

## Annex E

# Report of the Revised Management Scheme Working Group

Wednesday 15 June 2005, Ulsan, Korea

A list of participants is given as Appendix 1.

### 1. INTRODUCTORY ITEMS

#### 1.1 Appointment of Chair

Henrik Fischer (Denmark/Chair of the Commission) was appointed as Chair of the Revised Management Scheme (RMS) Working Group. He welcomed delegates to the meeting, especially those from governments that had adhered to the International Convention for the Regulation of Whaling since IWC/56 last year.

#### 1.2 Introductory remarks and objectives of the meeting

The Chair drew attention to the Terms of Reference for the Working Group, given in Resolution 2004-6 adopted last year, i.e. to:

- (1) complete work on the RMS package, with the goal of having a finalised RMS text ready for consideration, including for possible adoption, at IWC/57, and/or to identify any outstanding policy and technical issues;
- (2) take account of delegates' comments at IWC/56, as well as written submissions from delegates; and
- (3) provide guidance to, and to review the work of, the Small Drafting Group.

He noted that Items 2 and 3 were relevant to the intersessional work that had taken place since IWC/56 in Sorrento and have already been addressed. Consequently, he suggested that this meeting of the Working Group should focus on the first item.

#### 1.3 Appointment of rapporteurs

Nicky Grandy and Greg Donovan from the IWC Secretariat were appointed as rapporteurs.

#### 1.4 Review of documents

The documents presented to the Working Group are listed in Appendix 2. Noting that the reports from the intersessional meetings of the Working Group and Small Drafting Group (SDG) were made available to Contracting Governments principally via IWC's website, concern was expressed by one delegate that this puts delegations without access to the internet at a disadvantage. The Secretariat reported that its policy is to send copies of all pre-circulated documents to Contracting Governments by email or post on request, but that documents can also be obtained from the Secretariat office at the meeting.

### 2. ADOPTION OF THE AGENDA

The Agenda given in Appendix 3 was adopted.

### 3. COMMENTS ON THE REPORTS FROM THE RMS WORKING GROUP AND SMALL DRAFTING GROUP

#### 3.1 Overview of intersessional work

Prior to addressing comments on the reports, the Chair invited the Secretariat to give a brief overview of the intersessional work since IWC/56, particularly for the benefit of those who were not able to participate in any of these activities.

The Secretariat reminded the Group that Resolution 2004-6 had anticipated two meetings of the Working Group and SDG prior to IWC/57. The Terms of Reference of the Working Group for this intersessional period are given under Item 1.2 above.

The Terms of Reference for the Small Drafting Group (SDG) were as follows:

'Under the auspices of the RMS Working Group the SDG will have the following responsibilities:

- (1) to prepare a consolidated draft text for the replacement of parts of Chapters V and VI of the current Schedule;
- (2) to prepare consolidated draft text on other related issues in the RMS package;
- (3) to utilise the Chair's proposal (IWC/56/26) and his statement (IWC/56/28), as a framework for this work; and
- (4) to rearrange, revise and renumber paragraphs in the draft text for Chapters V and VI as appropriate but not to attempt to merge them with other parts of the Schedule.'

The RMS Working Group was open to all Contracting Governments and observers while the SDG comprised 12 countries: Argentina, Denmark, Dominica, Rep Guinea, Iceland, Japan, Netherlands, New Zealand, South Africa (who later withdrew and were replaced by Germany), Sweden, UK and the USA.

It had been anticipated that there would be two meetings of the RMS Working Group and of the SDG before IWC/57 with a further meeting of the RMS Working Group in Ulsan. In addition the need for the establishment of technical specialist groups was recognised. In the event, the first RMS meeting was held in Borgholm from 29 November to 1 December 2004, at the kind invitation of the Government of Sweden (and co-sponsored by the Netherlands); this was immediately followed by a two-day meeting of the SDG. The second RMS meeting was held in Copenhagen from 30 March to 1 April 2005, at the kind invitation of the Government of Denmark; this was followed by a further two-day SDG meeting.

At the first meeting, the main topics considered were: practical mechanisms for adopting an RMS; what elements should comprise an RMS package; the development of instructions to the SDG; and the development of instructions to the technical specialist groups.

With respect to the first item, two approaches were considered. The first was to create a single draft RMS text that includes all of the options proposed using square brackets that could be voted upon paragraph-by-paragraph. The second was to develop complete text for one or more scenarios/packages reflecting the different views on what an RMS should contain, such that the package(s) could be voted on as a whole. More support was given for the first approach in the discussion, although some concern was expressed that this could lead to an RMS with internal contradictions.

The discussion of what elements might comprise a final RMS package took as its starting point the Chair's proposal. In that the following elements were proposed:

- (1) the RMP as endorsed by Commission;
- (2) a phase-in of commercial whaling with it initially being restricted to national waters;
- (3) a national inspection and international observer scheme that was largely the same as the one developed by an earlier expert drafting group;
- (4) additional catch verification measures involving national DNA registers/market sampling with international oversight, a resolution to deter IUU whaling and a national catch documentation scheme assisted by the IWC if required;
- (5) a Compliance Review Committee with terms of reference that had been largely developed by an earlier expert drafting group;
- (6) a mechanism to apportion costs, with some being shared and others allocated to the whaling nations;
- (7) a link between an agreed RMS and the lifting of Paragraph 10(e) provided that whaling only took place under the full RMS;
- (8) a voluntary code of conduct for scientific whaling; and
- (9) animal welfare issues reflected in general text in Schedule plus the voluntary provision of data and an agreed research programme to improve killing techniques.

The Borgholm meeting then took each of these elements and reviewed them in the light of written comments from member governments and comments from the floor. For all of these elements, views were expressed by at least some countries that did not support the Chair's proposal. It was agreed that rather than trying to reach compromises on these it was preferable to develop further options for consideration by the SDG. The floor was also open for additional issues or elements to be raised and these included discussion of the inclusion of a 'statement of principle' and an explicit consideration of sanctuaries.

The Borgholm meeting also agreed to establish four technical specialist groups: Vessel Monitoring Systems (VMS); DNA/market sampling; code of conduct for scientific permit whaling; and animal welfare issues.

The VMS group was asked to consider whether VMS was needed on all vessels given IWC requirements, the advantages and disadvantages of national and centralised systems, possible technical specifications and associated costs. The group was led by Iceland and its report (IWC/57/RMS3 Annex II.D) was developed by email.

The group examining DNA registers/market sampling was asked to develop specifications for diagnostic registers, mechanisms for avoiding fraudulent claims and for ensuring transparency/audit/oversight, and to look at the advantages and disadvantages of centralised tissue and

DNA profile archives compared to just a profile archive. This group was led by the USA and it met in La Jolla, California in March 2005. Its report is given as IWC/57/RMS3 Annex II.E.

The group considering a code of conduct for scientific whaling comprised the Chair and Vice-Chair of the Scientific Committee and the Head of Science. It worked by email and its report is given as IWC/57/RMS3 Annex II.H.

The group looking at animal welfare issues was originally led by the UK but later was led by New Zealand. Its tasks were to develop specifications: to give effect to Chair's proposal; for the compulsory collection of data by international observers of all whales killed under the RMS; and for prescribed killing methods and conditions under which whales could be killed under the RMS. The report of the group is given as IWC/57/RMS3 Annex II.I

At the first meeting of the SDG, text was drafted for those issues for which instructions had been given. In addition New Zealand and Sweden agreed to undertake some additional work on possible catch documentation systems.

