



Pew Whales Commission Bulletin

A report on the Pew Commission on Whale Conservation in the 21st Century
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MEETING OF THE PEW COMMISSION ON WHALE CONSERVATION IN THE 21ST CENTURY: 9-10 FEBRUARY 2009

The Pew Commission on Whale Conservation in the 21st Century met from 9-10 February 2009, in Lisbon, Portugal. The meeting was sponsored by the Pew Charitable Trusts and hosted by the Luso-American Foundation (FLAD). It was the third major meeting of the Pew Whale Conservation Project. Previous events included the “Pew Symposium on the Conservation of Whales in the 21st Century,” held in New York, US, in April 2007, and a symposium on “Changing the Climate for Whales – Is there a Common Way Forward?” held in Tokyo, Japan, in January 2008.

The Pew Whales Commission was established to advance possible solutions that will enhance whale conservation and help the International Whaling Commission (IWC) resolve some of the complex issues on its agenda. The Pew Whales Commission includes eminent individuals with broad experience in international policy and diplomacy, representing various sides of the debate.

The Lisbon meeting brought together 13 Pew Whales Commission members and around 25 observers, representing civil society, academia, and various IWC member countries. Participants evaluated diplomatic remedies and areas of agreement and disagreement relating to the IWC and its constituent instrument, the International Convention for the Regulation of Whaling (ICRW). The discussions were summarized in a Chair’s report which, pending consensus through consultation following the meeting, may become the Pew Whales Commission’s report. The report will be made available to all governments and stakeholders with whale conservation interests through the Pew Whales Commission’s website.

Despite some strongly-held positions on both sides of the debate, consensus at the meeting was reached on a number of important issues. For instance, it was agreed that the best way forward would be not to draft an entirely new convention, but rather to develop a protocol to the current Convention that modernizes both the ICW and the ICRW. Consensus was also apparent on the need for high-level participation in the IWC’s Annual Meetings to help move the issue forward. Areas of disagreement included the possibility of officially permitting small-type coastal whaling in Japan, ceasing all whaling operations in the Southern Ocean, and bringing scientific whaling under the authority of the IWC Scientific Committee, rather than that of individual states.

A BRIEF HISTORY OF WHALE CONSERVATION IN THE CONTEXT OF THE IWC

Several populations of great whales are highly endangered and number 500 or fewer individuals; many others are also at a fraction of their original population levels. The primary cause of this situation is commercial whaling, which started in the early Middle Ages and officially ended in 1986, when the moratorium on commercial whaling, adopted in 1982 by the International Whaling Commission (IWC), entered into force. The intense whaling efforts in the 1960s, when around 70,000 whales were caught annually, are thought to have been particularly critical for many species. Whaling is still taking place today, either as aboriginal subsistence whaling, scientific whaling, or under official objection to the 1982 moratorium.

The 1946 International Convention for the Regulation of Whaling (ICRW) currently regulates whaling. Its purpose is to “provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.” In 1949, upon its entry into force, the Convention established the IWC. The main duty of the IWC is to keep under review and revise as necessary the Schedule to the Convention, which specifies measures to regulate whaling. These measures, *inter alia*: provide for the complete protection of certain species or stocks; designate specified areas as whale sanctuaries; set limits

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on the numbers and size of whales that may be taken; prescribe open and closed seasons and areas for whaling; and prohibit the capture of suckling calves and female whales accompanied by calves. Since 1946, the Convention itself has not been revised, except for an amending protocol in 1956 that incorporated regulations on methods of inspection and extended the definition of “whale catchers” to include aircraft.

Membership in the IWC is open to any country that formally adheres to the ICRW, and currently stands at 84. Each member country is represented by a Commissioner, who is assisted by experts and advisers. The IWC meets annually; the 2009 Annual Meeting is scheduled to take place in June in Madeira, Portugal, preceded by meetings of the IWC’s Scientific Committee and two of the IWC’s sub-committees.

Since its inception, the IWC has had three main committees: Scientific, Technical, and Finance and Administration. The Technical Committee has fallen out of use, but a new Conservation Committee first met in 2004. Thirteen sub-committees have been established to address a variety of issues, including setting catch limits, aboriginal subsistence whaling, and by-catch and other anthropogenic removals.

The Convention requires that amendments to the Schedule “shall be based on scientific findings.” To this end, the Commission established the Scientific Committee, which comprises up to 200 of the world’s leading whale biologists, many of whom are nominated by member governments.

The information and advice of the Scientific Committee form the basis on which the Commission develops the whaling regulations in the Schedule. Schedule amendments require a three-quarters majority vote. The regulations adopted by the Commission are implemented through the national legislation of the member states.

In recent years, the Scientific Committee has been concentrating on a Comprehensive Assessment of whale stocks. This resulted in the development of the Revised Management Procedure (RMP), which is to be used in setting catch limits for different whale populations. The RMP was accepted and endorsed by the IWC in 1994, but it has yet to be implemented, pending the negotiation of a Revised Management Scheme (RMS), under discussion since 1996, which would set out a framework for inspection and observation to ensure compliance with the RMP.

The IWC decided at its meeting in 1982 that there should be a moratorium on commercial whaling of all whale stocks from 1985/1986. Japan, Peru, Norway and the USSR lodged objections to the moratorium, rendering it not binding on them. Japan later withdrew its objection. Iceland did not lodge an objection, but withdrew from the IWC in 1992. It rejoined in 2002, with a retroactive objection to the moratorium, and resumed its whaling programme in 2006. Today, only Norway, Iceland and Japan are considered whaling nations, with Norway and Iceland referring to their respective objections, and Japan describing its whaling efforts as scientific whaling. In addition, some aboriginal communities in Denmark (Greenland), the Russian Federation, Saint Vincent and the Grenadines, and the US (Alaska) engage in subsistence whaling.

