

AWI Comments on Cetacean Welfare Issues



The Animal Welfare Institute (AWI) welcomes discussion paper IWC/65/WKM&AWI05 to address cetacean welfare within the IWC.

The IWC took its first step towards addressing the welfare of whales in 1959 when it reviewed the efficacy of weapons then in use in whaling operations. Today the IWC is concerned with, and is actively seeking to mitigate, a wide range of threats to the welfare of cetaceans beyond whaling.

These include vessel strikes, bycatch in fishing gear and entanglement in, and ingestion of marine debris. The IWC is also considering the best and most humane methodologies to euthanize whales. Consequently, it is time for the terms of reference and action plan of the Whale Killing Methods & Associated Welfare Issues Working Group (WKM&AWI-WG), to reflect the broadening of the IWC's welfare mandate.

AWI therefore strongly supports the proposal of the Intersessional Working Group on Welfare to **revise the terms of reference of the WKM&AWI-WG and the current WG-WKM&AWI Action Plan to better reflect current considerations of welfare within the IWC.**

We also strongly support the suggestion to **second welfare experts to the IWC and involve more welfare experts, both within and outside the IWC, to assist its deliberations** and request that contracting governments to the IWC support these efforts.

In light of this, we encourage contracting governments to the IWC to advance the discussion on welfare with the following suggestions:

1. Increase welfare expertise within the IWC:

To date, other than the chairmanship of some workshops, the Commission's work on welfare is not led by an expert in animal welfare—the chair of the working group is elected from among serving Commissioners or their delegations.

While no criticism of the competence of past or present WKMAWI-WG chairs is implied, AWI suggests that an independent expert in a relevant discipline (such as veterinary science, whale physiology, or neuro-anatomy) could chair the WKMAWI-WG and take a more active role intersessionally in ensuring that progress is made in the work assigned to the WKMAWI-WG, that relevant data is submitted, reports are prepared and published, and any requisite workshops are organized and scheduled.

AWI also suggests that, building on the successful secondment of an entanglement expert from the US to the Secretariat, the Commission consider seeking the **secondment of a dedicated welfare adviser to the Secretariat, or dedicate funds to establish a permanent position within the Secretariat.**

AWI also recommends that the IWC **invite a permanent observer from the**

Organization on Animal Health (OIE) to attend its meetings.

The Commission clearly envisaged that the Humane Killing Working Group it created in 1982 would be a “*technical*” working group, recommending in 1983 that “*appropriate experts be brought by contracting governments to such working group meetings and that provision be made for invited experts also to attend.*” It has expressed the same intention for independent experts to be invited to workshops, in addition to those who attend on national delegations, even specifically recommending that experts be invited “*in such subjects as engineering, electronics, ballistics, munitions, explosives, pharmacology, etc.*”.

Despite this, all working group and workshop participants, other than two invited experts in 1980, have been representatives of national delegations—undoubtedly experts in their field but, by explicit agreement of the parties in 1988, only submitting papers “*sponsored*” by a contracting government.¹

Given the longstanding polarization of positions within the WKMAWI-WG—and the expectation that a delegation’s choice of experts will reflect a nationally-held position—it is hoped that the inclusion of mutually acceptable, independent, experts in both WKMAWI-WG and workshop meetings will bring new perspectives, skills and information to the discussions. Ultimately it is hoped that they will help resolve complex disagreements. The Commission took a step in this direction in 2012 when it directed the Secretariat to develop a database of external contacts with

expertise in animal welfare science pertinent to work being undertaken by the Commission. Progress on this recommendation will be reported at the 2014 meeting when the Commission will also decide on the topics of future technical workshops.

2. Seek external collaboration with welfare experts:

Just as inviting welfare experts would bring fresh perspectives to welfare discussions within the IWC, the IWC’s consideration of welfare issues also would benefit from external collaboration with independent experts and institutions. To this end, the Commission agreed in 2012 to direct the Secretariat to recommend “*opportunities for constructive co-operation with other relevant animal welfare bodies.*”²

It is anticipated that these will include the OIE, which has extensive expertise in all matters relating to animal welfare. They might also include institutions dedicated to animal welfare in the European Union (EU), such as the Animal Welfare/Health Framework or the EU’s developing network intended to provide technical and scientific assistance to authorities and stakeholders on animal welfare and protection issues, and relevant academic institutions.

To facilitate such “*constructive cooperation,*” AWI recommends that the IWC **consider hosting specific workshops in conjunction with other bodies such as OIE**; this would maximise the contribution of specialists in animal welfare, adding value and credibility to the analyses

¹ IWC/40/18. Report of the Humane Killing Working Group, 1988. 1

² Annual Report of the International Whaling Commission, 2012. 35

conducted as well as the evidence-based solutions proposed.

