



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE EUROPEAN COMMISSION TO THE EUROPEAN  
PARLIAMENT AND TO THE COUNCIL**

**on Community action in relation to whaling**

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### Introduction

Extensive exploitation of whales and environmental degradation have severely depleted the populations of many whales. The international work to conserve and manage whale stocks carried out by the International Whaling Commission ('IWC') –is weakened as a result of the endless discussions between 'pro-whaling' and 'anti-whaling' States. The European Union has not yet been able to use its political weight in the IWC context mainly because of the lack of a coordinated and agreed Community position.

With this Communication, the Commission, taking stock of the current situation in relation to the protection of whales within the EU and internationally, intends to underline the need for the EU to act as a united major player in international whaling policy. The EU should be guided by the objective of ensuring that an effective international regulatory framework for the protection of whales is in place and is properly enforced.

### 1. THE INTERNATIONAL WHALING COMMISSION

#### 1.1. Background

1. Whales as well as dolphins and porpoises belong to the order of *Cetacea*. There are 13 species of 'great whales' such as blue, fin, humpback, bowhead, sperm and minke whales etc. and a further 68 species of smaller whales and dolphins. Whale species, mainly the great whales, have been hunted since the middle ages in Europe, the northern oceans and subsequently in the Americas and other regions in the world, including the Antarctic region. While the meat of whales was used for food in several areas of the world, further important products of whales were the baleens and in particular oil and grease which were used as fuel and to oil machines. The catch of whales peaked in the 50's and 60's of the 20<sup>th</sup> century, with yearly catches of tens of thousands of whales. Due to this extensive exploitation of whales many populations became severely depleted by the middle of last century. In addition, environmental degradation, including climate change, and by-catches in fisheries cause further threats to whales.
2. The International Whaling Commission (IWC) is the international organisation competent for the conservation and management of whale stocks. It was set up by the International Convention for the Regulation of Whaling ('the Convention'), which was signed in Washington D.C., on 2 December 1946. With an increasing and developing whaling industry at that time, the purpose of the Convention was "*to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry*".

3. Membership of the IWC is only open to governments that adhere to the Convention. In recent years the number of Parties to the Convention has increased rapidly to reach 77, out of which 20<sup>1</sup> EU Member States. The European Commission has continuously encouraged those Member States that are not yet Parties to join the Convention.
4. The European Community has observer status. The Commission adopted a proposal in 1992 to negotiate the accession of the Community to the Convention<sup>2</sup>. However, the Council has not yet taken any action further to this proposal.
5. IWC is to keep under review and revise as necessary the measures laid down in the Schedule to the Convention which governs the conduct of whaling throughout the world. While the Schedule is annexed to the Convention, it is defined as an integral part of it and is therefore binding on Parties. In practice, while the Convention provides the general regulatory framework, it is the Schedule which provides detailed whaling regulations with respect to the conservation and utilization of whale resources. The measures of the Schedule provide, among other things, for the complete protection of certain whale species, designate specified areas as whale sanctuaries, set limits on the numbers and size of whales which may be taken, specify the hunting seasons, coordinate scientific research (including environmental issues) and the collection of data. Amendments to the Schedule necessitate a majority of three-quarters of the Parties and become effective within 90 days for all Parties that do not object to them. On this basis, the Schedule was amended in the 1982 meeting of the IWC by adding a new paragraph to introduce the moratorium on commercial whaling.
6. The IWC meets once a year. The 2006 and 2007 meetings were held in St. Kitts and Nevis and Anchorage, Alaska, respectively.
7. Further to a request from the 1972 UN Stockholm Conference on the Human Environment, the IWC adopted a moratorium on commercial whaling in 1982, which is in force since 1985. In adopting this measure the IWC took into account the uncertainties in the scientific information on whale stocks and the difficulty in obtaining the required data<sup>3</sup>.
8. One of the main underlining issues at IWC meetings over the past years has been whether whale stocks have recovered enough to lift the moratorium on commercial whaling in a controlled fashion.
9. The need to develop new management objectives and procedures was recognised at the outset of IWC discussions on future management of commercial whaling, following the entry into force of the moratorium. Accordingly, work was undertaken to develop a Revised Management Procedure (RMP). The RMP would establish catch limits based on scientific data on whale populations. While the procedure was

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<sup>1</sup> Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Slovak Republic, Slovenia, Spain, Sweden, UK.