In addition to the moratorium, two whale sanctuaries have been created: in the Indian Ocean (1979) and in the Southern Ocean (1994).

Discussions in the IWC are highly polarized. A key question raised in the whaling debate is whether it is acceptable to consider that, as predators, whales should be “culled” for fisheries

management purposes. In addition, pro-whaling nations propose to lift the moratorium and abolish the current sanctuaries, arguing that these restrictions represent a breach with the ICRW objective to provide, *inter alia*, for “the optimum utilization of the whale resources.” Anti-whaling nations, however, express concern that despite the moratorium, catches have gradually increased over recent years – particularly through the use of special permits to allow killing of whales for scientific purposes. According to IWC data, of the 1933 whales reported caught in 2007-2008, 953 were caught by Japan and Iceland under scientific whaling. Japan reported taking 759 minke whales, 3 sperm whales, 100 sei whales and 50 Bryde’s whales, and Iceland reported catching 39 minke whales. In 2007-2008, under their objection to the moratorium, Norway and Iceland caught 597 and 6 minke whales, respectively. Aboriginal subsistence whalers caught 377 whales in 2007, primarily minke whales (West Greenland) and grey whales (Chukchi, Russia).

RECENT SESSIONS OF THE IWC: Recent meetings of the IWC have continued to show some strong divisions on key issues. At IWC-57 in June 2005, the IWC rejected proposals by Japan to broaden the option of voting by secret ballot, revise the RMS so as to lift the moratorium, remove the existing Southern Ocean Sanctuary, and allow the yearly taking of 150 minke whales by coastal communities. A proposal by Brazil and Argentina for a South Atlantic Sanctuary also did not obtain the required three-quarters majority. However, a resolution was passed that strongly urged the Government of Japan to withdraw or revise its proposal on catches for scientific purposes in the Antarctic.

At IWC-58 in June 2006, delegates recognized that the issue of advancing the RMS had reached an impasse. A proposal by Brazil and Argentina for a South Atlantic Sanctuary was not put to a vote. Japan’s proposals to allow the yearly taking of 150 minke whales by coastal communities and to abolish the Southern Ocean Sanctuary were again defeated. The Commission adopted the St Kitts and Nevis Declaration, proposed by Japan and several other countries, which declared a commitment to “normalizing the functions of the IWC.”

As a result, a “Conference for the Normalization of the IWC” was held in Tokyo, Japan, in February 2007. The meeting aimed to “put forward specific measures to resume the function of the IWC as a resource management organization.” Although Japan had invited all IWC member countries, only 35 countries attended the meeting, which was not officially sanctioned by the IWC. Twenty-six IWC member countries decided not to attend the meeting. The meeting resulted in a series of recommendations to be presented to the IWC at its 2007 meeting, including a request for secret ballots and Japan’s proposal to expand coastal takes of minke whales.

However, differences remained at the sessions held in 2007 and 2008. At IWC-59 in May 2007, the proposal by Brazil and Argentina for a South Atlantic Sanctuary was again put to a vote, but failed to obtain the required three-quarters majority.

At IWC-60, which took place in June 2008, in Santiago, Chile, participants established a number of additional sub-committees to address various issues both at this meeting and in the future, and discussed: whale stocks; aboriginal subsistence whaling; special permits; environmental issues; small cetaceans; and the Conservation Committee. The meeting also established by consensus a Small Working Group (SWG) to facilitate further discussions/negotiations on the future of the IWC. The SWG has

met twice in the second half of 2008, and will present a report on the results of its initial deliberations to the 2009 Intersessional Meeting on the future of the IWC.

OTHER RELEVANT MEETINGS: Whale conservation is also addressed under other multilateral treaties such as the Convention on Migratory Species (CMS) and the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES). At its seventh Conference of the Parties (COP-7) in 2002, the CMS decided to list fin, sei and sperm whales in CMS Appendices I and II, and Antarctic minke, Bryde's and pygmy right whales in Appendix II. Three years later, at COP-8, parties to the CMS adopted resolution 8.22 on cetacean conservation, which urges the integration of cetacean conservation into all relevant sectors and encourages cooperation between the CMS Secretariat and Scientific Council and the IWC and other international bodies.

Meanwhile, in 2002 parties to CITES rejected proposals to downlist populations of minke and Bryde's whales from CITES Appendix I to Appendix II. In 2004, parties rejected by secret ballot Japan's draft resolution urging the completion and implementation of the RMS and its proposal to downlist three stocks of minke whale from Appendix I to Appendix II.

THE PEW WHALE CONSERVATION PROJECT:

In 2007, the Pew Environment Group launched its Whale Conservation Project, in response to recent efforts by parties to the IWC to address some of the highly controversial issues that had polarized its discussions for many years. The Project was set up with the aim of advancing solutions that could enhance whale conservation and help the IWC meet its reform objectives.

In 2007 and 2008, two Pew-sponsored Whale Symposia were held in the context of this project. The first took place in April 2007 in New York, US, bringing together the conservation community, scientists, policy experts and others from both inside and outside the "IWC world." Some thought that current arrangements, contentious as they are, might be the best available means of conserving whales. Many suggestions were made on how to improve the situation, including to: modify the Convention in order to remove or restrict the use of scientific whaling; eliminate provisions for making reservations to (or opting out of) new rules; and settle disputes through a "higher" authority such as an independent world commission, a ministerial summit, or a mutually agreed binding mediation or arbitration procedure. It was also suggested that research be conducted into the economics of whaling, including the question of government subsidies for whaling.

