lack thereof) at the recent intersessional meeting indicated that the scope of the proposal currently under discussion is limited to Japan's whaling. Any proposal tabled at IWC61 is extremely unlikely to prohibit scientific whaling outside existing programmes, or control whaling under objection or reservation

Whilst Japan's whaling in the Southern Ocean whale sanctuary attracts by far the greatest attention and disapproval, it is by no means the only uncontrolled whaling carried out by IWC members. During the period 2004-2008 Japan killed a total of 1,357 minke, Bryde's, sperm and sei whales in the North Pacific. Since the moratorium was implemented,

⁵ Article V(2c) [catch limits] "shall not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory ship or land station or to any group of factory ships or land stations;"

Norway has taken 8,640 whales in commercial hunts, whilst Iceland has killed 214 whales in a mixture of scientific and commercial hunts since 2004.

Proposals which do not address escalating scientific whaling in the North Pacific, nor the development of new 'scientific' programmes during any five-year interim period must be rejected by EU IWC members. Any proposal which would not stop, or bring under full IWC control, whaling that exists under objection or reservation should also be rejected. If the EC's intention under this clause is to reduce the number of whales killed then this effort cannot be directed exclusively at scientific whaling in the Southern Ocean by Japan.

Furthermore, we wish to draw attention to the ambiguity of the aim to bring whaling *under IWC control*. This would of course imply the setting of quotas by the IWC, but we further assert that implicit to this is the agreement and binding adoption of Monitoring, Supervision and Control schemes for any new category of whaling. In IWC intersessional discussions to date it seems that ensuring compliance with any quotas set, ensuring the proper conduct of surveys, submission of whaling data to the IWC, monitoring and supervision of whaling vessels and land stations, and all other elements of international oversight have been divorced from the setting of quotas for Japanese coastal whaling, and would instead be the subject of future negotiations. We contend that for EU IWC members to fully meet their mandate to bring whaling *under control*, they must ensure that a comprehensive management scheme is in place *before* ever giving consideration is given to setting quotas.

e) Support proposals aimed to end the conduct of "scientific whaling" outside IWC control

The majority of IWC member countries, including almost all EU members, would openly agree that Japan's so-called 'scientific whaling' is a very thinly veiled commercial whaling operation, employed to circumvent and undermine the moratorium. Since 1987 the IWC has passed 20 Resolutions stating its objection to Japan's scientific whaling

operations and calling for a halt. Japan has responded to this criticism by escalating its scientific whaling programmes and attempting to use the threat of increased quotas to progress its own agenda.

EU IWC members, whose priority is the conservation and protection of whales, rightly see scientific whaling as a serious problem. The desire to stop it has led the IWC to a proposed compromise solution whereby some scientific whaling would be limited or controlled by the IWC 'in exchange for' awarding Japan a coastal whaling quota.

We do not believe that this is an appropriate solution to the scientific whaling problem. Firstly, controlling scientific whaling by 'gentlemen's agreement' is wholly unacceptable - Japan has a long history of renegeing on non-binding agreements in the IWC as well as other international marine resource conventions. The only fully binding mechanism by which to prevent abuses of Article VIII (scientific whaling) would be an amendment to the International Convention for the Regulation of Whaling (ICRW), requiring ratification by each IWC member nation, a move to which Japan would never agree. Secondly, bringing scientific whaling under IWC control effectively legitimizes it and would establish a dangerous precedent within the Commission whereby any country wishing to commence whaling could request scientific whaling quotas from the Scientific Committee. Given that there is no scientific need to kill whales in the name of science, it would be retrograde for EU IWC members to approve an agreement which sanctioned this practice.

We urge EU members not to attempt to achieve a quick fix for scientific whaling, and in doing so create precedents to allow increased and legitimised scientific whaling and coastal whaling, even if 'under IWC control' on paper.

Aboriginal Subsistence Whaling (ASW) – Greenland's request for humpback whales

We note the substantive change to the EC's 2008 common position by the removal of the requirement that whaling operations be

'within the scope of documented and recognised subsistence needs'. Understanding that this weakening in the position was made at the request of Denmark, it is disappointing that, having secured this change purportedly on behalf of Greenland (which is not a member of the EC) Denmark then exempted itself from the EC's Common Position (again on behalf of Greenland) and is free to vote against it.