<sup>2</sup> Communication from the Commission to the Council concerning the conservation of whales within the framework of the IWC (COM (92)316). The Annex thereto includes a draft Decision authorizing the Commission to negotiate, on behalf of the Community, a protocol amending the Convention to allow EC participation.

<sup>3</sup> The text of the Schedule reads as follows: Para. 10(e) "Notwithstanding the other provisions of paragraph 10, catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. This provision will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits".

adopted in 1994, it has not been applied yet pending further work on the Revised Management Scheme (RMS). The RMS would seek to ensure that the regulations of the IWC are complied with. It would include a wide range of control measures in this context. Issues like international observers on vessels, verifications to combat illegal unreported whaling, compliance measures, distribution of costs for control measures, options for lifting the moratorium under certain conditions (e.g. limiting catches to the Exclusive Economic Zones only), animal welfare considerations and international control of scientific whaling have been raised. However, substantial work on the RMS has been difficult and controversial and no concrete results have been achieved so far. The 2006 IWC plenary recognised for the first time a definitive deadlock on RMS negotiations. In the long term, the future of the IWC depends to a large extent on finding a solution to the issues discussed in the context of the RMS.

## **1.2. The exceptions to the moratorium**

10. The moratorium on commercial whaling does not affect aboriginal whaling, which, under the current IWC regime, is permitted for Denmark (Greenland only, fin and minke whales), the Russian Federation (Siberia only, gray whales), St Vincent and The Grenadines (humpback whales), and the USA (Alaska only, bowhead; and occasionally Washington, gray whales). Since its inception, the IWC recognised that aboriginal subsistence whaling (ASW) is of a different nature from commercial whaling. It is the responsibility of national governments to provide the International Whaling Commission with evidence of the cultural and subsistence needs of their people. The International Whaling Commission sets catch limits for stocks subject to aboriginal subsistence whaling for a five year period, based on scientific advice.
11. The Convention allows Parties to lodge objections<sup>4</sup> against binding decisions such as the moratorium. Norway and Iceland are not bound by the moratorium as they have lodged an objection/reservation and continue to hunt whales at their own discretion.
12. The Convention also allows Parties to conduct whaling without specific approval by the IWC under special permits granted by national authorities for so-called 'scientific research purposes'. The right to issue these special permits is enshrined in Article VIII of the 1946 Convention<sup>5</sup>. Whilst Parties must submit proposals for review, in accordance with the Convention, it is each Party that ultimately decides whether or not to issue a special permit. This right overrides any other Commission regulations including the moratorium and sanctuaries. There have been indications that not all the killed whales are used only for scientific purposes in certain countries. It appears

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<sup>4</sup> The objection procedure (Convention Article V paragraph 3) has been strongly criticised as rendering the IWC 'toothless', but without it the Convention would probably have never been signed. In addition, without such a right a government would still have been able to withdraw from the Convention and thus not to be bound by any of the regulations.

<sup>5</sup> Article VIII, Paragraphs 1-3:1. "Notwithstanding anything contained in this Convention any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit, and the killing, taking, and treating of whales in accordance with the provisions of this Article shall be exempt from the operation of this Convention. Each Contracting Government shall report at once to the Commission all such authorizations which it has granted. Each Contracting Government may at any time revoke any such special permit which it has granted. 2. Any whales taken under these special permits shall so far as practicable be processed and the proceeds shall be dealt with in accordance with directions issued by the Government by which the permit was granted. 3. Each Contracting Government shall transmit to such body as may be designated by the Commission, in so far as practicable, and at intervals of not more than one year, scientific information available to that Government with respect to whales and whaling, including the results of research conducted pursuant to paragraph 1 of this Article and to Article IV".

that Japan (and to some extent Iceland) carry out 'scientific' programmes, mostly in Antarctica, and then puts the whale meat in national markets.

