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Briefing Document IWC/60/10 - Chair's Recommendations for Follow-up to the March 2008 Intersessional Meeting on the Future of IWC

Is There a Need for this Document?

In recent years, each Chair of the IWC has endeavored to 'fix' the body. The presumption that the IWC must be 'fixed' is a result of the behavior of a small minority of its members, their ability to convince other members that the IWC needs fixing, and the reluctance of the majority of member governments to refuse to be manipulated. In the 60 years since the IWC was established, attitudes towards whales and the synergistic role that they play in the marine ecosystems have evolved from whales being viewed as expendable resources to species that warrant full protection for aesthetic, ecological, intrinsic, moral, and scientific reasons. Those member governments who have instigated the need to fix the IWC defy all attempts to bring the IWC in line with other similar international fora and instead are exploiting loopholes in the Convention to not only kill whales, but also to make the IWC unworkable.

That these few countries are able to get away with causing the dysfunction of the IWC is remarkable – yet the document **“Chair's Recommendations for Follow-up to the March 2008 Intersessional Meeting on the Future of IWC”** proves that they have succeeded. Once staunch conservationist countries are being steered toward unnecessary compromises by the current IWC Chair who has elected to pursue a policy of capitulation to resolve the alleged impasse within the IWC. His document is neither helpful nor necessary and Commissioners are urged to pause and consider the seriousness of the Chair's recommendations before accepting his recommendations.

The document is presented as a means to “move the IWC forward” and lists eight steps which result in the development of a compromise “package”. This package will likely contain similar elements to previous packages including: a resumption of commercial whaling; a proposed management and enforcement regime; a reporting procedure; and possibly some conservation concessions such as an agreement on a reduction in the number of whales killed for scientific research to make the “package” more palatable to the majority. Though the package will likely contain the same flaws inherent in preceding packages (e.g., Irish Proposal), there are also very serious concerns with the proposed process as outlined by the Chair in the document.

As an initial matter, it is unclear if the Chair has the authority to introduce such a document. Such authority is not reflected in the duties/responsibilities of the Chair as contained in the IWC's Rules of Procedure. Though previous IWC Chair's have engaged in similar efforts, this does not obviate the fact that such actions are not explicitly permitted under the Rules of Procedure. The introduction of such a proposal is only within the purview of a member government.

The Document Proposes a Process for Unacceptable Compromise

- The document is not merely a recommendation on a process to enable the IWC to move forward but is a proposal for compromise.
- It urges negotiations to achieve a package through which “no-one will achieve everything they seek” and as a result of which there “will be no outright winners or losers”.
- The compromise package, like similar proposals debated in the past, will be disastrous for whales.
- The only parameter that the Chair establishes for the development of a package is “that the science-based conservation of whale stocks should not be compromised during negotiations of any package,” anything else is fair game.

The Steps Outlined in the Document Predetermine the Outcome and Promote Closed-door Deals

- The Chair insists that an acceptable compromise be reached as quickly as possible but does not state why such haste is necessary.
- Step one secures a commitment by the Commission to negotiate a package without any discussion as to whether a compromise is necessary thus predetermining the outcome of the process.
- No open discussions between all IWC member nations on the need for a package have been held; there was no such discussion at the March Intercessional meeting and, even if there were, improving the way the Commission conducts its business does not mean that a compromise package is the solution.
- Step two encourages the Commission to achieve a negotiated package through consensus allowing individual member countries to utilize reservations if consensus cannot be achieved.
- The allowance for members to take reservations to decisions of the Commission and then not be bound by them is one of the principal reasons that the IWC is described as dysfunctional; to perpetuate this mechanism is a step backwards.
- Steps three and four involve the identification of possible elements of a package (or packages), the negotiation of these elements, and a debate over possible compromises.
- Steps five through eight would involve ongoing deliberations by a “working group” to develop through e-mails, conference calls, and at intercessional meetings a package or packages under terms of reference set at IWC/60 for review by all member governments at a proposed intercessional meeting of the entire Commission in February/March 2009.

The Document Calls for a Deliberate Lack of Transparency

- Only three of the eight steps will be fully open to observers; with the bulk of the negotiations and substantive deliberations being undertaken behind closed doors.
- This lack of transparency is totally contrary to other international fora and is not consistent with the open processes required by the national legislation of the vast majority of the IWC’s member governments.
- Members of the majority of the IWC delegations are representing governments that have been democratically elected by their respective citizens.
- These countries have established positions on the whaling issue and delegates are typically under instructions from their governments on what positions to advocate at IWC meetings and, consequently, should have no objections to openly advocating and defending such positions in a public forum.
- The NGO community contains many subject matter experts who have a keen understanding of the history and procedures of the IWC and their inclusion in such deliberations, preferably as active participants but at least as observers, is a terrible oversight for the evolution of the IWC.
- To negotiate behind closed doors with no public accountability is dangerous, promotes suspicion, breeds rumors, is inconsistent with past practices of the IWC, and will only undermine the future of this international body.