

Resolution 2018-X

Resolution on Way Forward of the IWC

REAFFIRMING that the International Convention for the Regulation of Whaling (hereinafter referred to as “the Convention”) was concluded “to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry”;

RECOGNIZING that the whale stocks are susceptible of natural increases if whaling is properly regulated, and that increases in the size of whale stocks will permit increases in the number of whales which may be captured without endangering these natural resources;

RECALLING the importance of tolerance and respect for cultural diversity and traditions on whales and whaling;

NOTING that sustainable whaling contributes to livelihoods, food security and poverty reduction of coastal communities;

RECOGNIZING the rights and obligations of the coastal states within the area under their national jurisdiction;

BEARING IN MIND that any conservation and management of whale resources, including catch limits for sustainable whaling, needs to be based on the best scientific evidence available;

RECOGNIZING that significant scientific progress has been made since the adoption of the moratorium on commercial whaling in 1982, including the adoption by the Commission in 1994 of a robust and risk-averse procedure for calculating quotas for abundant stocks of baleen whales (known as Revised Management Procedure (RMP)) and the findings by the Scientific Committee that stocks of some whales species are abundant;

RECALLING, however, that various attempts, including the “Future of the IWC” process, at normalizing the functions of the IWC have been unable to produce solutions acceptable to all Contracting Governments of the Convention;

WELCOMING the recent efforts in the “Way Forward of the IWC”, to which the last Commission meeting in 2016 agreed to proceed;

RECOGNIZING that it is in the common interest of the Contracting Governments to have a functioning system of international regulation of whaling to ensure proper and effective conservation of whale stocks and orderly development of whaling;

NOW THEREFORE THE COMMISSION:

A. Establishment of the Sustainable Whaling Committee

1. WELCOMES the exchange of views among the Contracting Governments in the “Way Forward of the IWC” process for promotion of proper and effective conservation and sustainable use of whale resources, including sustainable whaling;

2. DECIDES to strengthen the collaboration among the Contracting Governments to ensure that the Commission realizes the objectives of the Convention;
3. DECIDES, in accordance with paragraph 4 of Article III of the Convention, to establish the Sustainable Whaling Committee, composed of all Contracting Governments committed to promoting sustainable whaling;
4. DECIDES to entrust the Sustainable Whaling Committee with:
 - Making recommendations to the Commission on catch limits for whaling irrespective of the types of whaling, based on the best scientific evidence available;
 - Making recommendations to the Commission on any management issues contributing to sustainable whaling;
 - Implementing activities that the Commission may request in relation to sustainable whaling; and
 - Elaborating its Rules of Procedure to properly conduct its work for the promotion of sustainable whaling based on the best scientific evidence available;
5. INSTRUCES the Sustainable Whaling Committee in the performance of functions entrusted to it, to always give due regard to the interests of the coastal states;
6. INSTRUCES the Sustainable Whaling Committee to meet annually from 2019, in order for the Committee to initiate its activities on sustainable whaling so that the Commission can consider any recommendations from the Committee for adoption at the next session in 2020 and thereafter;
7. REQUESTS the Scientific Committee to provide the Sustainable Whaling Committee with advice on the best scientific evidence available, in the performance of functions entrusted in this Resolution, on any scientific issues contributing to sustainable whaling irrespective of types of whaling;
8. REQUESTS the Sustainable Whaling Committee to respect the advice given by the Scientific Committee, and to provide relevant scientific evidence if it were to make recommendations to the Commission which are contradictory to such advice;
- B. Convening a Diplomatic Conference of the Contracting Governments to Amend the Convention
9. RECOGNIZES the need for reforming the working methods of the Commission in order to ensure that the Commission realizes the objectives of the Convention;
10. RECOMMENDS that the Contracting Governments convene a Diplomatic Conference of the Contracting Governments as soon as possible for the purpose of considering and adopting a proposed amendment of paragraph 2 of Article III of the Convention as described in the Appendix attached hereto so that a recommendation on conservation and management measures by relevant Committees may be made in an effective manner; and
11. INSTRUCES the Secretariat to consult with a host state of the Diplomatic Conference and to provide necessary assistance to facilitate its preparation.