The second meeting of the RMS Working Group in Copenhagen reviewed the work of the technical groups, undertook a further discussion of each element, developed further instructions for the SDG and identified further work to be undertaken prior to IWC/57 to aid the formulation of text for some of the options proposed. This included the finalisation of the technical specifications for DNA registers/market sampling (by the same earlier technical group), the further elaboration of the IWC catch document scheme (New Zealand and others), an exploration of the nature of additional compliance measures possible within context of the Convention (UK and others) and the development of minimum conditions for hunting (UK and others). The need for further technical specifications for VMS was recognised but no group was established at this second meeting.

In summary, during the intersessional period, progress was made in developing better description of, and technical specifications for, some of the possible RMS package elements. However, at the same time there was no consensus on either what elements should be part of a package or indeed on a single option for any of the possible elements. In fact one result of the intersessional work was an increase in the number of options for most of the potential elements of an RMS.

### **3.2 Comments on the reports**

There was only a brief discussion under this item in Ulsan. Japan commented that it had some problems with one of the options regarding the question of Paragraph 10(e) in IWC/57/RMS4, particularly with respect to the apparent attempt to limit the right to objections. Norway added that it believed that Paragraph 10(e) should be removed as soon as an RMS was agreed. The Chair noted that such an option could be added to the list in IWC/57/RMS4.

## **4. PROGRESS WITH FURTHER TECHNICAL WORK**

### **4.1 The 'blue box'**

At the Copenhagen meeting, Norway had indicated that it was developing an Automated Electronic Monitoring

System (colloquially known as the 'blue box') to monitor whaling operations that would obviate the need to have national inspectors on each vessel. At this meeting, Dr Egil Øen presented information on the blue box and on the results of trials carried out during whaling operations. Details can be found in Appendix 4. In summary, the blue box comprises an independent GPS (that can monitor position and time – and thus speed and course – of the vessel) and a series of sensors (calibrated for individual vessels) that can identify when a harpoon has been fired and when a whale has been hauled alongside and onto the vessel. Data are encrypted. Blue box development work began in 2001 and field trials on 13 vessels took place in 2004. As a result, some modifications have been made and further trials with 29 vessels are taking place. The development programme is expected to be completed in 2005.

The Working Group thanked Norway for its interesting presentation. In response to a number of questions relating to the role of the blue box and the possibility of fraud, Norway clarified that its intention was that the final version of the blue box would replace national inspectors on every vessel, although there would be monitoring checks by inspectors during the season. In addition, the data from the blue box will also be checked for consistency against the detailed log books that must be filled out by each skipper. It noted that it would be extremely difficult for a skipper to fabricate the logbook information such that it matched the blue box data. There are also a number of inbuilt monitors that can restart the system in case of failure and can detect whether the box has been unlawfully tampered with.

A number of delegations (UK, Australia, New Zealand, Germany, Spain) expressed concerns that the blue box would not be able to collect all of the information about the hunt that they believed to be necessary. Many of these centred on animal welfare information such as verification that penthrate grenades are used, information on the secondary killing methods used (including number of rifle shots and the position of those shots) and data on time to death. With respect to the last point, Australia questioned whether the current time-to-death results from the hunt would continue if the incentive of an inspector being on board was removed. New Zealand queried whether the presence of a blue box would have prevented the case of the 15 minute, 7 rifle shot hunt referred to in the WKM &AWI meeting. They also noted that the system would not be able to confirm the species of whale caught or whether the animal was a pregnant or lactating female.

Norway responded that the blue box was just one part of the overall national inspection scheme. A numbering system for the grenades is in place and the crew is obliged to retain parts of fired grenades; this information is checked when the vessel returns to port. It also noted that the present killing methods are the result of an intensive programme lasting over 25 years and the results on instantaneous death in some 80% of the animals are exceptional for a wild animal hunt, although efforts to improve the system will continue. However, given this, it does not believe that it is necessary to continue to collect time-to-death data independently for all animals killed. Similarly, information on the number of rifle shots seems to be unnecessary when it is known that one well placed shot is sufficient to give the coup de grace. Norway stressed that whalers do not require inspectors to provide an incentive to kill animals quickly and humanely; all whalers wish to kill

animals as quickly as possible with as little suffering as possible. It was disappointed that once again certain countries continue to ask questions that imply that whalers have different standards to other members of society with respect to animal welfare issues. With respect to the case cited by New Zealand, Norway noted that the presence or absence of an inspector was irrelevant. It was not able to comment in detail on the case as Dr Øen would be interviewing the skipper to discover the precise situation surrounding the hunt of that animal on his return to Norway. However, it noted that exceptions occur when any animals are being killed, be it in hunts or slaughterhouses. All animals caught in the Norwegian hunt have DNA samples taken that *inter alia* can be used to confirm species identification. Although most female common minke whales in Norwegian waters are pregnant, lactating females and calves are not seen.

Some countries (Japan, Korea, Guinea) congratulated Norway on the system it had developed, noting that many other fisheries bodies are moving towards automated monitoring systems and they urged Norway to publish information on the system more widely. Guinea also noted that it was a particularly valuable system for small boats. In response to a question Norway commented that the approximate price of the system would be less than £8,500 depending on the particular specifications (e.g. number of sensors) and including installation and configuration.

#### 4.2 DNA register/market sampling scheme

The Secretariat briefly summarised the work of the SGDNA (Technical specialist group on DNA registers and market sampling schemes). The SGDNA comprised scientists from Iceland, Japan, Netherlands, New Zealand and the USA, as well as the Head of Science from the Secretariat. It met at the kind invitation of the USA at the Southwest Fisheries Science Center in La Jolla. Its report, given as Annex I.I.E in IWC/57/RMS3, was presented at the RMS Working Group meeting in Copenhagen. As a result of discussions there, instructions were given to the small drafting group (see Annex 7 of IWC/57/RMS4). The primary drafting options considered were for either a centralised system or a national system with international audit. It was noted that the technical specifications for both options are essentially the same, the primary differences relate to who is responsible for carrying them out. Given this, the Head of Science developed draft text for a 'dated' Appendix called 'Specifications and Requirements for Diagnostic DNA Registers and Market Sampling Schemes' – given as 'Appendix {DNA}' to Annex 7 of IWC/57/RMS4. The aim was to develop text with as few square brackets as possible and indicating where decisions of the Commission are needed. Following the Copenhagen meeting the draft was circulated to the members of the SGDNA who agreed with the text. Little further technical work is possible until the Commission decides which option, if any, it wishes to include in the RMS.

The Working Group thanked the SGDNA for its work. On a point of clarification, it was noted that the question of access to the samples themselves by experts from Contracting Governments was not considered in detail by the SGDNA (although see Item 9 of Annex I.I.E in IWC/57/RMS3). However, the level of access will depend on which option (national or international) is chosen; most of the discussion in the SGDNA had centred on access to the DNA profiles.

