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March 14, 2014

H.E. Marcos Vinicius Pinta Gama

IWC Commissioner for Brazil,

(rebraslon@itamaraty.gov.br)

Dear Commissioner Gama:

This communication is in response to the letter from the Permanent Representative of Brazil to International Organizations in London dated December 9, 2013 concerning an International Workshop to be held 19-21 March 2014 on the proposal to create the South Atlantic Whale Sanctuary. The letter from the Permanent Representative, which invites all IWC Commissioners to the workshop, was circulated by the Secretary of the International Whaling Commission (IWC) as an attachment to IWC.ALL.203 dated December 12, 2013.

Since the Government of Japan is unable to send a representative to the workshop this time, we would like to submit our comments on the proposal to establish a South Atlantic Whale Sanctuary as attached to this letter. We would like to request that the attached document be made available to the workshop participants and also be included accordingly in a report of the workshop if such report is produced.

The Government of Japan continues to look for ways to manage whales in accordance with the Articles of the ICRW and looks forward to balanced and meaningful discussions on this issue.

By copy of this letter and attachment to the Secretary of the IWC, I am requesting that they be circulated to all IWC Commissioners.

Sincerely;

Joji Morishita

IWC Commissioner for Japan

cc: Simon Brockington, Secretary to the IWC

Comments on the proposed South Atlantic Whale Sanctuary

Submitted by the Government of Japan to the International Workshop on
the South Atlantic Whale Sanctuary
19 to 21 March 2014

Although Japan indicated in the past its willingness to accept the establishment of a South Atlantic Sanctuary as a compromise in order to form a consensus in the IWC normalization process, Japan firmly believes that the establishment of Sanctuaries irrespective of the stock is not compatible with the ICRW, which requires decisions to be based on scientific data.

History of the IWC Sanctuaries

A number of amendments have been made to the Schedule of ICRW *without* agreed scientific advice provided by the Scientific Committee, such as the addition of Paragraphs 7(a) and 7(b) in 1979 and 1994 (the Indian Ocean Sanctuary and the Southern Ocean Sanctuary) and paragraphs 10(d) and 10(e) in 1979 and 1982 (Moratoria on Factory Ships and on Commercial Whaling).

It is also to be noted that during the period 1972-1982, between the time when the commercial whaling moratorium proposal was first rejected by the IWC and the time when the Moratorium was finally adopted, there was a significant increase in the number of the Contracting Governments. Of the 25 members who voted for the adoption of the Commercial Whaling Moratorium in 1982, 18 were members who joined the IWC during this period¹.

The increase in the proportion of anti-whaling countries among the Contracting Governments meant that, if they wanted to pursue an anti-whaling agenda within the framework of the IWC, there was an increased likelihood that they would succeed, albeit without agreed advice by the Scientific Committee. In doing so, they tended to underrate the importance of science-based management, the core principle of the ICRW.

¹ IWC website, <<http://www.iwcoffice.org/commission/members.htm#members>> accessed 14 February 2012 *See also*, Verbatim Record (19-24 July 1982), p 86

This created mounting political difficulties for the IWC, and resulted in the implementation of conservation and management measures without agreed advice by the Scientific Committee, as exemplified by the adoption of the Indian Ocean Sanctuary in 1979² and the Southern Ocean Sanctuary in 1994.³ The Southern Ocean Sanctuary did not meet the requirements of Article V of the ICRW and thus did not contribute to conservation and management purpose of the IWC, as it was implemented “irrespective of the conservation status of baleen and toothed whale stocks in this Sanctuary, as may from time to time be determined by the Commission”⁴

In 2004, the Scientific Committee carried out a major review of the Southern Ocean Sanctuary. As part of that review process, the Committee commissioned a review by a group of outside experts.⁵ The independent experts concluded that:

- “Overall, the SOS – and IWC Sanctuaries in general – are not ecologically justified.”
- “The SOS is based on vague goals and objectives that are difficult to measure,”
- “lacks a rigorous approach to its design and operation, and does not have an effective monitoring framework to determine whether its objectives are being met.”
- “The SOS represents a “shotgun” approach to conservation, whereby a large area is protected with little apparent rationale for the boundary selection and management prescriptions within the sanctuary.”
- “While a vast array of ecosystem-level and precautionary conservation benefits have been invoked for the establishment of the SOS, in reality this large-scale sanctuary does little more than provide a false sense of security by assuming that protections for whale populations are in place.”