C. Calculation and Establishment of Catch Limits for Abundant Whale Stocks

12. INSTRUCTS the Scientific Committee to implement the RMP, before the end of SC68b in 2020, for whale stocks for which abundance have been confirmed as sufficient as a result of comprehensive assessments and thereby calculate and provide advice on their sustainable catch limits;
13. INSTRUCTS the Sustainable Whaling Committee to consider the advice of the Scientific Committee and make recommendations to the Commission for the establishment of catch limits for whale stocks as described in paragraph 12 above at the next Commission meeting in 2020;
14. COMMITS to considering recommendations of the Sustainable Whaling Committee referred to in paragraph 13 above and setting catch limits based on those recommendations, at the next Commission meeting in 2020;

Appendix

Proposal to amend Article III of the Convention

A new paragraph 2bis will be added to paragraph 2 of Article III of the Convention

Article III

2. The Commission shall elect from its own members a Chairman and Vice Chairman and shall determine its own Rules of Procedures. Decision of the Commission shall be taken by a simple majority of those members voting except that a three-fourths majority of those members voting shall be required for action in pursuance of Article V. The Rules of Procedure may provide for decisions otherwise than at meetings of the Commission.

2bis. Notwithstanding paragraph 2 of this Article, decisions of the Commission for action in pursuance of Article V shall be taken by a simple majority of those members voting when such decisions are based on the recommendations made by consensus of a relevant Committee, established in accordance with paragraph 4 of this Article.

Proposed Schedule amendment for setting catch limits for certain whale species

10(f) Notwithstanding the other provisions of paragraph 10, catch limits shall be established for the 2020 coastal and the 2020/21 pelagic seasons and thereafter based on the best scientific advice available, for the taking of whales for commercial purposes from stocks for which abundance have been confirmed as sufficient, as a result of comprehensive assessment by the Scientific Committee.

The Way Forward of the IWC
-Proposal for IWC Reform and its Explanatory Note-

Government of Japan

The Government of Japan submits herewith a proposal for IWC Reform for the consideration by the Members of the IWC. Sections I (Introduction) to IV (Conclusion) below provide a brief overview of the elements contained in the reform package proposed by Japan, and the brief intent of the proponent in making such a proposal. Background information, including the summary of the discussion in the “Way Forward of the IWC” process, its analysis and further details of the intent of the reform proposal is attached for reference. The proposal itself is contained in Annexes 1 and 2 of this document.

I. INTRODUCTION

1. Ever since IWC agreed to place the so-called moratorium on commercial whaling in 1982, there have been significant developments in the work of the IWC Scientific Committee (SC), including the development of the Revised Management Procedure (RMP) and the substantial progress made in the process of comprehensive assessment to enhance our knowledge of the status of whales.
2. On the other hand, given the fundamental differences in positions on whales and whaling, the Members of IWC have worked hard to overcome the impasse that has existed for many years at IWC, to restore its functions as a working whale resource management organization. Unfortunately, however, all such endeavors, including the negotiations on the Revised Management Scheme (RMS) and the “Future of the IWC” process, have not been able to produce results acceptable to all. As a consequence, IWC remains to be a mere forum of confrontation, being unable to make any substantial decisions on its core functions including Schedule amendment for the purpose of neither conservation nor management of whale resources and whaling.
3. For example, Japan’s proposals to establish catch limits for certain whale stocks have been repeatedly rejected even though it was demonstrated that the proposals will have no adverse effect on stocks in the proposed areas and the proposals were in conformity with the Convention’s objective and Paragraph 10(e) of the Schedule to the International Convention for the Regulation of Whaling (hereinafter referred to as “the Convention”). Similarly, some proposals aimed at conservation of whales have also been repeatedly rejected, such as the proposals of South Atlantic Whale

Sanctuary (SAWS). Not being conducive to either sustainable use or conservation of whales, the relevance of IWC as an international resource management organization is at stake.