### 4.3 Catch documentation and labelling schemes

Issues relating to catch documentation schemes were discussed in Borgholm and Copenhagen and the work of the SDG can be found in Annex 8 of IWC/57/RMS4. Options considered were the Chair's proposal for a national scheme (with a voluntary IWC pro forma) and a full IWC-operated scheme including product labelling. The question of whether this should be to point of entry/landing, wholesaler or retailer was left open. At the present meeting, New Zealand introduced an updated version (IWC/57/RMS7) of the IWC scheme discussed in Copenhagen that had been prepared by New Zealand, Sweden and the UK. This has been included as Appendix 5 to this report.

The Working Group thanked the authors for their interessional work. After a suggestion from the USA that there be consistency in the wording between the proposed Schedule text and the Annex pertaining to the exemption for aboriginal subsistence whaling, discussion within the Working Group centred on two issues previously considered: the relationship with CITES documentation; and the competence of the IWC with respect to trade related matters.

Some countries (e.g. Norway, Iceland) commented on the need to avoid overlap with the documentation requirements of CITES; they believed that unnecessary duplication would merely add an additional burden on whaling countries to no appreciable benefit. New Zealand responded that it had examined the CITES form and concluded that the requirements of the IWC in this context would be different from those of CITES. Given the fixed nature of the CITES documents it believed that it was appropriate to keep the two systems separate. The UK added that if commercial whaling were to resume, it was possible that changes in the CITES listings would follow and that CITES documentation may no longer be a requirement. It also noted that an IWC scheme would aid traceability. Under such circumstances it seemed appropriate to develop an IWC scheme.

The issue of the competence of the IWC in trade-related issues has long been discussed. Japan re-iterated its long-held view (shared by many others) that such matters are outside IWC competence. In this context it commented that many aspects of the proposals being considered conflicted with this position. However, it noted that it has its own regulations relating to labelling and traceability of products, and that it was prepared to share such information on a voluntary basis. Sweden, the UK, Australia and New Zealand stressed that in their view the issue was not one of monitoring trade per se but rather of using this as a compliance tool to ensure that IWC rules were not being broken and that breaches were identified. Iceland remarked that in its view, the use of the words 'The export, import or re-export of whale products without a certified Catch Document is prohibited' indicated that the measure certainly was about IWC control over trade. While there was no agreement on this issue, New Zealand indicated that it was pleased to note that Japan was willing to share information on its domestic scheme; it would welcome suggestions from any delegations on improvement to the present draft.

### 4.4 Options for compliance mechanisms under the RMS

The issue of the IWC's role in setting penalties and imposing sanctions with respect to infractions was

discussed extensively in Borgholm and Copenhagen. It had been agreed (IWC/57/RMS3 p.45) that a group comprising the UK, Australia, Argentina and New Zealand would develop a discussion document exploring the measures the Commission may be able to take in this regard under the Convention. The UK introduced IWC/57/RMS6 (now included as Appendix 6 to this report). The paper examined developments in international environmental and fisheries agreements, looked at the basis for a compliance procedure under the IWC Convention and proposed some key components for an IWC compliance scheme. In the paper, the key components identified were: reporting and monitoring obligations; verification procedures; and non-compliance response. It proposed *inter alia* that the Compliance Review Committee should:

- (1) be able to consider how effectively Contracting Governments have fulfilled their obligations with respect to investigating alleged infractions thoroughly and ensuring that violators are deprived of the benefits of non-compliance;
- (2) be able to recommend to the Commission that information on vessels committing infractions be shared and that revocation of vessel licences/registration be considered; and
- (3) be able to make recommendations to the Commission on a reduction in quotas in response to non-compliance (including to zero in extreme cases).

It also considered that quotas should be set for three year blocks and that they automatically revert to zero at the end of the block, with the Commission taking into account the views of the Compliance Review Committee before new quotas are set. The UK noted that this approach may be an alternative to considering a change to the Convention.

Iceland asked if it was a correct understanding of the paper that it did not foresee binding decisions by the IWC but rather non-binding recommendations, noting that if so, this marked a positive change from discussions in Copenhagen where some had suggested IWC decisions on minimum standards for punishments. The UK confirmed that this was a correct understanding, adding that there would be a gentleman's agreement that decisions would stand.

Some countries expressed reservations (e.g. because of questions related to the compatibility of suggestions in the paper with the Convention) and/or suggested that they needed more time to consider the paper further (Japan, Iceland, Norway). Sweden indicated its broad support for the paper. Others (New Zealand, Australia, Argentina, Brazil, Chile, Germany) also broadly supported the paper and they believed that emphasis should be given to the development of a binding compliance mechanism and that progress could be made on this interessionally. Argentina, Australia and the USA agreed to work with other countries to form a scoping group to determine how this might best be achieved.

### 4.5 Animal welfare issues

The UK introduced IWC/57/RMS5 (included in this report as Appendix 7). At the Copenhagen meeting (see Annex 12 of IWC/57/RMS4) the UK had agreed to develop text on a set of minimum standards that incorporate welfare conditions when specifying whale killing techniques. They put forward this document as providing a suitable structure

for such text, while recognising that further research was necessary.

## **5. ASSESSMENT OF PROGRESS WITHIN INTERSESSIONAL WORK IN RELATION TO RESOLUTION 2004-6**

### **5.1 Outstanding policy and technical issues**

Resolution 2004-6 had charged the Working Group to complete work on the RMS package, with the goal of having a finalised RMS text ready for consideration, including for possible adoption, at IWC/57, and/or to identify any outstanding policy and technical issues.

There was some consideration as to how best to review progress and identify outstanding issues. The Secretariat had developed a summary table of general issues (e.g. elements to be considered as part of an RMS package) and specific issues (for each of the proposed elements) identifying where there were outstanding policy and technical issues, as a possible way to help structure and stimulate the discussions.

Brazil expressed its concern with this approach. It believed that producing a summary table marginalised the extensive discussions that had taken place and that were recorded in IWC/57/RMS3 and 4. In particular, it strongly believed that its view of the overall value of sanctuaries and its right to the non-lethal use of whales should be highlighted before any discussion on individual elements in the context of an RMS. Argentina and Chile supported the position of Brazil with respect to the importance of non-lethal management being adequately recognised as part of a broad agreement.

The Secretariat reiterated that the table had been developed as an aid to discussions not to suppress such discussions and indeed the general issues items at the start of the table had been intended to allow such overarching principles to be discussed. If the table did not fulfil a useful function then it was happy for it to be withdrawn. It also noted that it was not intended that the summary should replace the existing extensive material and that it was intended to include references to IWC/57/RMS3 and 4 in any updated table.

With this clarification, and noting Brazil's comments on non-lethal use, the Working Group then went on to review the table to ensure that it captured the various options and outstanding issues adequately. It was agreed that the table should not include any commentary or evaluation. Table 1 represents the result of these discussions.

### **5.2 General comments**

At the end of the meeting there was a general discussion of the status of discussions on the RMS and possible ways forward, comprising largely of statements by individual countries. Rather than try to provide a verbatim record of those statements, this section of the report summarises the main general points made.

#### *Comments on the Chair's proposal*

A wide range of views were expressed over the value of the Chair's proposal. A number stated that they broadly welcomed the proposal as a constructive way forward, even though they may have reservations on one or more aspects of the proposal (e.g. see comments on Scientific Permits below). Some of these noted that no alternative to the

Chair's proposal exists and that it therefore remains the only possible alternative to letting the whole RMS process collapse. Other delegations were unhappy with many or even all aspects of the proposal and did not believe that it represented a basis for future discussions. Their views on some individual items are given below.