Within the Commission, no consensus has been reached over the general value of sanctuaries or the value of specific sanctuaries.

² “Chairman’s Report of the Thirty First Annual Meeting”, *Rep. int. Whal. Commn* 30, 1980, p 27; see also, “Report of the Scientific Committee”, *Rep. int. Whal. Commn* 30, pp 48-49

³ Chairman’s Report of the Forty-Sixth Annual Meeting, *Rep. int. Whal. Commn* 45, 1995 pp 27-28

⁴ Schedule, Paragraph 7(b)

⁵ M A Zacharias, L R Gerber and K D Hyrenbach, “Incorporating the Science of Marine Reserves into IWC Sanctuaries: The Southern Ocean Sanctuaries”, SC/56/SOS5 (2004), p 2

As to the Indian Ocean Sanctuary, the Scientific Committee made a similar observation. The Committee was unable to reach a consensus view in its review of the Indian Ocean Sanctuary, noting that its review was not helped by the fact that the scientific objectives for the sanctuary were not clearly spelled out.⁶

The Commission has received proposals for Sanctuaries in the South Pacific (initially in 1999) and South Atlantic (initially in 2001). These proposals or modifications of them have been submitted on a number of occasions since then. Proposals for the establishment of a South Atlantic Whale Sanctuary have been submitted to the IWC and rejected or withdrawn from voting each year between 2001 and 2008 as well as in 2011 and 2012.

Japan's position on the proposal to establish a South Atlantic Sanctuary

Japan is of the view that the conclusions of the independent experts that reviewed the Southern Ocean Sanctuary in 2004 referenced above apply equally to the proposal for the establishment of a South Atlantic whale sanctuary.

Japan notes that the Scientific Committee of the IWC has not recommended the establishment of a sanctuary in the South Atlantic as a required conservation or management measure.

Japan also notes that sanctuaries are redundant because the moratorium on commercial whaling is currently in place and that when the moratorium is lifted, the risk-averse Revised Management Procedure (RMP) will provide the required protection.

Most importantly, the establishment of a South Atlantic whale sanctuary would be a contravention of Article V of the ICRW that requires regulations to be necessary to carry out the objectives and purposes of the Convention, to be based on scientific findings and to take into consideration the interests of the consumers of whale products and the whaling industry.

⁶ Chair's Report of the 54th Annual Meeting, *Annual Report of the International Whaling Commission 2002*, pp 31-32

Points discussed on the establishment of a sanctuary in the South Atlantic in the IWC meetings

- Protecting all species irrespective of their population status is not a science-based approach to management. Management should be based on a stock-by-stock approach.
- The proposed sanctuary is not ecologically justified. It is based on vague goals and objectives that are difficult to measure and does not have an effective monitoring framework to determine whether its objectives are being met.
- The IWC Scientific Committee has not recommended establishment of a South Atlantic whale sanctuary as a necessary conservation measure. Whales in the South Atlantic are already fully protected.
- Establishment of a South Atlantic Sanctuary is not required to promote research.
- Establishment of sanctuaries without a conservation need is contrary to the object and purpose of the Convention which is to manage the sustainable use of whale resources. The principle of sustainable use of resources is the world standard.
- The proposed sanctuary is not required since no whaling will occur within the EEZs of the bordering countries and because any future whaling on the high seas within the proposed sanctuary area would be based on a precautionary Revised Management Procedure.
- The proposed sanctuary would not promote the whale watching industry since at least initially, it will not apply to waters under the national jurisdiction of coastal states within the area (with the exception of Brazil).
- Establishment of the proposed sanctuary would be illegal since it does not meet the requirements of Article V of the Convention.

(END)