4. The current proposal is a renewed attempt to restore the functions of the IWC as a resource management organization with novel and drastic approach. Building on the analysis of the comments provided through the “Way Forward of the IWC” process, Japan proposes an IWC reform package composed of a Draft Resolution (Annex 1) and a Schedule Amendment (Annex 2).
5. Given the substantial magnitude of the reform and the importance of maintaining the integrity of the proposal, Japan seeks a consensus decision on both Annexes 1 and 2 as a package.

II. DRAFT RESOLUTION

6. Bearing in mind the necessity to build a new decision-making scheme which can work despite the severely divided fundamental positions among the Members, the draft resolution contains the following elements. The main changes to the IWC’s process of Schedule amendment proposed in this draft resolution are illustrated in Annex 3.

A. Establishment of the Sustainable Whaling Committee (SWC)

6.1 Japan proposes to establish a Committee dedicated to sustainable whaling (including commercial whaling and aboriginal subsistence whaling). Being conscious of the fact that the Convention pursues the purpose of ensuring the conservation of all species of whales while allowing for their sustainable exploitation, the SWC is intended to function as a main deliberative body for one of such objectives of the Convention, whereas the existing Conservation Committee (CC) emphasizes the other. The decisions of the SWC will be based on scientific advice from the SC. The Commission and the SWC will always give due regard to the interests of the coastal states.

B. Recommendation to convene a Diplomatic Conference of the Contracting Governments to amend the Convention

6.2 In addition, Japan proposes to amend paragraph 2 of Article III of the Convention, so that the Schedule may be amended by a simple majority vote (instead of three-quarter majority vote as is currently required), when Schedule amendment is recommended by either SWC or CC by consensus.

C. Calculation and Establishment of Catch Limits for Abundant Whale Stocks/Species

6.3 Science is clear: there are certain species of whales whose population is healthy enough to be harvested sustainably, and IWC has developed a robust and risk-averse procedure for calculating quotas (known as the RMP) more than 20 years ago. Therefore, Japan proposes a resolution instructing the Scientific Committee to implement the RMP to calculate catch limits for abundant whale stocks/species, and expressing commitment by the Commission to set catch limits for such whale stocks.

7. In particular, Japan would like to highlight B of paragraph 6 above. Amending the Convention to relax the decision-making requirement of the Commission would be beneficial for all Members. Such an amendment would facilitate actions taken by both the Members supporting sustainable whaling and those supporting conservation, despite the fundamental differences in positions on whales and whaling.

III. PROPOSED SCHEDULE AMENDMENT

8. In addition, Annex 2 proposes to add a new paragraph 10(f) to the Schedule, which provides a legal basis for the Commission to establish appropriate catch limits for stocks/species whose status have been confirmed as abundant by the Scientific Committee.

IV. CONCLUSION

9. We cannot continue making the same mistakes, and must be open to discussing the fundamental issue that IWC faces. Japan believes this package proposal is the only possible way out for IWC which have been unable to make any substantial decisions on its core functions including Schedule amendment for conservation and management of whales and whaling, in disregard of cultural diversity and unable to serve its objectives. Taking into account the history of past compromise efforts where indefinitely prolonged negotiation all resulted in failure, Japan does not intend to prolong discussions on its reform proposal as were the cases such as RMS package and “Future of the IWC” negotiations. Japan sincerely requests all Members to seriously consider its reform proposal so that we could reach a consensus in package at the upcoming IWC67 in September.