Due to the large scope of all these exceptions, the moratorium has had virtually no effect on the whaling policy of Japan, Norway and Iceland.

### **1.3. Recent developments – Commercial whaling**

13. In spite of the moratorium on 'commercial whaling', substantial whaling continues on the basis of the exceptions described above. Since the moratorium on commercial whaling took effect in the 1985/86 season, more than 29000 whales have been killed under the various exceptions and the yearly takes have increased. The total catches for the four countries under the aboriginal subsistence whaling exemption are lower<sup>6</sup>. In the period between 1985 and 2005 the total catches under this exemption were about 6788 according to information made available by the IWC.

It is estimated that Norway has caught 639 minke whales in the 2005/6 season and it is now considering to greatly increasing the catches over the next years. Japan has issued scientific permits every year since 1987. In 2007, permits concerned about 850 Antarctic minke whales, 10 fin whales, 220 common minke whales, 50 Bryde's whales, 100 sei and 10 sperm whales. Iceland has resumed scientific whaling in 2003 and commercial whaling in 2006<sup>7</sup>. A total of 161 common minke whales have been caught since the start of the Icelandic research program in 2003. Moreover, in 2006 Iceland announced that it would take 9 fin whales<sup>8</sup> and 30 common minke whales for commercial purposes.

14. The dual mandate of the IWC of both managing whaling and conserving whales has led to extremely polarised positions over the years between leading pro-whaling and anti-whaling States. This deadlock is jeopardizing international cooperation and hindering progress towards the effective protection of all whale species. Pro-whaling States have actively sought the accession of supportive countries to reach the necessary majority to lift the moratorium on commercial whaling. At the 2006 Annual meeting at St. Kitts and Nevis, these countries achieved a thin majority which led to the adoption of a declaratory resolution in support of the "sustainable use of whales", a term largely used for consumptive use or commercial whaling. This declaration was of serious concern and prompted the Commission to bring this matter to the Council for discussion<sup>9</sup>, as well as to call upon all Member States to accede to the IWC.

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<sup>6</sup> For 2008-12 quotas, see Chair's Report of the 59th IWC meeting: <http://www.iwcoffice.org>

<sup>7</sup> Iceland left the IWC in 1992 stating that the moratorium was no longer needed, only to rejoin the IWC in 2002 with a reservation on the moratorium. In their instrument of adherence to the IWC Iceland stated that it would not resume commercial whaling until 2006.

<sup>8</sup> Fin whales have been classified as 'endangered' on the IUCN red list of threatened species.

<sup>9</sup> Discussion at Environment Council of 20 February 2007, and at Coreper of 28 March and 2 May 2007.

15. In addition, Japan has proposed for several years decisions to allow small-type coastal whaling of certain species<sup>10</sup>. Such proposals, aimed to amend the binding Schedule, have not gathered so far the support required<sup>11</sup>. Such an amendment would be tantamount to a partial resumption of commercial whaling<sup>12</sup> and would open up again quota negotiations.

## 2. PROTECTION OF WHALES UNDER COMMUNITY LEGISLATION

16. According to Article 174(1) of the EC Treaty, one of the objectives of Community environment policy is the promotion of measures at international level to deal with regional or worldwide environmental problems. This includes the conservation of species, such as whales, at global level.
17. Therefore, the European Community is committed to the protection of whales and other cetaceans and has put in place legislation that ensures a high level of protection primarily in the framework of Community environment policy.
18. The Habitats Directive<sup>13</sup> lists all cetacean species in its Annex IV. All whale species are strictly protected from deliberate disturbance, capture or killing within Community waters. The Directive also prohibits the keeping, transport and sale or exchange, of specimens taken from the wild. This legislation does not allow the resumption of commercial whaling on any stock totally or partially occurring in Community waters. Due to the migratory character of whale stocks, it is clear that the objectives of the Habitats Directive can only be achieved in full if a comparable international regulatory framework is in place.
19. The Regulation implementing the Convention on International Trade on Endangered Species (CITES) in the European Community bans the introduction of cetaceans into the Community for primarily commercial purposes<sup>14</sup>. This high level of protection is further reinforced by the EC Marine Strategy<sup>15</sup> and the proposed Marine Strategy Directive<sup>16</sup>, which is expected to strengthen the protection of whales in the Community by fostering the overall objective of good environmental status of our oceans and seas.