#### *Comments on the progress of RMS discussions*

Several delegations expressed their concern that after 10 years of discussions, the Commission was still not close to a consensus RMS. They stated that international regulation of whaling was essential and believed that the present situation was not acceptable. Some commented that they believed that many of the issues that were being raised were outside the bounds for a discussion of ensuring sustainable whaling and were intended to slow down progress. In this context some delegations believed that views expressed by some countries that commercial whaling was never acceptable were in contradiction with the aim of the Convention. Other delegations commented that although they were opposed to commercial whaling, they were completely within their rights to participate fully in discussions to ensure that if commercial whaling was ever to resume, it was undertaken under a regime that as a minimum represented best international practice, and preferably, given the history of whaling, set new standards. In response, one delegation pointed out that the situation today with regard to whaling (where it is almost exclusively aimed at meat for human consumption, with a limited market) is completely different to previous large-scale whaling in the Antarctic where the demand for oil was immense.

#### *Comments on special permit whaling*

Many delegations expressed the view that a voluntary code of conduct on scientific permit whaling was not sufficient, although how to develop a mechanism to achieve a binding agreement (e.g. on a phase-out of scientific permit whaling) was unclear. Several stressed that this issue was the most important feature of RMS discussions to their delegations. A number of delegations expressed their concern that catches would be even higher if an RMS was introduced without a restriction on scientific permit whaling. Other countries noted that Article VIII of the Convention is perfectly clear on the sovereign rights of states to issue special permits for scientific research, although they can accept the concept of scientific guidelines. They noted that if an RMS was introduced, for those species/stocks for which commercial whaling was allowed catches by scientific whaling would be subtracted from total allowable takes to give the commercial catch limits. It was observed that this would not apply to protected species/stocks. New Zealand reiterated its view that it was not acceptable to have unlimited whaling using the special permit provisions as well as an RMS – it believed that it was disingenuous of Japan to suggest otherwise.

#### *Comments on other high priority issues*

A number of delegations highlighted those areas which they believed were of particular importance in reaching agreement over an RMS package. These include the linkage (or otherwise) between an agreed RMS and the lifting of Paragraph 10(e); the apportioning of costs; animal welfare issues; compliance; and sanctuaries in the context of non-lethal management of whale resources.

Table 1			
Summary of status of present discussions and outstanding issues presented in response to Resolution 2004-6. Note: readers are referred to the extensive discussions of these items in IWC/57/RMS 3 (RMS Working Group) and 4 (Small Drafting Group) for a full consideration of the issues.			
Issue/element	Brief summary	Outstanding issues remaining	
		Policy	Technical
RMS 'Package' IWC/57/RMS3	There is still no agreement on what elements should comprise an RMS package.	Yes	No
RMS adoption procedure IWC/57/RMS3, p. 5	Should any prospective RMS be voted upon as a complete package or packages, or should a paragraph by paragraph approach be adopted. There are also practical implications as to how the voting should take place.	Yes	Yes (voting mechanism)
Statement of principle IWC/57/RMS3, pp. 5-6; 37 (IWC/57/RMS4, Annex 4)	Options: (1) no statement; (2) short statement; (3) and (4) one of two longer statements.	Yes	No
RMP IWC/57/RMS3, pp. 6-7; 37-8 (RMS 4, Annex 5)	Options: (1) RMP as currently agreed; (2) RMP with different tuning level. Possible addition: text regarding periodic review of RMP.	Yes	No (although yes if Norway proposes a case-specific <i>CLA</i> )
Phased in approach to whaling once RMP implemented IWC/57/RMS3, pp.7-8; 38-9 (RMS 4, Annex 5)	Options: (1) No phase-in; (2) No 'high seas whaling'; (3) Limited to national waters for initial period. Possible addition: compensation mechanism	Yes	Yes to specify compensation mechanism
Sanctuaries IWC/57/RMS3, pp. 25; 48-9 (RMS 4, Annex 5)	Options: (1) Not necessary as part of RMS, existing provisions clear; (2) Proposed text on sanctuaries.	Yes	No
National Inspection and International Observers IWC/57/RMS3, pp. 8-11; 39-41 IWC/57/RMS3, Annex IID (RMS 4, Annex 6) This report Item 4.1 and Annex D	Options: (1) As proposed by EDG with some later updates (takes into account issues relating to very small vessels); (2) All vessels must have an international observer irrespective of vessel size; (3) VMS only on very small vessels; (4) VMS on all vessels even where observer present; (5) No specification of nature of national inspection QQ of priority between national inspector and international observer; QQ on national or international VMS system; QQ on real-time or periodic reporting.	Yes	Yes: further work on technical specifications for VMS
DNA registers/market sampling IWC/57/RMS3, pp. 11-16; 41-3 IWC/57/RMS3, Annex IIE RMS4 Annex 7 This report Item 4.2	Options: (1) national schemes with international audit; (2) centralised IWC system; (3) not included.	Yes	Most work done irrespective of options chosen, but some further specification needed linked to policy decisions
Legal deterrence of IUU whaling IWC/57/RMS3, pp. 16; 43 (RMS4 Annex 8, 1)	Options: (1) Resolution, with commitment; (2) Incorporation into Schedule.	Yes	No
Catch documentation scheme IWC/57/RMS3, pp. 16-17; 43-44 IWC/57/RMS3, Annexes IIF and G (RMS4 Annex 8, 2) This report Item 4.3/Annex E	Options: (1) National scheme; (2) IWC scheme (see RMS7); (3) No scheme; QQ To which point in process does scheme apply (point of entry/landing/wholesale/retail).	Yes	Further work needed depending on policy choice
Compliance monitoring IWC/57/RMS3, pp. 16-17; 44-5 (RMS4 Annex 9) This report Item 4.4 and Annex F	Options: (1) Compliance review committee as agreed by EDG; (2) Infractions Committee; (3) Change to Convention* QQ Level of IWC involvement in setting penalties; QQ Implications of RMS 5.	Yes	Yes (legal issues with respect to penalties and sanctions)
Costs IWC/57/RMS3, pp. 19-20; 45-46 (RMS 4, Annex 10)	Options: (1) Chair's proposal for cost sharing; (2) All by whaling countries; (3) Factor in membership contributions; (4) Core (IWC) plus rest to whaling countries	Yes	Yes in terms of identifying actual costs (depends on several policy decisions) and nature of contributions scheme, etc.
Link between RMS and 10(e) IWC/57/RMS3, pp. 20-23; 46 (RMS 4, Annex 11)	Options: (1) Link to ensure whaling only carried out under RMS (i.e. to avoid objections) (2) Two-stage approach – first adopt RMS, then soon after 10(e); (3) Retain 10(e) but gradual exemptions; (4) No link (5) Direct link	Yes	Yes in terms of options seeking to avoid problems associated with trust and objections
Animal welfare considerations IWC/57/RMS3, pp. 24-25; 47-48 IWC/57/RMS3, Annexes II I & J (RMS 4, Annex 12)	Options: (1) General <i>Schedule</i> paragraph plus voluntary data submission and regular workshops/co-operative research programme; (2) Specific <i>Schedule</i> text on data collection and conditions for hunting; (3) Not included	Yes	Yes if a co-operative research programme is to be developed or if final <i>Schedule</i> specifications are to be developed
Scientific permits IWC/57/RMS3, pp. 23-4; 46-7 IWC/57/RMS3, Annex II.H	Options (1) Voluntary code of conduct (2) Binding code of conduct (3) Phasing out via protocol* (4) No reference to scientific whaling as part of an RMS.	Yes	Yes if final codes are to be developed

\*This is outside the Terms of Reference of the RMS Working group but mentioned during the WG meetings.