At its last meeting in 2008, Greenland did not secure the necessary support for its proposal to hunt 10 humpback whales a year. Serious concerns were raised, including by several EC members countries, about the degree of commercialisation of meat from Greenland's whaling operation and whether it had adequately demonstrated a need for more whale meat. We expect Greenland to bring the same proposal to the 61st annual meeting and urge the EC to take into account the following facts when testing Greenland's proposal against the EC's criteria for support:⁶

1. Until such time that the IWC negotiates and adopts an Aboriginal Whaling Management Scheme (AWMS), Aboriginal Whaling operations will not be properly regulated by, or "under the control" of, the IWC, nor could they be described as being 'properly regulated.'. At this time, the IWC has no universally agreed definitions of key terms such as 'local use', 'subsistence', 'need' etc. It has no effective mechanism for assessing claims that whale meat is needed to meet subsistence and cultural needs and it has no provisions to ensure supervision and control of operations, collection and provision of data to the IWC, or compliance with quotas and other regulations. We note, in this context, that the 2009 European Parliament resolution on whaling emphasises the importance of regulations for ASW, calling for "any such hunting to take place only with clear quotas based on the advice of the IWC Scientific Committee and regulated under strict

⁶ i.e. Annex to Annex I, (d) that 'the conservation of the relevant stocks is not compromised, having due regard to the precautionary principle and the advice of the Scientific Committee; that whaling operations are properly regulated; and that all whaling catches remain sustainable within the scope of subsistence needs for local use.

controls incorporating full recording and reporting to the IWC".⁷ We urge EU IWC members to take active steps to bring ASW operations under full control of an agreed AWMS, and to cite the current absence of an AWMS as a barrier to the EC supporting further ASW quotas.

- Greenland's true 'subsistence need for local use' remains unknown and, despite the requests of numerous countries at IWC60 to do so, it is highly unlikely that Denmark will table a new needs statement at IWC61. We believe that many more great whales are hunted under ASW quotas that are actually necessary to meet the claimed level of human subsistence need. This is because the meat yields of small cetaceans hunted by the same communities, or supplying the same markets, are not taken into account in needs statements submitted to the IWC. For example, Greenland argued in 2007 that its current ASW quota does not provide enough whale meat to satisfy the need it claims for 730 tonnes annually. However, Greenland also hunts over 4,000 small cetaceans a year – killer whales, belugas, narwhals, pilot whales and harbour porpoises – and the products from these hunts alone provide almost half of Greenland's declared need for whale meat.
- There also remains uncertainty over the legitimacy of use of Greenland's large whale products. In 2008, the World Society for the Protection of Animals conducted an investigation into the commercial sale of whale products in Greenland and found that around a quarter of the total volume of products from large whale hunts was processed and sold commercially throughout over 100 supermarkets across Greenland.⁸ This commercial element continues and is clearly in evidence from the processing

company's website,⁹ which shows both wholesale and 'recommended retail' prices with clear commercial profit margins. Such enterprises dangerously blur the distinction between ASW and commercial whaling and should be actively opposed by EU IWC members.

Welfare and whaling

Finally, we wish to draw your attention to the EU's position on whaling with respect to animal welfare. As you will be aware, the EU's commitment to improved protection and respect for animal welfare is enshrined in the Treaty of Amsterdam,¹⁰ which recognises animals as sentient beings and agrees that: '*in formulating and implementing the Community's agricultural [and other] policies, the Community shall pay full regard to the welfare requirements of animals...*'

Furthermore, the Community Action Plan on the Protection and Welfare of Animals (2006-2010)¹¹, records a primary objective of the Commission to '*Continue to promote high animal welfare standards in the EU and at the international level.*' The fifth action area recommended in the Action Plan appears particularly pertinent to the EC's position on welfare at the IWC in that it contains a commitment to: "*Continue to support and initiate further international initiatives to raise awareness and create a greater consensus on animal welfare....*"

We respectfully request the European Commission's promotion of this commitment at IWC61, by proactively encouraging Member States to advance and endorse language and decisions within the IWC which would secure improvements in welfare standards for hunted whales.

⁷ European Parliament resolution of 19 February 2009 on Community action in relation to whaling (2008/2101(INI)).

⁸ http://www.wspa-international.org/Images/ExplodingMyths_tcm25-3402.pdf

⁹ www.arcticfood.gl/?GB/Products/Domestic%20market/Minke%20whale%20

¹⁰ Protocol annexed to the Treaty of the European Community - Protocol on the Protection and welfare of animals. *Official Journal C 340, 10/11/1997 p. 0110*

¹¹ http://ec.europa.eu/food/animal/welfare/actionplan/actionplan_en.htm