The second Pew Whale Symposium, entitled "A change in climate for whales," took place at UN University Headquarters in Tokyo, Japan, in January 2008. Discussion focused on the need for a clear, agreed definition of "scientific whaling," including numerical targets, and for a more diplomatic approach towards the Japanese standpoint. During a round robin session on the future of the IWC process, delegates discussed, *inter alia*, fundamental concerns, the role of science, NGO participation, and cooperation with other organizations.

The Pew Whales Commission was established in 2009 to synthesize those efforts, seek new input from both whaling experts and civil society, and make recommendations to help advance the IWC negotiations at the IWC's 61st Annual Meeting, to be held in Madeira, Portugal in June 2009. The Pew Whales Commission includes eminent individuals with broad experience in international policy and diplomacy, representing various sides of the debate.

MEETING REPORT

The Lisbon event began with an evening reception on Sunday, 8 February. Charles Fox, Pew Environment Group, welcomed participants. Noting the "daunting challenges" surrounding the whaling debate, he underlined that the Pew Whales Commission is independent of government positions but conscious of diplomatic realities, and said this meeting would build upon and possibly strengthen the proposals put forward by the Small Working Group (SWG) of the International Whaling Commission (IWC), which recently released its report.

Peter Bridgewater, Chair of the Pew Whales Commission, noted that governments share a sense of concern regarding the



Peter Bridgewater, Chair of the Pew Whales Commission

way the IWC conducts its business, and highlighted the opportunities for the Pew Whales Commission as a parallel process. He said this Commission would address four major, interconnected aspects of the whaling debate, namely differences in: cultural perspectives on cetaceans; scientific approaches to understanding whale populations; views on the

use of protected areas or sanctuaries; and views on which type of legal instrument would work best, and how to ensure strong compliance. Bridgewater encouraged participants to embrace a wide range of perspectives.

The formal part of the event began on Monday morning, with an opening session and introductions. This was followed by sessions focused on five issue areas or "clusters," as follows: science and precautionary management; an overview of current whaling activities; compliance and enforcement; conservation tools; and links with other instruments. The following morning, participants took stock of these discussions and identified areas of agreement and disagreement and possible outcomes from this meeting. The summary report that follows outlines these discussions and the meeting outcome.

OPENING SESSION

On Monday morning, 9 February, the formal event began. The meeting was subject to the Chatham House Rule, whereby statements are not attributed to individual speakers, except in the case of presenters listed in the meeting's agenda. It was also noted that representatives would be offering their personal views, and not necessarily those of their governments and organizations.

Charles Buchanan, Managing Director of the Luso-American Foundation, described the history and independent nature of the Foundation, highlighting its interest in ocean affairs. He cited collaborations with the Pew Environment Group on bottom trawling and shark fisheries, and with the US and the EU on identifying coastal environmental indicators. He also outlined the Foundation's role in the development of Portugal's Ocean Strategy.

Humberto Rosa, Environment Secretary of State, Portugal, stressed his country's commitment to the whaling debate and highlighted its peaceful transition from whaling to non-lethal use of whales, particularly whalewatching. Supporting the moratorium and improved whale conservation, he called for consensus and understanding in negotiation. Presenting the two sides of the current political deadlock, he cautioned that tolerance



L-R: Rémi Parmentier, Pew Environment Group; Humberto Rosa, Environment Secretary of State, Portugal; Peter Bridgewater, Chair of the Pew Whales Commission; and Charles Buchanan, Managing Director of the Luso-American Foundation

is required to reach an agreement. Rosa also called for “bringing the IWC into the 21st Century” to accommodate challenges from pollution, climate change, shipping, and noise pollution. He said that based on his experience at the climate meeting in Bali in 2007, ministerial involvement is important when there is a deadlock, and that he would encourage his ministerial colleagues to attend the IWC Annual Meeting in Madeira in June in order to help IWC Commissioners to move forward.

Pew Whales Commission Chair Peter Bridgewater noted that although IWC countries are divided into two camps, these camps can change over time. He highlighted the fortunate timing of this meeting following the release of the SWG’s report, and the Pew Whales Commission’s unique opportunity to help shape the way forward. He called for increased attention to semantics in the debate, and to sustainable use and equitable benefit sharing with regard to non-lethal uses of whales.

Members of the Pew Whales Commission then briefly introduced themselves, highlighting their experience relevant to the whaling debate and delivering some preliminary remarks.

SCIENCE AND PRECAUTIONARY MANAGEMENT

Bill de la Mare, Commonwealth Scientific and Industrial Research Organisation, Australia, addressed the practical challenges of establishing catch limits, which he said are the basis of the controversy surrounding the Revised Management Procedure (RMP). He stressed that the RMP is designed to meet both conservation and industry objectives, which should ultimately be similar. He elaborated the RMP’s Catch Limit Algorithm that specifies which proportion of whales from a certain stock can be safely caught, based on information that can be reliably obtained about whale abundance, such as sighting surveys and catch data.

Noting that better information will lead to higher catch limits, while high uncertainty leads to lower catch limits, de la Mare emphasized this incentive for the whaling industry to contribute data. He said the Catch Limit Algorithm is designed to include many scenarios, including a changing world, epidemics, different



Bill de la Mare, Commonwealth Scientific and Industrial Research Organisation, Australia

stock dynamics, and biased or incomplete data. He explained how surveys can result in unsustainable catch limits if they disregard the fact that particular stocks in an area with multiple stocks are much more likely to be caught than others, for instance in coastal whaling programmes. He also outlined modeling challenges posed by spatially complex populations, for instance with slow mixing, territorial behavior, migration and a distribution dependent on age and sex.