*Comments on the need for discussions to be taken to the next political level*

Some countries noted that the impasse over some important issues despite many years of negotiating within the IWC were such that other approaches should be considered (e.g. a diplomatic conference, discussions at ministerial level). The Russian Federation added that some aspects of some of the proposed RMS package elements implied changes to the Convention; this is not within the competence of the IWC and would need to be addressed by a diplomatic conference.

### 5.3 Conclusions

In the absence of any response from the floor, the Chair concluded that the RMS Working Group was not in a position to put forward a 'finalised RMS text ready for

consideration, including for possible adoption' at the plenary session. He therefore proposed that he would refer the plenary to its discussions of outstanding policy and technical issues. In response to a question from the USA, the Chair stated that he would not be putting a proposal for RMS text forward to the Plenary as Chair. Japan indicated that it may put forward proposed text and that it will consult with as many members as possible over this.

## 6. OTHER MATTERS

No other matters were raised.

## 7. ADOPTION OF THE REPORT

The report was adopted on Saturday 18 June 2005.

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## Appendix 1

### LIST OF PARTICIPANTS

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#### Australia

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Leif Fontaine  
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**Saint Kitts and Nevis**

Ian Liburd  
Josephs Simmonds

**Saint Lucia**

Vaughn Charles  
Jeannine Rambally

**Saint Vincent and The Grenadines**

Raymond Ryan

**Senegal**

Thiam Moustapha

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**Solomon Islands**

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**Switzerland**

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**Tuvalu**

Simeti Lopati  
Tupulaga Poulasi

**UK**

Richard Cowan  
Laurence Kell  
Jennifer Lonsdale  
Trevor Perfect  
Mark Simmonds

**USA**

Roger Eckert  
Maggie Hayes  
Cheri McCarty  
Daniel Morast  
Rolland Schmitt

**Appendix 2**

**LIST OF DOCUMENTS**

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3	Chairs' Reports of the RMS Working Group Meetings	
4	Chairs' Reports of the meetings of the RMS Small Drafting Group	
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6	Paper on options for compliance mechanisms under the RMS (submitted by the UK)	6
7	Catch document and labelling system (New Zealand, UK, Sweden)	5
8	Electronic Monitoring of Norwegian Minke Whaling by Egil Ole Øen (Norway)	4

**Appendix 3**

**AGENDA**

1. Introductory items
  - 1.1 Appointment of Chair
  - 1.2 Introductory remarks and objectives of the meeting
  - 1.3 Reporting
  - 1.4 Review of documents
2. Adoption of the Agenda
3. Comments on the Reports from the RMS Working Group and Small Drafting Group
4. Progress with further technical work
5. Assessment of progress with intersessional work in relation to Resolution 2004-6
6. Other matters
7. Adoption of the Report

## Appendix 4

### ELECTRONIC MONITORING OF NORWEGIAN MINKE WHALING

Dr. Egil Ole Øen

*Associate Professor, Norwegian School of Veterinary Science, Section of Arctic Veterinary Medicine, Norway*

#### Management Surveillance of Hunting

Successfully managed harvesting of resources must ensure that harvesting practices fit within long term resource sustainability goals. Most commercial fisheries and hunting activities therefore utilise monitoring programmes to ensure compliance with the regulations in addition to collection of information supporting fishery and wildlife management, stock assessment and scientific research. The methods for management surveillance of activities at sea have traditionally been at-sea inspector and observer programmes, logbooks and data collection by scientists and trained observers. Most monitoring programmes at sea are therefore costly because of the high labour component associated with at-sea observers.

The traditional methods for at sea monitoring of the harvest of minke whales in Norway have included logbooks and at-sea inspector programs. In addition every boat is controlled and must be approved for hunting by governmental inspectors from the Norwegian Directorate of Fisheries and the Norwegian Food Safety Authority before they are allowed to start the hunt. The control includes relevant documents and licences, weapons and hunting equipment, and that the standards of hygiene comply with Norwegian regulations. In addition, at-sea inspectors have also been trained to collect data for scientific institutions in addition to the scientists that are at sea on several boats during the hunt.

The inspector programme has given 100% coverage of the boats and hunting activities, which is highly unusual both compared with most fisheries management regimes, wild game hunting as well as several other activities where animals are harvested or killed. For example in hunting of terrestrial animals in Norway specially trained officers are present in the area and monitor the hunting activities by random or periodical checks in addition to hunter's licence check and weapons control. The terrestrial hunters themselves are also commonly ordered to sample specimen for science and management surveillance.

#### The Norwegian minke whale hunt

In Norway only one whale species is targeted, namely the minke whale, and it is hunted from small fishing vessels that are rigged for whaling in the season. The IWC definition of this catching operation is "small type whaling", see Schedule, Paragraph 1 C. The whales are killed using a penthrite grenade mounted on a harpoon. The dead whales are hauled on board across the deck and butchered. The products are stored in ice in the hold before being brought to processing plants on land.

The boats operate in areas through which whales migrate or feed. A stealthy approach is normally used to get close to the whale. There is no chasing at high speed or support of electronic devices like sonar. The hunters simply idle the boat slowly towards the position where they believe that the whale will surface to take its next breath and the whales are often shot when they are passing by or approach the boat. The hunt is therefore dependent on calm sea and little wind. In periods with windy weather, which

sometimes might last for days or weeks, the boats usually must stay at port. From 1993 to 2004, one inspector was present on every vessel through its whole season, which could last up to 7-8 weeks.

#### Electronic monitoring and surveillance of minke whaling

Traditional methods for monitoring the hunt in the Norwegian harvest of minke whales have included logbook inspection, at-sea inspectors from Norway, Sweden, Denmark and Germany, and North Atlantic Marine Mammal Commission (NAMMCO) nation observers. The monitoring programme using inspectors on every vessel has gradually become extremely costly. The costs have annually been about NOK 6 millions (€750,000/US\$950,000). The system has been useful in monitoring hunting regulations, but it has unintentionally imposed important side effects on the execution of the hunt and on hunting practice. The annual cost for the inspection scheme has been far too high for the vessels to be paid from the income from the harvest, and has been paid by the government. To keep costs down, inspection time has been limited (less than 2 months per boat). This time restriction has prevented the hunters from their earlier and traditional opportunistic 'fair weather' hunt, which had many similarities with the aboriginal hunting of whales, and forced them to start the season when the inspectors are available. In periods with much 'bad' or windy weather the vessel's 'inspection time' will run without any hunting, which sometimes results in a tendency to hunt the largest animals instead of the young ones to secure their income before the inspection time is over. Another serious effect is that, for the smallest vessels, one of the crew has to stay at port and consequently lose income, to make room for the inspector during the season.