3. Increase collaboration within the IWC on welfare issues:

It has previously been suggested by the United Kingdom that animal welfare considerations be integrated into all relevant aspects of the IWC work.³ This could be achieved by including guiding principles on animal welfare in the terms of reference of all its sub-bodies. On a practical level greater integration would be facilitated by **structuring biennial meetings so that any discussions of welfare issues taking place in other IWC sub-bodies could be considered by the WKMAWI-WG before being reported, with any relevant recommendations, to the Commission.** Since the WKMAWI-WG already meets in the week before plenary, it could be scheduled to meet last, after the Aboriginal Subsistence Whaling Sub-committee, Infractions Sub-committee and Conservation Committee, in order to consider items arising from their meetings. The new publication timetable for the Scientific Committee report allows ample time for welfare-related issues arising in the Scientific Committee to be considered by the WKMAWI-WG before the Commission meeting.

4. Refer an intractable question to external experts:

The fourth objective of the Intersessional Working Group on Welfare is to *“identify any important issues relating to good animal welfare that would benefit from future technical workshops”*. AWI suggests that such a workshop, if it were to include external experts, could be used to help

the IWC resolve one of its longstanding disagreements over a highly technical issue such as identification of the moment that a struck whale becomes irreversibly insensible or dies—a question which has challenged the IWC for decades.

The Commission agreed in 2004 that the current IWC criteria for determining the onset of death or irreversible insensibility are inadequate and has repeatedly instructed workshops to develop new, practical, criteria. However, this has not yet been possible. Typically, discussion of this issue in the WKMAWI-WG and workshops takes place mainly between a few experts who represent a small handful of countries without an independent expert to evaluate their data and analyses or to adjudicate the outcome of the debate.

AWI suggests that the Commission refer this specific question (and all the existing literature) to one or more mutually-agreed independent animal welfare experts. For example, the IWC could **ask the OIE to establish an international panel of specialists in veterinary science, perhaps with expert testimony from ballistics experts, to review the existing science with a view to proposing new criteria.**

Referral of intractable questions to an outside expert is not unprecedented at the IWC; indeed this was a primary strategy in the Future of the Commission discussions. Similarly, the IWC could direct funds to independent field research to address and outstanding question, as it did in the 1980s when it commissioned a veterinarian to undertake a *“systematic investigation and evaluation of the*

³ IWC/64/WKM&AWI 3. Report of the Intersessional Workshop on Welfare and Recommendations for Future Work, 2012. Submitted by the United Kingdom.

efficiency of present methods of killing whales” in different fisheries.⁴

IWC mandate for welfare:

Some contracting governments argue that the IWC does not have a mandate to address welfare issues. In response to such claims, we urge contracting governments to make the following arguments:

Although drafted at a time when society did not prioritize animal welfare as an issue of significant concern, the 1946 International Convention for the Regulation of Whaling (ICRW or treaty) empowers the Commission that it created to undertake research and collect data related to whales and methods used to kill them: Article IV. 1 of the ICRW provides that the Commission “*may encourage, recommend or organize studies and investigations relating to whales and whaling*”.

The ICRW also mandates the Commission to adopt measures to improve the efficiency of whaling methods and equipment: Articles V.1 (f) and (e) permit the Commission to “*amend the Schedule to prohibit or specify the types of gear and apparatus to be used in whaling operations*” as well as to adopt regulations “*fixing the ... methods and intensity of whaling*”.

Since the late 1950s, these treaty provisions (although not always explicitly cited) have provided the Commission with the legal foundation for a series of decisions and initiatives to better understand and improve the efficiency of whaling methods so that hunted whales are killed as swiftly as possible and with a

⁴ Chairman’s Report of the 30th Annual Meeting of the International Whaling Commission, 1979. 27

minimum of pain and distress—a joint objective memorialized as a working definition of “*humane killing*” in 1980.⁵ In recent years, the IWC has built upon this foundation to consider other, non-hunting related, threats to the welfare of whales and cetaceans generally.

That the IWC did not exercise its original welfare mandate to its full potential from the outset does not mean that it cannot exercise that authority now, particularly as new information has become available and as circumstances—and global and societal norms—have changed over its long history. The Vienna Convention on the Law of Treaties (VCLT)⁶ establishes the rules for interpreting the ICRW’s mandate: In addition to considering the ordinary meaning of the terms of the treaty in their context and in light of its object and purpose, interpreters must also consider subsequent practice by the parties.⁷

The evolution of the IWC’s consideration of the welfare of whales over the last 65 years is consistent with global developments in scientific understanding of animal physiology, sentience, and pain over the same period. This evolving understanding of animals’ welfare and the need to treat animals humanely by its contracting governments has, in large part, persuaded the IWC to expand its welfare welfare. Societal concerns about animal welfare are now so prominent that animal welfare has become an established scientific discipline in its own right.

⁵ Report of the workshop on Humane Killing Techniques for Whales. Presented to the 33rd meeting of the IWC as paper IWC/33/15

⁶ Vienna Convention on the Law of Treaties, May 23, 1969, U.N. Doc. A/CONF. 39/27. 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980).

⁷ Article 32, VCLT