On setting stock-specific catch limits, de la Mare said whales can be tested genetically for stock origin at landing, and incentives should be created for the whaling industry to perform these tests.

Participants addressed a range of issues, including: the optimum frequency of whale surveys; the need to reduce high variability in catch limits between years; the method and accuracy of whale surveys; and the degree to which the science in question is politicized. De la Mare explained that the Catch Limit Algorithm is generally accepted as being scientifically sound and objective, but that some uncertainties persist regarding the distribution of stocks, which opens the door to selectively rejecting hypotheses.

One participant remarked that this discussion is based upon the *a priori* assumption that whaling should or can continue. Chair Bridgewater clarified that this discussion stems from the danger of having an IWC that is not functional, and the resulting need to establish sound scientific procedures and management. He also emphasized that the RMP is still not formally part of the IWC lexicon.

OVERVIEW OF CURRENT WHALING ACTIVITIES

Summarizing current whaling activities, Russell Leaper, International Fund for Animal Welfare and member of the IWC Scientific Committee, highlighted the International Convention on the Regulation of Whaling’s (ICRW) goal of sustainability. He noted the lack of a definition of coastal whaling in the ICRW, and stressed that the term is not necessarily related to distance from shore.

Leaper stated that Norway establishes catch limits based on a unilateral tuning of the RMP, which is based on harvest desires rather than IWC scientific advice. He described uncertainty in the future of Iceland’s whaling programme at the government level despite annual catch limits having been set for five years by the former government. He also outlined Japan’s special permit whaling programme. He said the IWC’s review of Japan’s research programme in the Antarctic suggests the scientific objectives have not been met, though it does not indicate whether the programme should continue.

Leaper described the challenges of managing mixed stocks using the example of the O- and J-stocks of minke whales in the Pacific Ocean, highlighting the Scientific Committee’s continued concern for the state of the J-stock and the incomplete sharing of genetic data from harvested whales. He also outlined the Scientific Committee’s concerns about being asked for *ad hoc* interim advice, the lack of recent assessments for some species, and the impact of coastal whaling focused around specific ports, and noted scientific challenges including accounting for by-catch.



Russell Leaper, International Fund for Animal Welfare and member of the IWC Scientific Committee

In response to a participant's concerns about the lack of recent assessments, it was noted that the scientific community does not have sufficient data on abundances and distribution to perform full assessments on some species.

One participant lamented the fact that IWC Scientific Committee meetings are held just prior to the IWC Annual Meetings, which leaves insufficient time for delegations to scrutinize the scientific reports. Another remarked that the transparency and timing issues relating to the scientific input reflect a lack of confidence in the science. Several felt that the IWC's apparent "dysfunctionality" does not relate directly to the RMP but rather to the governance of the IWC itself. One participant stressed the need to involve African experts in the debate, addressing the concern that some African countries are reluctant to take a position on the issue, and that sentiments such as "whales eat fish" prevail among the general public.

In response to a remark on the lack of tangible results from scientific whaling, a participant noted that in recent years, Japan has submitted 182 scientific reports to the Scientific Committee, and published 92 articles in peer-reviewed journals.

Several participants felt that scientific whaling is incompatible with the moratorium. It was remarked, however, that aboriginal whaling also takes place alongside the moratorium, and suggested that countries in favor of scientific whaling should be asked to strengthen their argument in the future.

COMPLIANCE AND ENFORCEMENT

Al Gillespie, University of Waikato, New Zealand, provided an overview of by-catch, compliance and monitoring, and objections and reservations. He stressed that international law relies on mutual consent, but that trends have tended towards an increased focus on compliance and enforcement mechanisms. He described the difference between non-compliance and non-cooperation, and noted that countries tend to avoid non-compliance.

Gillespie said consideration of by-catch is common to fisheries agreements, noting that discussions should focus on creating incentives to mitigate by-catch. He highlighted that trade of whale by-catch is regulated by the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES), but that its use on a local scale should be addressed as well.

Discussing compliance and monitoring, Gillespie suggested combining DNA methods with traditional fisheries approaches, such as vessel registers, land and water inspection, vessel monitoring systems and port state monitoring. He described the IWC's challenge of defining ownership of and access to DNA information.

With respect to objections and reservations, he stressed the importance of mutual cooperation and trust. He noted that results have been mixed in fora that have eliminated the right to object, and suggested that a change in the opt-out clause would require the drafting of a new convention.

In conclusion, Gillespie suggested creating a small compliance committee within the IWC with an equitable rotating geographic representation, which should focus on problem resolution rather than punishment. He also stressed the importance of inspection.

In the ensuing discussion, participants addressed the need for obligations under the ICRW to define infractions. One participant said the normalization of cooperative relationships based on mutual understanding should be prioritized before addressing opting out, and another felt that overriding countries' right to object would be a radical step. A participant noted that fisheries

compliance tools have never been combined with DNA registries within a single compliance regime, and expressed concern over the costs of meeting compliance obligations.

There was extensive discussion about the option of drafting an entirely new convention, with one participant strongly suggesting that the Pew Whales Commission recommend this option. It was agreed that the current Convention is a reflection of the time in which it was written, and that any modern convention, with respect to taking animals for scientific purposes, would specify the need for prior approval by a scientific committee and catch limits. Some favored the option of adding a protocol to the Convention.

Participants also discussed the possibility of sharing the costs of compliance mechanisms among whaling and non-whaling countries, and the need to reflect on the economic and financial costs of the IWC process, including meetings and compliance and monitoring mechanisms.