An electronic tamper-proof automated computing system to independently monitor the whaling activities would ease some of these unnecessary and unintended restrictions and be superior to the traditional monitoring system in many ways. It would provide a lower cost alternative, it would bring the hunt back to its traditional opportunistic 'good weather' hunt and still secure that the harvest fit within long-term resource conservation targets and sustainable goals. It takes little space, it does not sleep, eat, and does not socialise with anyone.

#### Program for development of automated electronic monitoring technology for minke whaling 2001-2005

A project to develop an electronic monitoring system, a trip recorder, named Blue Box (BB) system, started with governmental funding in 2001 at Norwegian School of Veterinary Science after request of Norwegian Fishermen Association.

The Blue Box system consists of a control and data logger box (Blue Box) designed to independently monitor and log hunting activity data provided by an independent GPS and different sensors (deliverers) placed in certain areas and structures of the boat, data that prove that a whale

is shot and taken on board. The control box and the sensors are configured and calibrated individually for each vessel. The system is automated with programmes designed for the continuous operation and logging of data for at least four months and equipped with backup batteries and automatically restarting functions following system interruption.

The Blue Box system includes in summary the following components:

- Control box (Blue Box)
- Independent GPS - antenna
- Shock transducers
- Strain transducers
- Heel sensor

#### *Control Box (Blue Box)*

The heart of the electronic monitoring system is a metal, tamper-proof box that houses the computer system, system and data disks, backup batteries and heel sensor. The locked and sealed box is normally mounted in a cabin that can be locked from outsiders and operates on an independent circuit of 24 volts DC. Data are stored on high capacity disks. The system operates within a temperature range of  $\pm 30^{\circ}\text{C}$  ( $+85^{\circ}\text{F}/-20^{\circ}\text{F}$ ). Potentially failures in the power supply or data supply from the sensors will be logged and the system restarts itself and restores the sensor function. Each system is signed individually. Data is encrypted and can be sampled either at random or by periodical checks or at the end of the season by educated personnel. To get access to the data and for analysis a specific encoded key (WIBU key) is needed.

#### *GPS*

The Global Position System (GPS) receiver is an important tool that provides the BB with continuous and independent information on time, position, speed and course of the vessel. The data from the GPS can be used to plot the activities of the vessel in connection with the hunt. The search for, killing and hauling in of the dead whale can be read from the plot by personnel that are well trained and with good knowledge about the hunting practice.

#### *Shock transducers*

Two independent shock transducers mounted on each harpoon gun identify the shock waves from the firing of the harpoon gun. The transducers are configured and calibrated individually and for each gun, in a testing program set up for this purpose.

#### *Strain transducers*

Strain transducers provide data by measuring static and dynamic strains to structures like beams and ribs, strains that occur in the structures when a whale is hauled on board across the deck and processed. The strain transducers that are attached to the measurement object where the surface conditions are good are connected to the power supply, an amplifier and the BB in protected wires. If there is any risk of mechanical damage, moisture etc. to the transducers and electrical wires, they are additionally covered with enclosures.

#### *Keel sensor*

Due to the swell, some keel movements will always occur on a boat at sea. The Norwegian minke whale hunt is normally conducted in fair weather with moderate swell and keeling, but when the whale is hauled in and across the deck, it produces a very distinct and characteristic keel

movement of the vessel. This movement, which is most distinct on the smaller boats, can be registered on all vessels. The registration from the keel sensor cannot be used alone to verify a catch but helps to verify the data from the other sensors.

#### **Field trials in 2004**

In 2004, after 2½ years of development, testing of different computer and sensor systems, and field trials, 13 units were installed on 13 whaling vessels. Before installation, the electricians and other personnel working with installation and calibration of BB were trained in a three day workshop that included installation on one vessel under the supervision of experts. The vessels chosen for the trials were of different sizes and construction (steel and wooden boats) and were operating in three different areas. Experienced and trained inspectors were chosen and taught to supervise the function of the BB system. They were instructed to record their observations in separate logs that were made for this specific purpose and report directly to the manager of the development project, Dr. Egil Ole Øen at Norwegian School of Veterinary Science. Simultaneously the skippers wrote their official logbook used for control by the Directorate of Fisheries. These logbooks (from inspector and skipper) were later used to control and qualify the data sampled in the BB. Three to 12 weeks after the conclusion of the season the BBs were actively switched off and system and data disks were removed for analysis.

#### *Results*

The analyses of data from the BB in 2004 showed that all trip recorders had functioned and logged data through the whole season. When the system was turned off, it had been actively logging data on average for 116 days (range 68 - 159 days). Two hundred and thirty-five whales were registered caught during the registration period. The number of harpoon gun firings, number of whales caught, time and positions were in accordance with the data from the logbooks from the inspectors (and the hunters). For some of the boats, GPS and all sensors had functioned 100%, for some others, one or two of the sensors had not functioned quite successfully for every whale taken, and for three of the wooden boats, some of the strain transducers had not functioned satisfactorily for several of the whales. However, data from the GPS in combination with logged data from other sensors were sufficient to verify the exact number of whales taken and when and where they had been caught.

#### **Field trials in 2005**

##### *System upgrading and instruction of personnel*

After the 2004 season all BB hardware were upgraded and slightly modified. By thorough studies of the raw data from the 2004 season it was discovered that the flaws in the sensor data were mainly caused by inaccuracies in placement and calibration of the actual sensors. It was therefore decided to hold a new workshop prior to the 2005 season, where the main topics were sensor installation and configuration. A new installation and configuration manual was compiled and the personnel were trained in installation and calibration on one vessel under surveillance of experts before recalibration and modification of the system on the thirteen vessels that had been equipped with BB in 2004 and installation on sixteen new vessels was started. In 2005

the program manager has been present at installation and recalibration on most of the vessels.

The skippers on every boat attended a compulsory workshop in 2005. They were given an introduction to the function and the planned routines for the control of the BB in 2005. In addition they were given instructions in recording of a new logbook that had been prepared for the season.

There is a strong focus on assuring the integrity of the logged data in all parts of the system. In addition to the upgrading of BB and sensors and training of personnel for installation, twenty-two inspectors were trained in a two day workshop to supervise and control the hunting in 2005 and to record a separate log that will be used for the quality control of the system and logged data in 2005. The plan is that seven of the inspectors will be present and stay on

board the same vessel the whole season (mainly the largest vessels), while the other fifteen will stay on board alternate boats for shorter periods of time and do random checking of hunting boats at sea and in port.

When the hunting season is closed, the encrypted data will be collected from the BBs, decrypted and analysed. The development programme is expected to be concluded in 2005.

#### **Analysis tool for data from BB**

In 2004 the Ministry of Fisheries started an independent project to develop an automatic configuration and analysing tool to analyse data from the BB. An early version of this tool was used for the analysis of data from the 2004 season. The analysing tool is still under development, but is expected to be ready by Autumn 2005.



Fig. 1. The Blue Box (Control Box) of the Automated Electronic Monitoring System developed for monitoring the minke whale hunting in Norway.

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## **Appendix 5**

### **ADDITIONAL WORK ON A CATCH DOCUMENT AND LABELLING SCHEME**

New Zealand, Sweden and the United Kingdom

This document is an updated version of the Catch Documentation Scheme that was discussed at the working group meeting and the Small Drafting Group meeting in Copenhagen, April 2005.