Therefore, the ultimate objective of Community environmental policy in relation to whales is to seek their strictest protection. The above mentioned environmental legislation ensures the highest level of protection through exhaustive rule harmonisation.

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<sup>10</sup> See for instance IWC Summary records of 2006, 2007.

<sup>11</sup> Amendments to the Schedule need the support of three-fourths of the Parties (Article III paragraph 2 of the Convention).

<sup>12</sup> As often highlighted by other Parties, such as Australia (Summary Report 2006) and UK (oral intervention in 2007).

<sup>13</sup> Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p.7.

<sup>14</sup> Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61 3.3.1997, p. 1. In addition, Council Regulation (EEC) 348/81 on common rules for imports of whales and other cetacean products only allows imports of listed products if they are not used for commercial purposes.

<sup>15</sup> Communication from the Commission to the Council and the European Parliament: Thematic strategy on the protection and conservation of the Marine Environment COM(2005) 504 final.

<sup>16</sup> Proposal for a Directive of the European Parliament and of the Council establishing a Framework for Community Action in the field of Marine Environmental Policy COM(2005) 505 final.

Furthermore, under the Common Fisheries Policy (CFP), the Community has exclusive competence for the conservation of biological resources of the sea<sup>17</sup>. As 'live animals', cetaceans fall within the scope of Annex I to the EC Treaty and are subject to Articles 33 to 38 thereof<sup>18</sup>. Moreover, the Council Regulation on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy<sup>19</sup> states that the scope of the CFP extends to conservation, management and exploitation of living aquatic resources. On this basis, the Community has concluded fisheries agreements dealing, partly or exclusively, with marine mammals<sup>20</sup>. Similarly, cetaceans are addressed by secondary legislation adopted under the CFP aimed to implement international commitments undertaken in the context of fisheries agreements and to address the protection of whales in the high seas<sup>21</sup>.

20. By virtue of Article 6 of the EC Treaty, environmental requirements are integrated into the definition and implementation of the CFP. A good example of this approach is Regulation 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea. For cetaceans, this Regulation extends to the Mediterranean high sea the strict protection already afforded by the Habitats Directive within Community waters<sup>22</sup>.
21. The legislative measures adopted by the European Community aim at ensuring the highest level of protection of whales. They will not be successful if they are not supported by coherent international action by the Community aimed to ensure also an effective international regulatory framework for the protection of whales.
22. At present, in the absence of a strategic approach or even of a common view on whaling, the EU needs to use its political and economic weight to counter the influence of leading whaling nations on whaling and fisheries policies of other countries, notably in the African, Caribbean and Pacific region (ACP). A Community position would for instance allow the question of whaling to be put on the agenda of regular meetings held at multilateral level (e.g. Generalised System of Preferences (GSP), Cotonou Agreement context) or at bilateral level (e.g. through Commission's delegations).
23. Similarly, the EU could co-operate more with Norway and Iceland, two neighbouring States which continue to whale close to Community waters<sup>23</sup>, in order to try to influence their policy on whales. This situation, if not modified, is likely to affect the state of the whale stocks protected by the Habitats Directive. Community action could also contribute to put the protection of the Atlantic whale stocks more at the centre of the IWC debate. This would complement the long-lasting and crucial

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<sup>17</sup> See for instance Cases C-141/78 [1979] ECR 2923, paragraph . 6, and C-804/79, [1981] ECR 1045, paragraph 17.

<sup>18</sup> See Art. 32, paragraph 3 of the EC Treaty

<sup>19</sup> Council Regulation 2371/2002/EC , OJ L 358, 31.12.2002, p.59.

<sup>20</sup> See e.g. Council Decision 2005/938/EC on the approval on behalf of the European Community of the Agreement on the International Dolphin Conservation Programme, OJ L 348, 30.12.2005, p. 26.