One participant remarked that there is little risk of compliance mechanisms being "over the top" in the case of whaling, given the degree of distrust between governments and the strong sentiments among the general public. Another, however, felt that the need for stronger compliance mechanisms brings to mind the question of scale, noting that whaling cannot be compared to the world's broad-scale commercial fisheries.

Participants recalled the use of reservations under other conventions, with one noting the continuous obligation to cooperate and provide justification for the reservation in question.

Responding to concerns about the lack of local involvement in the IWC process, participants cited representatives of local communities in the IWC, as well as the fact that they were invited to the current meeting, and another urged involving a wider range of stakeholders. Others voiced disquiet that wealthy nations are swaying developing countries' whaling policy by using economic leverage and incentives, indicating a "dysfunctionality of the present situation."

Participants also discussed challenges of moving forward with negotiations when viewpoints are entrenched, with one individual suggesting that no party has an incentive to change its position. He cited the strong emotional response to this issue in anti-whaling countries.

CONSERVATION TOOLS

Sue Lieberman, WWF International, noted ambiguity regarding whether the ICRW is a conservation or management convention, which she identified as a fundamental question. She said whaling as a threat should be considered in the broader context of other threats, including by-catch, habitat loss and degradation, ship strikes, chemical and noise pollution, oil and gas development, and climate change. She elaborated on the five elements of species conservation planning: policy and legislation; habitat protection and management; population protection and management; incentives for conservation; and awareness.

Among the policy options available, she suggested that whaling countries withdraw their reservations to the CITES Appendix I listing of cetaceans and accept the current CITES trade rules. She also proposed that all IWC countries agree:

- not to submit a proposal to CITES to downlist any CITES-listed species;
- that monitoring of trade in whale products is necessary to ensure compliance with any new regime, including a DNA-monitoring system;

- to give priority to whalewatching over lethal whaling, particularly if there is a potential conflict over a single whale stock;
- to enhance the IWC's role in promoting whalewatching and establishing whalewatching standards; and
- to create a geographical segregation of management regimes, for instance by establishing full protection in the Southern Hemisphere, allowing only whalewatching, with an option of limited and internationally-controlled whaling in some Northern Hemisphere coastal regions.

Participants discussed the option of bringing all whaling issues under other existing conventions, thus abandoning the ICRW rather than modernizing it to address other threats. The option did not receive any support. One participant stressed that listing species on CITES Appendix I without a solid scientific justification sets an undesirable precedent. Another noted, however, that the IWC had specifically asked CITES to list all great whale species because of a general difficulty in identifying the origin and nature of whale meat on the market.

One participant expressed concern that the positions of non-whaling countries in the Caribbean are being influenced by infrastructure and development inducements from pro-whaling countries. She argued that the economics of this situation should be a part of any discussion of the socioeconomic aspects of the whaling issue.

Participants also addressed Iceland's conflicting interest between whaling and whalewatching. It was noted that whaling in Iceland is subsidized, while whalewatching is increasingly lucrative, and that discussion in the Icelandic parliament is ongoing. One participant highlighted the importance of whalewatching in the Southern Hemisphere. Stressing that whalewatching does not preclude whaling in the same area but creates a difficulty from a management perspective, he supported geographic separation of the two activities. He called for all IWC member states to allow the full consideration of the issue by the IWC, and for the IWC to recognize that non-lethal use of whales is a valid management option.

One participant underscored the value of removing direct and indirect subsidies and government support for whaling operations as a conservation measure. Another cautioned against the assumption that the demand for whale products will not increase, drawing attention to other potential uses, such as in fishmeal, cosmetics, and food and health supplements.

LINKS WITH OTHER INSTRUMENTS

Duncan Currie, legal advisor to the Pew Environment Group, presented on the state of governance of the ICRW and possible procedural reforms. He highlighted the need to bring the ICRW into harmony with international law, called for a clarification of the ICRW's objectives, and stressed the importance of cooperation based on the shared goals of democracy, transparency, cost-effectiveness and accountability.

Currie noted lessons learned with regard to the precautionary approach, integrated management, the ecosystem approach and environmental impact assessments. He compared the ICRW with the UN Convention on the Law of the Sea, noting that the ICRW does not meet international best practice in terms of decision-making processes, monitoring and enforcement, transparency, and dispute resolution procedures.

He outlined policy options and constraints for amending or redrafting the ICRW, and highlighted the Pew Environment Group's call for reaching an outcome within an agreed time-frame, for example by concluding a new convention or protocol by 2012. He presented potential approaches for change, including negotiations within the IWC, diplomatic conferences and bringing the issue to the UN General Assembly.

Currie presented on the procedure for creating sanctuaries and expressed concern with the SWG's proposal to establish a South Atlantic Sanctuary for an initial period of five years, noting the lack of grounding in the ICRW procedures for establishing temporary sanctuaries.

Participants discussed whether the precautionary principle is embedded within the RMP. A participant questioned whether existing sanctuaries meet all of the criteria outlined in Article 5 of the ICRW (conservation regulations). He suggested that concerns regarding civil society involvement could be addressed within the current procedures of the IWC.

One participant cited the influence of non-governmental organizations (NGOs) on public opinion in both pro- and anti-whaling countries. He suggested that no resolution would occur without NGO support, urging formal NGO involvement in the IWC. Another participant drew attention to the "fantastic capacity" of national NGOs of smaller countries to integrate policy and science, and suggested that seats be reserved on delegations for NGO advisors. It was noted that a number of delegations already include NGOs, but that in practice NGOs that sit on national delegations are bound by their governments' rules. It was then suggested that the IWC allow NGOs to speak in plenary, which is common practice in other fora.

On the need for a fresh approach to sanctuaries, one participant suggested establishing all of the world's oceans as a sanctuary, and allowing some exceptions with regard to aboriginal subsistence and small-type coastal whaling by local communities.