BACKGROUND NOTE

Background and Summary of the discussion in the “Way Forward of the IWC” Process

I. BACKGROUND

1. The International Whaling Commission (IWC) is at stake due to the stagnated situation caused by fundamental differences in positions of Members on whales and whaling, having long been unable to make any decisions on its core mandate; conservation and management of whales.
2. In 2014, responding to the rejection of its proposal at the IWC65 on the allocation of a catch limit of minke whale based on the advice by the Scientific Committee, Japan distributed a questionnaire via the IWC Circular (IWC.CCG.1140) requesting those who had opposed Japan’s proposal for their legal interpretation of Paragraph 10(e) of the Schedule, scientific concerns or any other reasons that formed the basis of their views. Majority of the responses simply gave a general explanation on their position of their support for the moratorium on commercial whaling, and no clear scientific or legal reasons for their opposition were provided. It clearly highlighted the fundamental differences of views between those who consider whales as one of fishery resources that can be utilized in a sustainable manner, and those who consider that all whales should be fully protected under any circumstances.
3. This fundamental difference of views has hindered IWC from making any decisions on its core mandate; conservation and management of whale resources.
4. Because of such difference, not only Japan’s proposal on the allocation of the catch limit, but also all proposals of South Atlantic Whale Sanctuary (SAWS) had been similarly rejected. Moreover, there had been repeated failures of the efforts to reconcile the differences in the positions and to find a “package” acceptable to all; i.e. Revised Management Scheme (RMS) negotiations and the process of the “Future of the IWC” amongst others. They all failed. Thus the current IWC situation is not conducive to both sustainable whaling and protection of whales. In order to resolve the stagnated situation of IWC in light of the above, Japan believes there is no other way forward than to address the fundamental differences in positions as the central issue for all the Members.
5. With this in mind, at IWC66 in 2016, the Commission agreed to initiate the discussions on the central issue of such difference so that its progress will be reported at least 60 days prior to IWC67 (see “The IWC in the Future”, p.3, Summary

of Main Outcomes, Decisions and Required Actions from the IWC 66th Annual Meeting).

6. In Circular IWC.CCG.1295 dated 16 February 2018, Japan officially invited all the IWC Members to engage themselves in the discussions on the central issue, i.e. fundamental differences in positions on whales and whaling, by providing any comments or responses to the questions below for stimulating discussions either publicly via Circular or via a closed discussion forum:

- *How can we achieve both sustainable use and conservation of whales in the IWC through cooperative relations among the Members?;*
- *Are we willing to recognize that the fundamental differences in positions among Members on whales and whaling have been hindering the IWC to make decisions on both sustainable use and conservation of whales?; and*
- *If so, are we willing to have discussions on the fundamental differences, while respecting the basic position of each Member?*

7. This document aims to report to the Commission the results of the discussion among Contracting Governments on the central issues identified through discussions, together with Japan's proposal for reforming IWC, which it has come up with based on the results.

II. SUMMARY OF THE RESPONSES FROM THE CONTRACTING GOVERNMENTS AND THEIR ANALYSIS

8. In response to the IWC Circular IWC.CCG.1295, Japan (IWC.CCG.1301), St. Lucia (IWC.CCG.1305), Cambodia, Grenada, Nicaragua, Mali, Mauritania and Russian Federation (IWC.CCG.1310), Cote d'Ivoire and Lao People's Democratic Republic (IWC.CCG.1316), the European Union and its Member States (IWC.CCG.1318) publicly provided their comments as attached hereto as Annex 4. Also, some comments were provided via the closed online forum. This note refers to these comments indirectly for the sake of ensuring that a range of views are covered. Taking this opportunity, Japan expresses its sincere and deepest appreciation for their contributions to the discussion on the Way Forward of the IWC.

A. Major points raised by Japan

9. Ahead of other Members, Japan submitted its views to facilitate constructive

discussion, including the following major points:

- (a) Fundamental differences in positions on whales and whaling have been hindering IWC to make any substantial decisions on both sustainable use and conservation of whales and made IWC a mere forum of conflict rather than as an international resource management organization;*
- (b) Framework and/or mechanism of IWC need substantial improvement or reform, so that it can be beneficial to all Members of the IWC;*
- (c) All Members should “agree to disagree” and have discussions on the fundamental differences respecting the basic position of each IWC Member;*
- (d) A series of past reconciliation efforts have all failed; and*
- (e) All Members should have a genuine will to work together.*

10. Comments in response to Japan’s view can be summarized in order of its points as below.

10.1 Cambodia, Russian Federation and Lao People’s Democratic Republic shared Japan’s concern on IWC’s inability to make any substantial decisions on conservation and management of whale resources. Mali, Grenada and Russia analyzed that the root cause of IWC’s poor decision-making ability is the fundamental differences in positions on whales and whaling. Cambodia and Mauritania underscored the importance of dialogue for sound functioning of IWC. Cambodia and Lao People’s Democratic Republic were concerned that IWC has not been able to provide any merits to its Members as an international organization. Some including the EU expressed strong disagreement with the view that IWC is dysfunctional, mentioning that differences in position are natural within an international organizations and that the Commission plays an important role in the conservation and management of cetaceans.