<sup>21</sup> See Council Regulation (EC) 973/2001 laying down certain technical measures for the conservation of certain stocks of highly migratory species, OJ L 137, 19.5.2001, p. 1; and Council Regulation (EC)1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish, OJ L 263, 3.10.2001, p. 1.

<sup>22</sup> OJ L 36, 8.2.2007, p. 6. See recital 9 and Article 3(1) on protected species, in connection with Article 1(1) on scope (which extends to the Mediterranean high sea, beyond the scope of the Habitats Directive).

<sup>23</sup> Norway and Iceland created a regional management organisation for mammals (North Atlantic Marine Mammal Commission). The Habitats directive is not included in the environmental annex to the European Economic Area Agreement.

discussions on the Southern Hemisphere (Japanese research programme in the Antarctic, proposed South Atlantic Sanctuary, etc.).

24. To be able to address these issues in the most effective way, an EU position is needed. Its lack in an important environmental forum dealing with matters within Community competence like the IWC is an anomaly that needs to be addressed.
25. The recently adopted maritime policy for the Union<sup>24</sup> acknowledges that integrated approach to European maritime affairs must be reflected in EU contacts with international bodies. Therefore, to be able to address maritime issues, including whales, in the most effective way the Commission will work towards the promotion of coordination of European interests and coherence of EU position in key international fora.
26. In accordance with the principle of the unity in the external representation of the Community, it is essential that Member States prepare the next meetings of the IWC by agreeing an EU position in the framework of discussions in the Council. Due to the limitations intrinsic to the observer status of the Community and in keeping with the principle of loyal cooperation reflected in Article 10 of the EC Treaty, such position shall be expressed by the Member States acting jointly in the interest of the Community within the IWC<sup>25</sup>. It is also essential that the remaining 7 Member States that are not yet Parties to the IWC accelerate their accession procedure. This would consolidate the thin anti-whaling majority recovered at the IWC meeting of 2007.

### 3. CONCLUSION

27. The IWC ban on commercial whaling to ensure the recovery of whale stocks is in line with the objectives of Community policies. However, whereas protection is comprehensive within the Community system, this is not the case at the international level.
28. The lack of effective application of the ban due to reservations and objections and the lack of appropriate regulation of scientific whaling, which is carried out outside any adequate international management regulatory framework, undermine the purpose of the moratorium on commercial whaling<sup>26</sup>.
29. Any long-term solution for a better regulation of whaling should in principle address comprehensively all whaling activities currently carried out under the different legal headings of the Convention, be they commercial whaling, scientific whaling, whaling conducted under an objection (Norway) or a reservation (Iceland), as well as aboriginal subsistence whaling. Issues such as a stringent compliance regime, monitoring and reporting, etc. would also need to be addressed.

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<sup>24</sup> COM (2007) 575

<sup>25</sup> Joined cases 3,4 and 6/76 Kramer, paragraphs 42 and 45, Opinion of 19 March 1993 of the Court of Justice, 2/91, paragraph 37, case C-266/03, Commission v Luxembourg, paragraphs 57 and 58, and case C-433/03, Commission v Germany, paragraphs 63 and 64.

<sup>26</sup> As highlighted by several Parties, the link proposed by Japan at the 2007 IWC meeting by which it would proportionally reduce its current taking of whales for 'scientific purposes' if its proposed amendment on small-type coastal whaling would be adopted, confirms the relation between all whaling activities. As far as real scientific research is concerned, other countries insist on applying non-lethal methods.



30. Thus, the overarching long-term objective of the Community should be to ensure an effective international regulatory framework for the comprehensive protection of whales. In this respect, the Community should support strengthening cooperation in and enhancing the effectiveness of the IWC. It should assess, relying, *inter alia*, on the invaluable expertise in the Member States, the work carried out so far on the draft RMP and RMS, as well as past proposals to bridge the gaps among Parties to the Convention with a view to play a positive role to unblock the deadlock in the IWC.
31. Only acting together and developing a Community position the EU Member States would stand a chance to ensure the development and enforcement of an adequate and strict international regulatory framework for the protection of whales. To this end, the Commission is proposing an appropriate decision to the Council.