#### **Proposed Schedule text paragraph 30b**

[The Commission shall operate a standardised catch documentation system [in accordance with [best] international practice], in order to certify the authenticity of products from whales caught or obtained under the authority of Contracting Governments in accordance with the provisions of this [Schedule][Convention]. This system shall monitor the progress of such products from the point of harvest to the point of [entry/landing into the territory of the Contracting Government] [wholesale marketing] [retail sale]. The details of this system are set out in Annex X. The requirements of this Paragraph shall not apply to whales taken pursuant to Paragraph {asw}.]

#### **ANNEX {CDS}: CATCH DOCUMENTATION AND LABELLING SYSTEM**

##### **General provisions**

This Annex is an integral part of the Schedule. It applies to any Contracting Government that permits any vessel sailing under its flag to engage in whaling in accordance with the [Convention][Schedule]; and any Contracting Government into whose territory or from whose territory whale products are imported or exported. All information provided to the IWC Secretariat in accordance with this scheme shall remain confidential, but is to be made available to Contracting Governments on request and is to be used only in conjunction with this scheme.

The term 'Catch Document' may include an electronic version of any documents referred to in this section.

### **Authorisation of whaling vessels**

Contracting Governments shall provide specific authorisation to their flagged vessels that intend to take whales. Contracting Governments shall issue such vessels with a unique number in accordance with a numbering system to be developed by the IWC Secretariat. This number shall be included on the Catch Document.

Contracting Governments shall report to the IWC Secretariat, at least three months before the start of the season, the name or identifying code of each vessel, and its vessel category (as recognised in the International Observer Scheme), home port and authorised dates of operation<sup>1</sup>.

*[Note that this requirement may be included elsewhere in the Schedule. It is included here in the meantime for completeness. If it remains here, it will need to be consistent with other provisions.]*

### **Issue of Catch Documents**

Contracting Governments shall issue non-transferable Catch Documents to their authorised whaling vessels for each whaling trip. Catch Documents shall not be issued to non-authorised vessels. Each Catch Document shall be issued with a unique number.

### **Completion of catch documents**

Contracting Governments shall require that each master or authorised representative of its flag vessels:

- (a) complete a Catch Document for the catch landed and transhipped on each occasion that it lands or tranships any whale products; and
- (b) assign a unique Identification Code to each whale taken, in accordance with a numbering system to be developed by the IWC Secretariat.

The unique Identification Code directly links to the required biological information (sex, length, etc.) and can later be linked to the [national] [international] DNA register.

The transhipment and landing of whale products without a certified Catch Document is prohibited.

### **Certification of the Catch Document**

The Catch Document must be certified as to the accuracy of the information contained therein by:

- (a) the master of the vessel;
- (b) the IWC observer (except in the case of export or re-export); and
- (c) the competent authority of the Contracting Government of landing.

Once certified, a copy of the Catch Document shall be transmitted to the IWC Secretariat.

### **Export, import and re-export**

The export, import or re-export of whale products without a certified Catch Document is prohibited.

Following certification, Catch Documents shall be electronically transmitted to and held by the IWC Secretariat. On the request of a Contracting Government, the Secretariat shall forward copies of the relevant Catch Document to a Contracting Government on request, for purposes of validation.

### **Information to be included on the Catch Document**

The Catch Document shall include the following information (in accordance with the standard form attached as Adjunct 1).

- (a) The Catch Document number.
- (b) The national issuing authority (including name, address, telephone, fax number and email address).
- (c) The unique vessel number, the name, home port, national registry number, call sign of the vessel and, if issued, its IMO/Lloyd's registration number.
- (d) The place where the whale was transhipped, landed, exported, imported or re-exported.
- (e) The date and the port at which the whale product was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped.
- (f) The IWC observer present.
- (g) The species of whale taken (both scientific and common names).
- (h) The date, time and location of each whale taken.
- (i) The unique code for each individual whale captured.

### **Barcoding/labelling requirements**

An identification label (which may include a barcode), comprising the Catch Document Number and the Whale Identification Code, shall be affixed to each whale product. The appropriate identification label must be affixed to each whale product from the point of initial processing to the point of [entry/landing into the territory of the Contracting Government] [wholesale marketing] [retail sale]<sup>2</sup>.

The transhipment, landing, export, import or re-export of whale products without an identification label is prohibited.

### **Provision of information to the IWC Secretariat**

A Contracting Government shall promptly provide copies to the IWC Secretariat of all validated catch documents that it issued from and received into its territory, included instances of transhipment involving vessels sailing under its flag, using an electronic reporting system as shall, from time to time, be specified by the IWC Secretariat and notified to Contracting Governments.

Contracting Governments shall inform the IWC Secretariat of the national authority or authorities (including names, addresses, phone and fax numbers and email addresses) responsible for issuing and validating catch documents.

The Secretariat shall provide an annual report on all of the information received from Parties relating to the Catch Documentation and Monitoring Scheme.

This Scheme shall be consistent with the DNA scheme.

*Note that products authorized for market from other sources, such as whales obtained from bycatch, scientific whaling, ship strikes or existing stockpiles, etc, shall also have to be given an individual authorization code according to the IWC system to help ensure the overall robustness of the inspection and monitoring regime.*

<sup>1</sup> Note that this wording is based on paragraph 20 of the revised Schedule (IWC/D04/RMS SDG 4).

<sup>2</sup> Policy decisions still to be taken on this issue.



## IWC Catch Documentation

**International Whaling Commission**  
 The Red House,  
 135 Station Rd,  
 Impington,  
 Cambridge CB4 4NP, UK  
 +44 1223 233971  
 Secretariat@iwcoffice.org

<b>1</b>	<b>Document number:</b>			
<b>2</b>	<b>Issuing authority:</b>			
	Address:			
	Address:			
	Phone/fax/Email:			
<b>3</b>	<b>Whaling vessel:</b>			
	Flag state		Home Port, Ship Registration no., call sign	
	Master		Whaling permit no.	
	Dates of trip		IMO/Lloyd's Number	

<b>4</b>	<b>Whaling operations</b>			
	Location/time and date of each whale taken	Species (Scientific and common name)	Total	Individual whale codes
	Name of IWC observer present			

<b>5</b>	<b>Landing/Transshipment information</b>		Date of landing	
	Place of landing			
	Place of processing if not above:			
	<b>Certification by Master: I certify that the above information is complete, true and correct to the best of my knowledge</b>			
	<b>Certification by IWC Observer: I certify that the above information is complete, true and correct to the best of my knowledge</b>			

<b>6</b>	<b>Certificate of landing: I certify that the above information is complete, true and correct to the best of my knowledge</b>			
	Authorising officer		Date	
	Authority/address			
	Signature		Seal:	



# IWC Catch Documentation

## EXPORT/IMPORT DOCUMENT One form per shipment

**International Whaling  
Commission**  
The Red House,  
135 Station Rd,  
Impington,  
Cambridge CB4 4NP, UK  
+44 1223 233971  
[Secretariat@iwcoffice.org](mailto:Secretariat@iwcoffice.org)

<b>1</b>	<b>Document number:</b>	
<b>2</b>	<b>Issuing authority:</b>	
	Address:	
	Address:	
	Phone/fax/Email:	