10.2 Cambodia and Lao People’s Democratic Republic clearly supported Japan’s view on necessity of substantial improvement and reform of IWC. Cote d’Ivoire proposed to increase transparency of the Commission and introduce secret-voting scheme.

10.3 Cambodia further elaborated how the decision-making scheme should be reconsidered, by pointing out the necessity of “give and take.” Cambodia stated that

“Such a scheme includes some give and take, meaning that both sides should make some concessions: anti-whaling camp accepts some form of whaling and the pro-whaling camp accepts some form of whale conservation area. Would both sides accept this idea? If we agree to this idea, we can discuss further.”

10.4 Russian Federation highlighted the history of past attempts for reconciliation in IWC where the views have been so deeply divided that it has been unable to make any substantial decisions.

10.5 Mali, Russian Federation, Mauritania, Grenada and Lao PDR explicitly supported the Japan’s initiative of the “Way forward of the IWC,” while a Member encouraged Japan to better clarify how a proposed process of the “Way Forward of the IWC” might vary from the “Future of the IWC” discussions. Also, EU welcomed Japan’s initiative to address differences in positions on whales and whaling, underscoring the importance of open and constructive dialogue with mutual trust and cooperation.

B. Other major points raised by Members

11. Other points raised by responding Members are summarized as below:

(a) IWC’s deviation from its original objective

11.1 St. Lucia, Cambodia, Cote d’Ivoire, Mauritania and Grenada expressed concern that the IWC has long derailed from its mandate under the ICRW; conservation and management of whale resources. In contrast, some including the EU argued that the focus of the Convention has changed over time since its inception.

(b) Support for sustainable use of whale resources

11.2 St. Lucia, Cote d’Ivoire, Mali, Russian Federation, Nicaragua and Mauritania expressed their support for the sustainable use of whale resources.

In contrast, EU expressed that moratorium on commercial whaling should be in place to provide critical protection of whales.

(c) Support for coastal whaling within EEZ

11.3 Cambodia, Mauritania and Grenada gave supportive comments to Japan’s proposal on the allocation of a catch limit of minke whales for its small coastal whaling.

(d) Distinction from the Governance Review process

11.4 There were some suggestions including from the EU on the importance of keeping differing views about the function of the Commission separated from the ongoing governance reform. It was suggested that the governance reform agenda provides an opportunity for all Members to work together irrespective of their views on whales and whaling and that all Members should participate in this work.

III. DISCUSSION AND INTENT OF THE REFORM PROPOSAL

12. At least 11 responses were provided which expressed willingness to engage in the constructive dialogue to overcome the current situation of IWC, i.e. severe polarization over the views concerning whales and whaling. It was also recognized that those Members were in fact willing to respond to Japan's questions for stimulating the discussion in Circular IWC.CCG.1295. Japan expects all Members to engage in the dialogue in a constructive manner with full respect for the differing views.

13. With this in mind, and in line with the comments provided by Members, Japan hereby attempts to respond to the question below which herself has posed:

- How can we achieve both sustainable use and conservation of whales in IWC through cooperative relations among the Members?

14. The analysis of the discussion shows that the fundamental differences in positions on whales and whaling have been hindering IWC to make any substantial decisions on its core functions including Schedule amendment for conservation and management of whales and whaling, and that addressing this issue should be given utmost priority and urgency. Needless to say, this issue cannot and should not be resolved by simply putting it to a vote without constructive discussions.

