

6 October 2009

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Dear IWC Commissioner,

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[www.wdcs.org](http://www.wdcs.org)

Iceland's whaling and trade in whale products and its accession to the European Community

Echoing the demarche delivered to Iceland last week, including by thirteen members of the EU, the 36 undersigned conservation and animal welfare organisations, representing millions of European Union citizens and concerned individuals worldwide, write to express our concerns about Iceland's escalating whaling and international trade in whale products. We urge you to demonstrate to Iceland at the outset of the accession negotiations that Iceland will not be able to continue whaling activities if it joins the EU. Taking such a position of zero tolerance for Iceland's whaling and trade is not only entirely consistent with the European Community's (EC) strict protection measures in respect of whales, but also its policy towards the International Whaling Commission and, in particular, the moratorium on commercial whaling.

The EC's obvious commitment to the strict protection of whales, reflected in the 127% increase in the IWC's European Community membership since 2000, has positioned the EC as an extraordinarily influential champion of whale conservation. This commitment is articulated at every level in the Community – through the Council's adoption of a 'common position'<sup>1</sup>, and the Parliament's adoption of a resolution<sup>2</sup>, reinforcing the importance of the commercial whaling moratorium and the CITES ban on international commercial trade in whale products; through the wide representation of Member States (and the Commission) on demarches against whaling nations (including a demarche led by the UK in 2006 when Iceland resumed commercial whaling that represented over a billion people); through the objection of many Member States to Iceland's 2002 reservation against the moratorium on commercial whaling; and through the unanimous support of Member States for conservation and animal welfare-oriented decisions by the IWC.

The EC's position on whales was expressed perfectly by Environment Commissioner Stavros Dimas and Fisheries Commissioner Joe Borg who said when Iceland resumed commercial whaling in 2006, "If it was simply

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<sup>1</sup> Council Decision of 2 March 2009 establishing the position to be adopted on behalf of the European Community at the next three annual meetings and the related inter-sessional meetings of the International Whaling Commission with regard to proposals for amendments to the International Convention on the Regulation of Whaling and its Schedule

<sup>2</sup>, P6-TA-2009-0067 "Community Action in Relation to Whaling" Resolution adopted on 19 February 2009 by an overwhelming majority of 626 to 12.

a matter for the EU to decide, all commercial whaling would be abandoned once for all....The EU is resolved to spare no efforts to ensure that whale species are effectively protected worldwide<sup>3</sup>.

We assure you that the public continues to expect nothing less from the EC and, as the Community's influence over Iceland's future grows, they will expect more. We believe that Iceland is about to present the EC with the greatest test of its commitment to whale protection.

We know that many of you, like us, hoped that the new government in Iceland, elected in the wake of the recent economic crisis, would reverse its predecessor's whaling policy. Unfortunately however, the new administration has not only supported the dramatically increased whaling quotas for 2009 authorised by the outgoing government, but it appears likely to authorise even larger hunts in and exports in 2010. Kristjan Loftsson's fin whaling company, Hvalur, has killed 125 fin whales this summer, reaching a bloody milestone - its 15,000<sup>th</sup> fin whale since the company's creation in 1947<sup>4</sup>.

Iceland's conduct at recent IWC meetings, its massive whaling season this summer, and our intelligence on the ground all point to Iceland's determination to continue commercial whaling and trade, even as it seeks membership of the European Union. Although such activities would violate the EC's progressive conservation measures, we anticipate that Iceland will seek exemptions from the strict protection of the Habitats Directive and the CITES Regulation. We wish to urge you in the strongest terms to ensure that Iceland's demands are not accommodated in the accession negotiations. Instead, we appeal to you to use Iceland's application for EU membership as an opportunity to permanently stop its whaling and trade, including by demanding that it withdraws its CITES reservation.

We believe that the EU has the opportunity and the ability to permanently end Iceland's whaling and to head a major victory for whale conservation, the moratorium and the IWC. We implore you to find the political will to act. Anything less will result in the killing and exporting of whales from European Community waters; a disaster that would not only generate massive public protests inside the EC, but would significantly damage the Community's credibility on the global stage.

We hope the following commentary is useful and encourage you to contact us to seek more information. Several groups are undertaking full legal analyses of these issues and would be happy to share their findings with you.

Thank you for your attention and your continued commitment to whale conservation.

Sincerely



Chris Butler-Stroud  
Chief Executive Officer  
Whale and Dolphin Conservation Society (WDCS) \*

On behalf of:

American Cetacean Society  
Animals Asia Foundation \*  
Animal Welfare Institute  
Born Free Foundation \*  
Born Free USA  
Campaign Whale \*  
Canadian Marine Environment Protection Society  
Care for the Wild International \*  
Cetacean Society International (CSI) \*  
The Cousteau Society \*

<sup>3</sup> [http://ec.europa.eu/commission\\_barroso/borg/press/pressrel201006\\_en.htm](http://ec.europa.eu/commission_barroso/borg/press/pressrel201006_en.htm)

<sup>4</sup> [http://www.mbl.is/mm/frettir/innlent/2009/09/21/15\\_thusundasti\\_hvalurinn\\_i\\_sogu\\_hvals\\_hf/](http://www.mbl.is/mm/frettir/innlent/2009/09/21/15_thusundasti_hvalurinn_i_sogu_hvals_hf/)