Participants also discussed participation of the business sector in IWC meetings, and the urgent need for a dispute settlement mechanism. One participant noted the need for scientific justification for both the moratorium and sanctuaries, noting that when the moratorium was agreed in 1982, it was not intended to be permanent, but left open for re-evaluation.

ELEMENTS OF A NEGOTIATED AGREEMENT

On Tuesday morning, 10 February, Chair Bridgewater summarized the previous day's proceedings. He suggested moving forward by identifying areas of agreement and disagreement.



Participants during the meeting.

One participant said the history of distrust in the IWC stems not only from NGO exclusion, but also from lack of access to information. Another stressed the need for the Pew Whales Commission to discuss coastal whaling and the necessity of scientific whaling for the RMP. He suggested that the Commission highlight the importance of whalewatching in its report, but refrain from in-depth discussion on this issue given the general consensus.

Participants heard a presentation by Duncan Currie, legal advisor to the Pew Environment Group, on the significant growth of the worldwide whalewatching industry over the past fifteen years, as well as the annual revenue and expenditures of research whaling. A participant emphasized that research whaling is not conducted for the sake of profit.

Currie also summarized contentious issues contained in the SWG report. He said the report suggests setting a quota for the O-stock of minke whales over the next five years, with interim management advice focusing on the J-stock. He said the report also suggests defining vessels, trips, use of meat, and monitoring and enforcement regimes for small-type coastal whaling.

On special permit whaling, he said the report presents two options: a five-year phase-out of whaling of Antarctic minke whales, and no take of humpback or fin whales, in the Southern Ocean; or a five-year annual limit of minke and fin whales in the Southern Ocean and catch limits regarding western North Pacific minke, sei, Bryde's and sperm whales. On sanctuaries, Currie indicated that the report highlights the SWG's recommendation for a five-year South Atlantic Sanctuary, which may be extended indefinitely by a three-quarters majority vote.

Participants discussed the SWG report's recommendation for promoting whalewatching management and whether the issue of whalewatching is contentious. Responding to a question on potential negative consequences of whalewatching, a participant cited evidence showing that intense whalewatching pressure can lead to habitat abandonment and reduced reproduction in small cetaceans, but information is lacking on impacts on large whales.

One participant cautioned against over-regulation of whalewatching, while another suggested that the consideration of whalewatching by the IWC is not a question of imposing regulation but rather of encouraging the communication of best practice.

Currie elaborated on the SWG report's section on items requiring action during the five-year interim period, noting that no recommendations were made with regard to animal welfare, by-catch or small cetaceans. However, he added that the report does outline the following other recommendations:

- ensuring that compliance and monitoring elements include a vessel monitoring system, a transparent DNA registry and a catch documentation scheme;
- assessing whether the ICRW requires amendments to reflect the changes in concerns and priorities, the need for dispute mechanisms and the approaches to ocean governance that have occurred since 1949; and
- considering the approach adopted by the Northwest Atlantic Fisheries Organization, where a revised objection procedure was agreed in the context of a revision of the agreement that established the organization.

Currie concluded that the report recommends that the moratorium remains in place.

Participants agreed on the need for reflection on the relationship between the IWC and other bodies and processes relevant to ocean governance. It was noted that the discussion

on a South Atlantic Sanctuary goes beyond the whaling debate, as it touches upon basic principles of regional cooperation and management.

One participant noted the continued level of mistrust within the IWC. He expressed concern regarding the current process, lamenting the IWC Secretariat's absence at the current meeting, and cautioning against duplication of efforts. He argued that the solution to the problem must be sought through negotiations with Japan, and that high-level political decisions are needed beyond the level of IWC Commissioners.

It was clarified that consultation with the IWC Secretariat had resulted in the view that the Pew process should proceed without the Secretariat's involvement, and that the Secretariat had expressed interest in receiving key strategic ideas from the Pew Whales Commission.

A participant suggested that the Pew Whales Commission engage directly with technical officers involved in the IWC process to help them push the process forward, rather than only submitting recommendations to the IWC. Another proposed acting through relevant ministers, providing them with information that enables them to bring about change at the upcoming IWC meeting in Madeira, Portugal, in June 2009. In this context, participants discussed the need for policy-relevant research, and thus to define the scientific information needed for decision making.

Several participants noted the important role of Japan as a contributor to the solution, and reference was made to the high level of environmental leadership within Japan.

There was extensive debate about the mandate of the Pew Whales Commission and its role in the IWC process. Some participants suggested the Pew Whales Commission could help change the dynamics of the IWC and the way it functions by demonstrating that open and constructive dialogue between various stakeholders is indeed possible. There was a call for the Pew Whales Commission members to use their personal influence to involve national politicians in the IWC process. In order to advance solutions at the upcoming IWC meeting, a participant recommended that delegations include high-level politicians who could push the work forward.

A number of participants suggested an official expression of support for the SWG process. One participant felt that the Pew policy document issued in advance of the current meeting was biased. He urged that the Pew Whales Commission avoid criticizing the recommendations of the SWG. Some participants expressed concern that the SWG report has received no civil society input. One of these individuals noted that details of the SWG proposals, such as quotas, should not be left open to be defined over the next five years while whaling activities would be allowed to resume. A participant noted that the SWG report does not adequately address whaling in Iceland or Norway, nor the international trade in whale products.

One participant highlighted the symbolic importance of the IWC in ocean governance and suggested focusing on a five-year short-term readjustment of practices and a long-term agenda for asserting the IWC into a more active role in ocean governance. He proposed taking advantage of the Commission on Sustainable Development's intention to focus on ocean affairs in 2014.