15. In this regard, some expressed the view that IWC is not dysfunctional. It is, however, obvious that the long-standing inability to make any substantial decisions on its core functions, including Schedule amendment for conservation and management of whales and whaling, does not represent "balance of views of Members," and such a decision-making scheme should be regarded as a serious flaw.

16. The views expressed by the members in paragraphs 10.2 and 10.3 above show that in order for IWC to restore its sound functioning and thus provide merits to all Members, its decision-making mechanism must be reconsidered and reformed in a novel and drastic manner. It should be noted that a shift to a new paradigm was proposed where both pro-sustainable-use Members and pro-conservation Members

accept the other side's agenda to some extent. If we could agree with this idea, and if each side could mutually tolerate what the other side expects, the current dynamism of IWC can be changed.

17. However, we need to take into account lessons from past failures. As pointed out in paragraph 10.4 above, all the past reconciliation efforts such as "Irish proposal" and "Future of the IWC" all eventually failed within the polarized IWC. What was common among those failed initiatives was that they were attempts to reach a unified and single solution (package) on the substance of conservation and management. What the series of past failures tell us now is that the views of Members have been so deeply divided that it is no longer possible to seek any single and unified answer which satisfies all Members.
18. It could be therefore concluded that any negotiation in search of an agreeable balance between conservation and management measures is highly unlikely to resolve the central issue of current IWC. Rather, an "agree to disagree" approach where each side allows the other side to pass proposals which they wish to realize, might be realistic and feasible. It is not necessary to "accept" each other, as long as they could pay due respect to each other. If both sides could agree on such approach, they will be able to achieve their wish respectively and co-exist under the same roof.
19. Under this new cooperative paradigm, with "mutual trust and cooperation" as expressed in paragraph 10.5 above, the pro-sustainable-use side would be able to achieve sustainable management measures (e.g. catch limits), while respecting the wish of the pro-conservation side to implement conservation measures (e.g. sanctuary). Pro-conservation side would be able to pass a whale sanctuary, while tolerating establishment of catch limits, as long as they do not directly conflict each other (e.g. establishing catch limits in a sanctuary, or vice versa). Thus, IWC could restore a decision-making function for conservation and management of whales and whaling, providing merits to all Members.
20. This new model of decision-making is what Japan proposes as the "Way Forward of the IWC". In response to the Members' request to differentiate the goal of "Way Forward" process from the "Future of the IWC" process, this proposal is completely different from the past reconciliation attempts under which all Members had searched for a mutually acceptable compromise on the substance of conservation and management of whales and whaling, which had sought acceptance by all Members in vein. Rather, what Japan is proposing as a culmination of the "Way Forward" initiative is a reform package on the decision making scheme, given the

fact that fundamental differences in positions on whales and whaling have long hindered IWC from making any substantial decisions on its core functions including Schedule amendment for conservation and management of whales and whaling.

21. This is the basic premise for discussions, which is different from the “Future of the IWC’ discussions.”
22. This new paradigm enables IWC to be consistent with the objectives of the Convention. It even accommodates new and growing conservation needs. As for views supporting maintenance of commercial whaling moratorium in paragraph 11.2 above despite clear scientific advice by the Scientific Committee, Members should remind themselves of the discussion in the IWC66 as well as IWC.CCG.1295.
23. In addition, due regard should be given to the interests of the coastal states in the new cooperative paradigm given the views presented in paragraph 11.3 above.
24. At the same time, Japan agrees with the view illustrated in paragraph 11.4 above that the “Way Forward of the IWC” process addressing the “differing views about the function of the Commission” should be separated from the ongoing governance review process. The governance review, as shown in its Terms of Reference, “will not take account of the Commission’s objective or mandate.” Also, it would be noteworthy that a Member appreciated “an opportunity for all parties to work together irrespective of their views on whales and whaling” which is the very objective of the “Way Forward” process. Taking into account that some encouraged other Members to participate in such a governance review, it naturally follows that they would also be willing to encourage other Members to proactively participate in a constructive discussion of the “Way Forward of the IWC” seeking the very objective of the governance review as they see.