David Shepherd Wildlife Foundation (DSWF) \*  
Deepwave \*  
Dolphin Connection  
Eastern Caribbean Coalition for Environmental Awareness ECCEA) \*  
Environmental Investigation Agency (EIA) \*  
Eurogroup for Animals \*  
Global Ocean \*  
Green Balkans \*  
Greenpeace \*  
Humane Society International \*/ Humane Society of the United States  
(HSI/HSUS)  
International Fund for Animal Welfare (IFAW) \*  
Iruka and Kujira (Whale and Dolphin) Action Network, Japan (IKAN)  
International Animal Rescue, Malta \*  
International League for the Protection of Cetaceans \*  
NABU - Nature and Biodiversity Conservation Union \*  
Natural Resources Defense Council (NRDC)  
Ocean Care \*  
Pacific Orca Society / Orcalab  
Polish Society for Nature Conservation "Salamandra" \*  
Pro Wildlife \*  
Royal Society for the Prevention of Cruelty to Animals (RSPCA)\*  
Robin de Bois \*  
Society for the Conservation of Marine Mammals, Denmark \*  
Society for the Conservation of Marine Mammals (GSM) \*  
The Whaleman Foundation  
World Society for the Protection of Animals (WSPA) \*

\*NGOs with offices, members or supporters in the European Union.

## Derogations from the Habitats Directive

Although Directive 92/43/EEC (the Habitats Directive) establishes a system of strict protection for cetaceans, Article 16 provides the possibility for member states to derogate, under defined conditions, from the restrictions and prohibitions in Article 12. It should be anticipated that Iceland will allow itself a derogation to Article 12.1 which obliges Member States to prohibit “all forms of deliberate capture or killing” and to Article 12(2) which requires Member States to prohibit the keeping, transport, sale, exchange and offering for sale or exchange, of specimens taken from the wild.

Iceland is likely to assert that a derogation allowing it to continue whaling is justified on the basis that it meets the three pre-conditions established in Article 16,1: that it has “no satisfactory alternative”; that the derogation “will not be detrimental to the maintenance of the whale populations at a favourable conservation status”; and that it is necessary to conduct whaling either to “prevent serious damage to fisheries” (for example, to protect fish from predation by whales), “for imperative reasons of overriding public interest, including those of a social or economic nature”, or “for research” (though scientific whaling).

Although case law of the European Court of Justice (ECJ) in respect to derogations to the Habitats Directive is limited, and no directly comparable situation (i.e. an overtly commercial hunt) has been tested by the ECJ, the Justices have confirmed in respect of the analogous Birds Directive that derogations must be interpreted and implemented restrictively to avoid undermining the primary conservation objectives of the Directive. **We strongly urge Member States to express a similarly restrictive and precautionary interpretation during the negotiations with Iceland; making it completely clear that any derogation to Article 12 to allow whaling is absolutely unacceptable and will be immediately and strongly challenged at the ECJ as a violation both of Article 12 and the conservation objectives of the Directive as a whole.**

For example, we would expect EU member states and the Commission to state preemptively during the accession negotiations that it rejects the argument that whales are a real threat to Iceland’s fish stocks, but that a derogation allowing the hunting whales in order to protect fish stocks (or research interactions between whales and fish), is inconsistent with the general objective of the Directive to provide greater protection to species that are listed in the annex to the Habitats Directive (and protected by the IWC) than to far more populous, unprotected species such as commercially exploited fish stocks.

Furthermore, we would expect EU member states and the Commission to deny that Iceland can claim that its whaling “will not be detrimental to the maintenance of the whale populations at a favourable conservation status”. In fact, the IWC has not accepted abundance estimates for the minke and fin whale populations that Iceland hunts and the Scientific Committee stated at the 2009 meeting that it was premature to adopt any estimates for the central North Atlantic stock of minke whales for use in generating any possible quotas, as the data presented were insufficient to reach a conclusion. The status of fin whale stocks has also not been determined by the IWC’s Scientific Committee although Iceland will refer to advice from the North Atlantic Marine Mammal Commission (NAMMCO) in an effort to justify its fin whale quotas. EU member states and the Commission must argue robustly that NAMMCO is not the legally competent international authority for the management of whales; it is a “closed door” regional organization open only to invited governments whose work cannot take precedence over that of the IWC and its Scientific Committee.

## International trade in whale products

Iceland’s domestic market for whale meat is small and for decades before the moratorium was adopted, it exported the majority of its whale meat to Japan. Even though not whaling at that time, Iceland took a reservation to the Appendix I listing of great whales when it joined CITES in 2000. Since whaling resumed, Iceland’s exports of whale products have increased, with nearly 82 tons of fin whale meat exported to Japan, 900 kg of minke whale meat to the Faroe Islands, and 90 kg of whale oil to Norway in 2008 alone. Both the Association of Minke Whalers and the Hvalur fin whaling company have publicly stated their intention to export their entire 2009 catches. There can be no doubt that Iceland’s ability to export legally is driving its high hunting quotas.

Export of whale products for primarily commercial purposes is prohibited by the EU’s Regulation to implement CITES (Council Regulation 338/97) and there is no provision in the EC regulations for a member state to take a reservation to listings on the Annexes (equivalent to the CITES’ Appendices)<sup>5</sup>. It is likely, however, that Iceland will claim that its reservation to the CITES Appendix I listings exempts it from the listing of whales on Annex A of the Council Regulation and that it can continue to export.

It is imperative that Iceland does not join the EU still holding its reservation to the CITES Appendix I listing. **We strongly urge EU member states and the Commission to insist as a precondition of membership that Iceland first revoke its CITES reservations.**

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<sup>5</sup> However, Denmark negotiated an exemption for Greenland which is not a member of the EU