Participants cautioned against expecting significant results from Madeira. One questioned how the IWC can promote incentives to encourage states to collaborate. There was a proposal to change "Whaling" to "Whales" in the name of the

IWC to reflect its evolving role. A participant cautioned against simply repeating the suggestions of previous groups, including high-level involvement and cooperation.

ROUND ROBIN SESSION

Richard Black, British Broadcasting Corporation, moderated a round robin session to capture the Pew Whales Commission's main positions and encourage new ideas. Discussions first focused on the short-term perspective. Many participants argued that scientific whaling should fall under the authority and supervision of IWC's Scientific Committee, rather than that of individual states. As such, many favored removing ICRW Article 8, which allows countries to issue permits for scientific whaling. One felt that the issue could be quickly resolved by removing the provision stating that whale products resulting from scientific whaling should be put onto the market. Another pointed out the paradox that scientific whaling has increased even though non-lethal scientific methods have become increasingly advanced and available. Several participants mentioned that setting catch limits is considered international best practice in other fora. In response to concerns about the difficulty of changing the ICRW text, one participant recalled that at the IWC meeting held in Chile in 2008, participants had agreed to certain changes in the Rules of Procedure "as a confidence-building exercise." Discussion continued on mechanisms for the review of scientific whaling by the Scientific Committee.

One participant felt that even a five-year period would be too long with respect to reducing whaling in the Southern Ocean, and suggested that Japan consider emerging issues such as climate change, rather than the common anti-whaling arguments, as a motivation to cease whaling in this region. It was remarked that as the Southern Ocean does not belong to anyone, the countries in the Southern Hemisphere are not the only ones to decide how it should be governed. A participant pointed out the clash between the ICRW and the Antarctic Treaty with regard to activities in Antarctic waters.

Opening discussion on the longer-term perspective, Black invited the Pew Whales Commission members to name their top-three from among the following priorities: finalizing and implementing the RMP; rewriting the rules on objections and reservations; explicitly recognizing non-lethal use; introducing a dispute-resolution mechanism; regulating by-catch with penalties for infractions; engaging non-state actors in the process; decoupling the scientific and political processes; changing the name of the IWC to reflect "new priorities"; and addressing Article 8 (scientific whaling).

As their top priorities, participants ranked the need to address: dispute resolution mechanisms; the regulation of by-catch with penalties; and rules on objections and reservations. Several participants refrained from prioritizing the options. One highlighted a difference between measures that would improve the governance of the IWC and those that would help meet whale conservation objectives.

Participants discussed whether it would be more productive to draft an entirely new convention or to add a protocol to the current one. A few participants suggested that there is indeed a need for a new convention, but political reality prohibits this. As a result, there was a general agreement that developing a protocol would be the best way forward. One participant, however, highlighted the challenges of implementing protocol amendments within the IWC, with another noting that making

substantial amendments (such as redrafting Article 8), rewriting rules on objectives and reservations, and regulating by-catch with penalties, would in practice require a new convention.

Responding to a question on the politics of the moratorium in 1982, a participant recalled that at the time there was no discussion on the possibility of scientific whaling constituting a loophole. One participant expressed concern that the group was "dancing around" the core of the business, which he said was the emotional aspect of the politics, rather than scientific arguments. He said the importance of whaling in Japanese culture and economy had still not been adequately addressed. It was suggested that the use of the whaling debate as a domestic political tool in non-whaling countries is unjustified.

THE WAY FORWARD

Participants discussed a draft summary of the meeting's procedures that had been prepared by a small "Friends of the Chair" group.

The draft contained views on several different issues, including:

- encouraging ministerial-level participation at IWC meetings;
- limiting the use of whale products to local consumption;
- commending the participation in the meeting of individuals from Japan;
- recommending a number of steps that could improve the functionality of the ICRW, including dispute settlement mechanisms and improvements to the objection procedure;
- improving the provision of scientific advice to policy makers, for instance by allowing more time between the meetings of the Scientific Committee and those of the IWC;
- increasing transparency of the process and basing decisions on the best available information, taking into account the precautionary approach and socioeconomic, cultural and ethical considerations;
- encouraging the non-lethal use of whales, giving greater emphasis to whalewatching and identifying relevant best practice;
- recognizing the importance of whale sanctuaries worldwide and urging the establishment of the South Atlantic Sanctuary;
- urging that whaling in the Southern Ocean be ended as rapidly as possible, and that consideration be given to the SWG proposals for small-type coastal whaling in Japan;
- urging governments to consider the removal of direct and indirect subsidies of whaling activities; and
- substantially strengthening monitoring, control, surveillance, compliance and enforcement, supplemented by wildlife management tools such as internationally-controlled DNA testing and monitoring.

The first read-through of the document at the meeting produced some hesitation on both sides of the debate. Discussion centered on a paragraph that contained language both on ending whaling in the Southern Ocean, and on considering small-type coastal whaling in Japan. One participant could not support any language implying that ultimately some form of small-type coastal whaling would be allowed. He asserted that this whaling would be of undetermined scale, difficult to control, and occur in waters that already present other anthropogenic threats to cetaceans. Another participant could not agree with any language on ending whaling in the Southern Ocean. He stated a reservation to the entire report, noting that it weakens the SWG report in some aspects, while making it more explicit in others, which he felt introduced a bias towards anti-whaling.

This response resulted in further discussion on the way to proceed and the nature of the report. One participant suggested including language that reflects that all successful international negotiations require a spirit of “give and take” on all sides, rather than one of “win and lose,” underlining the importance of cooperation. Participants debated whether the document should be considered as the Pew Whales Commission’s report, which implies consensus, or as the Chair’s report, which would reflect different viewpoints and nuances, but may have less substance and weight.

