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IWC 66: Joint Statement on the South Atlantic Whale Sanctuary Proposal and the Resolution on Special Permit Whaling

South Atlantic whale sanctuary

The South Atlantic whale sanctuary (SAWS) has been proposed by the governments of Argentina, Brazil, Gabon, South Africa and Uruguay, all of which are range states of the proposed sanctuary. They have consulted widely within the region and obtained support.

Their proposal was reviewed by the Scientific Committee, which agreed that an adequate review of the SAWS proposal had been done, that the information provided was comprehensive and that the proposal had, in principle, the potential to encourage collaboration and to facilitate development of research relevant to IWC conservation goals. As well as stimulating research, it is intended to benefit coastal communities in the region by developing the sustainable, non-extractive and non-lethal economic use of whales.

The Scientific Committee noted this is the first IWC sanctuary proposal to provide a management plan; this plan involves the management of all threats to whales in the region, not just the threat of whaling.

At its meeting last month, the IUCN's World Conservation Congress supported the establishment of a South Atlantic whale sanctuary and in RES 086 called upon all members of the IWC to support the proposal to establish a South Atlantic whale sanctuary at the 66th meeting of the IWC in Slovenia in October 2016.

Our organisations strongly support this proposal. We urge Contracting Governments to do the same and make the Sanctuary a reality.

Special Permit Whaling

Our organisations do not believe there is any justification to conduct lethal whaling for the purposes of science. We note the IUCN's World Conservation Congress passed RES 058 at its recent meeting, calling upon countries to revoke existing special permits and refrain from issuing further ones.

While Article VIII of the International Convention for the Regulation of Whaling (ICRW) allows for takes of whales for scientific purposes, the International Court of Justice (ICJ), in its judgment in the case *Whaling in the Antarctic*, has clarified that this Article does not allow proponent nations to make unilateral decisions on what is or is not for scientific purposes, based purely on their own evaluation.

Paragraph 61 of the ICJ judgment states "*whether the killing, taking and treating of whales pursuant to a requested special permit is for purposes of scientific research cannot depend simply on that State's perception*".

Following the ICJ judgment, Japan submitted a revised 'scientific' whaling programme, NEWREP-A, but an expert panel convened by the IWC found this programme did not justify the killing of whales for scientific purposes. The IWC's Scientific Committee, at both its 2015 and 2016 meetings, found that further



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analyses recommended by the expert panel had still not been completed. Nonetheless, Japan resumed 'scientific' whaling in the Antarctic in 2015/16, killing 333 minke whales, in contravention of the ICJ judgment and IWC Resolution 2014-5.

Draft Resolution IWC66-11 *'Improving the Review Process for Whaling under Special Permit'* seeks to ensure that if special permit whaling is proposed, the IWC has better processes in place to ensure the Commission fully engages with special permit reviews and seeks to prevent the unilateral issuance of special permits in contravention of the whaling convention. As such, **our organisations support this resolution and urge Contracting Governments to vote in favour of it.**

The Resolution would establish specific Working Groups to examine each existing or proposed special permit whaling programme and make accessible information available to the Commission to properly consider these programmes. Proponents of special permit programmes would only be able to participate in the Working Group as observers. This is a significant advantage over the current process in the Scientific Committee where proponents take part in reviewing their own programmes, negating the possibility of objective judgments being reached.

The Resolution also seeks to align the submission of programmes for review with the new biennial cycle of Commission meetings by instructing the Scientific Committee to schedule its reviews in line with that cycle. This seeks to overcome the problem witnessed in the case of Japan commencing NEWREP-A before the Scientific Committee had completed its review and before the Commission had been given an opportunity to make recommendations. Japan has already indicated it intends to begin a revised North Pacific special permit programme in 2017, again before the Scientific Committee would have a chance to finish its review and before the Commission, which will next meet in 2018, would have an opportunity to give its views.

While our organisations support the Resolution, we recommend Contracting Governments strengthen it by adding:

1. additional language to the preamble after the first paragraph to more explicitly recall two key elements of the ICJ judgment that the Resolution is trying to ensure are reflected in IWC procedure:
 - Firstly, that Article VIII does not allow for the unilateral issuance of special permits by proponent states, as indicated by paragraph 61 of the ICJ's ruling;
 - Secondly, that it is incumbent upon proponents of special permit whaling to establish that killing whales is actually for the purposes of scientific research, not any other reason. As the Court stated in paragraph 71, *"even if a whaling programme involves scientific research, the killing, taking and treating of whales pursuant to such a programme does not fall within Article VIII unless these activities are "for purposes of" scientific research"*.
2. the following language at the end of operative paragraph 1(a) "and identify whether the special permit programme meets a research need identified by the Commission".
3. additional language, either in the preamble or in the operative paragraphs, highlighting the need to, or requesting Contracting Governments to, respect sanctuaries created by the IWC and prioritize non-lethal methods in achieving research objectives.