In a compromise solution, Chair Bridgewater said the document would be considered as a Chair’s report for the time being. He invited participants to submit their comments in writing within a few days following the meeting, suggesting that it would become clear at a later stage whether sufficient consensus existed to consider the document as the Pew Whales Commission’s report. One participant expressed regret that disagreement on “minor points” was blocking consensus on a document containing many points that were previously agreed.

In closing, Chair Bridgewater commended participants on their work, noting that they had “managed to retain a good working relationship” despite strongly held views. He said the meeting had demonstrated the value of active civil society contribution, which helped to inform the discussion. He closed the meeting at 6:30 pm.

The finalized text of the Chair’s report will be available online at: <http://www.pewwhales.org/pewwhalescommission/>

UPCOMING MEETINGS

IWC WORKSHOP ON CLIMATE CHANGE AND

CETACEANS: This workshop will be held from 21-25 February 2009 in Sienna, Italy. The primary aim of the workshop is to identify how climate change is/may already be affecting cetaceans, and how best to determine these effects. The workshop will bring together experts in cetacean biology, modeling, marine ecosystems and climate change. Participants will also review current understanding and seek to improve conservation outcomes for cetaceans under climate change scenarios described in the IPCC’s Fourth Assessment Report. For more information, contact: IWC Secretariat; tel: +44-1223-233-971; fax: +44-1223-232-876; e-mail: secretariat@iwcoffice.org; internet: http://www.iwcoffice.org/sci_com/workshops/CLIMATEworkshop.htm

23RD ANNUAL CONFERENCE OF THE EUROPEAN

CETACEAN SOCIETY: Hosted by the Turkish Marine Research Foundation, this meeting will take place in Istanbul, Turkey from 2-4 March 2009 under the theme “Climate Change and Marine Mammals.” For more information, contact: the Turkish Marine Research Foundation; tel: +90-216-323-9050; fax: +90-216-424-0771; e-mail: ecs2009@tudav.org; internet: <http://www.tudav.org/ecs2009/>

28TH MEETING OF THE FAO COMMITTEE ON

FISHERIES: This international meeting of government representatives will take place from 2-6 March 2009 in Rome, Italy. For more information, contact: Ndiaga Gueye, FIEL, FAO; tel: +39-6-5705-2847; fax: +39- 6-5705-6500; e-mail: ndiaga.gueye@fao.org; internet: <http://www.fao.org/fishery/nems/38478/en>

IWC INTERSESSIONAL MEETING: The Intersessional Meeting of the Commission on the Future of IWC will be held from 9-11 March 2009 at FAO Headquarters in Rome, Italy. This meeting will be followed by a meeting of the Small Working

Group on the Future of the IWC, from 12-13 March, at the same venue. For more information, contact: IWC Secretariat; tel: +44-1223-233-971; fax: +44-1223-232-876; e-mail: secretariat@iwcoffice.org; internet: <http://www.iwcoffice.org>

FIRST INTERNATIONAL CONFERENCE ON MARINE

MAMMAL PROTECTED AREAS: This conference will be held from 29 March to 3 April 2009 in Maui, Hawaii, US. It is co-hosted by the US National Oceanic and Atmospheric Administration, the National Marine Fisheries Service Office of International Affairs and the National Marine Sanctuaries. For more information, contact: Lee-Ann Choy, Conference coordinator; tel: +1-808-864-9812; fax: +1-866-211-3427; e-mail: prc@hawaii.biz; internet: <http://www.icmmpa.org/>

CITES AC-24: The 24th meeting of the Animals Committee of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) will convene from 20-24 April 2009 in Geneva, Switzerland. For more information, contact: CITES Secretariat; tel: +41-22-917-8139/40; fax: +41-22-797-3417; e-mail: info@cites.org; internet: <http://www.cites.org>

WORLD OCEAN CONFERENCE: This conference will be held from 11-15 May 2009 in Manado, Indonesia. It will draw high-level attention to issues of ecosystem-based integrated oceans management in the context of climate change. The main anticipated output is the formal adoption of the Manado Ocean Declaration, to be followed by a Plan of Action and the establishment of the World Ocean Forum, as the umbrella organization for implementing the Plan of Action. For more information, contact: World Ocean Conference Secretariat; tel: +62-431-861-152; fax: +62-431-861-394; e-mail: info@woc2009.org; internet: <http://www.woc2009.org/>

INTERNATIONAL MARINE CONSERVATION

CONGRESS: This event will take place from 19-24 May 2009 in Washington D.C., US. It will encompass the Second International Marine Protected Areas Congress. For more information, contact: Conference Chair John Cigliano; tel: +1-610-606-4666, ext. 3702; e-mail: John.Cigliano@cedarcrest.edu or IMCC2009@conbio.org; internet: <http://www2.cedarcrest.edu/imcc/index.html>

IWC-61: The 61st Annual Meeting of the IWC will take place from 22-26 June 2009 in Madeira, Portugal. The meeting will be preceded by meetings of the Scientific Committee (31 May to 12 June) and other committees and sub-committees. For more information, contact: IWC Secretariat; tel: +44-1223-233-971; fax: +44-1223-232-876; e-mail: secretariat@iwcoffice.org; internet: <http://www.iwcoffice.org>

GLOSSARY

CITES	Convention on the International Trade in Endangered Species of Wild Fauna and Flora
IWC	International Whaling Commission
ICRW	International Convention on the Regulation of Whaling
NGO	Non-governmental organization
RMP	Revised Management Procedure
RMS	Revised Management Scheme
SWG	Small Working Group