<b>3</b>	<b>Export company:</b>		
	Nationality		Company Registrn no.
	Director		Export permit no.
	Dates permit valid		

<b>4</b>	<b>Whale products:</b>	
	Nature of products	
	Origin	
	Identification number	

<b>5</b>	<b>Certificate of EXPORT: I certify that the above information is complete, true and correct to the best of my knowledge, and that all products originate from whales taken under the IWC's regulations</b>		
	Authorising officer		Date:
	Authority/address		
	Signature		Seal:

<b>6</b>	<b>Certificate of IMPORT: I certify that the above information is complete, true and correct, and authorise the importation of these products into the country</b>		
	Place of importation		Import license no.
	Destination:		
	Importation Authority		
	Authorising Officer		Date
	Signature		Seal

## Appendix 6

### PAPER ON OPTIONS FOR COMPLIANCE MECHANISMS UNDER THE RMS

United Kingdom

An effective regime to ensure compliance is an essential component of an RMS if it is to command the confidence of the international community and the public at large. We therefore take some encouragement from the fact that there appears to be broad agreement emerging on the need to include more specific measures on compliance as part of an RMS package - although, as we shall explain, our view is that the text must contain further elements to strengthen the proposed regime.

We were particularly concerned at suggestions made by some States at the last meeting of the RMS Working Group in Copenhagen which appeared to challenge the legal basis for a compliance procedure within the Convention/RMS as contrary to the principle of State sovereignty.

Compliance raises questions at different levels. Clearly, at the first level, the question of prosecution of infractions committed by persons or vessels under the jurisdiction of a State party is for each Contracting Government to carry out within its own legal system. However the question of compliance also relates to ensuring that the Contracting Governments comply with their obligations under the ICRW at the level of international law, including their international obligation to ensure enforcement of the Convention in their national legal systems. This second level of compliance relates to the international responsibility of the Contracting Governments, and - far from being an infringement of sovereignty - it simply follows from the basic rule of treaty law that a treaty is binding on its Parties and must be performed by them in good faith (*pacta sunt servanda*).

#### **Developments in international environmental and fisheries agreements**

In recent years the Parties to an increasing number of international environmental and fisheries agreements have developed mechanisms aimed at securing compliance in new ways which reflect the broader community interests at stake. Accordingly multilateral procedures have been developed within various treaty regimes in which an organ under the treaty can investigate and make findings of non-compliance against a Party, and in some cases offer forms of inducement or impose forms of sanction to bring that Party into compliance. Some of these procedures are based on specific treaty provisions (for example the Montreal Protocol on Substances that Deplete the Ozone Layer and the Kyoto Protocol to the Climate Change Convention), but others have developed within pre-existing treaty structures (for example CITES and the Basel Convention on the Transboundary Movement of Hazardous Waste).

Whilst these processes share certain common features in that they provide a means by which the compliance by the Parties of their obligations under the relevant agreement can be assessed, there is considerable variation in the design of each regime and in particular the measures that may be taken where non-compliance is established. A number of such regimes work with a combination of measures in the nature of carrots and sticks, to promote compliance in a more cooperative and less confrontational way than traditional methods of dispute settlement in

international law. Thus for example under CITES at all stages of the process the Secretariat can offer advice and assistance to the Party concerned to try to solve the problem and offer technical advice or assistance as is required. In some cases the State concerned can seek to agree with the relevant Committee 'a compliance action plan' setting out the steps that should be taken to bring it into compliance. At the same time the CITES process is a disciplined process with for example firm time-limits to ensure its effectiveness, and it can ultimately end in the imposition of trade measures.

#### **Basis for a compliance procedure under the ICRW**

Under the ICRW there is not an express treaty basis for the establishment of a multilateral compliance procedure, but in our view this does not preclude the Contracting Governments from adopting such a procedure. The Contracting Governments could interpret more broadly their obligation in Article IX(1) to 'take appropriate measures to ensure the application of the provisions of this Convention', so that it is not limited only to measures by each Contracting Government to ensure the application of the Convention by persons or vessels under its jurisdiction. Such an interpretation could serve as the basis of an obligation on the Contracting Governments (collectively) to take measures to ensure the application of the provisions of the Convention by all Contracting Governments under an appropriate compliance procedure. However even for States which take a narrower view of Article IX, there is nothing in the Convention which would prevent the Contracting Governments from establishing a more effective compliance regime. In particular it might be noted that the Commission has broad powers to make recommendations under Article VI on 'any matters which relate to whales or whaling and to the objectives and purposes of this Convention'. Whilst in many cases 'recommendations' by international bodies are non-binding in international law, the member States can nevertheless agree to treat them as authoritative. Thus, for example, the Parties to CITES in practice treat resolutions of the Conference of the Parties, and other technically non-binding measures including those relating to administrative, investigative and compliance procedures as authoritative, and, as we have observed, trade measures can be imposed in cases of non-compliance. Similarly under ICCAT although the Commission only has powers of recommendation, the Contracting Parties have agreed to a compliance regime which includes the recommendations for imposition of a variety of types of sanctions in respect of non-complying Contracting Parties, including the restriction of quota, and the imposition of trade measures.

It appears therefore that there are no insurmountable legal obstacles to the development of an effective multilateral compliance regime in the ICRW. In our view it will be crucial to the credibility of an RMS that its compliance arrangements should be as robust as possible. Indeed it would be surprising and difficult to explain to the public if the Parties to the ICRW did not aim for the strongest measures possible.

### Key components of a compliance regime

Experience of existing compliance mechanisms in the international environmental and fisheries fields, suggests that they broadly consist of three aspects:

- (1) reporting and monitoring obligations;
- (2) verification procedures; and
- (3) non-compliance response, including appropriate forms of enforcing/providing incentives for compliance.

In our view therefore the question of compliance is intrinsically bound up with the proposals on catch documentation; the International Observer Scheme; VMS; DNA registration and tissue archiving; as well as the proposals for the establishment of the Compliance Review Committee (CRC) and the question of responses to non-compliance. Whilst there has been some progress on a number of these fronts, further thought needs to be given to how the CRC should work and the range of responses that should be available in cases of non-compliance. The establishment of the CRC proposed in the RMS text should be further developed in the light of modern best practice in fisheries law and in international environmental law.

The obligations of Contracting Governments under Article IX require each Party to ensure that all alleged violations must be investigated thoroughly; where violations are established the violator is deprived of the benefit of non-compliance; and the Contracting Government in question is under an obligation to report to the Commission details of infractions and the measures they have taken to deal with them. The CRC should clearly have competence to consider how effectively these obligations have been carried out by the flag State concerned, and the Contracting Governments should be under an obligation to co-operate fully with it.

Unlike the present Infractions Committee, the new CRC procedure must have available to it a broader range of responses to ensure that infractions are dealt with effectively, and the Contracting Governments themselves comply with their obligations to implement the terms of the Convention.

In relation to those who commit infractions there should be possibilities for the CRC to recommend to the Commission that the Contracting Governments should adopt a more co-ordinated response. In the fisheries context this can involve listing and sharing information on vessels of known violators, and in some regimes can include recommending to all parties the revocation of licences and/or vessel registration (see for example the Forum Fisheries Agreement). We would therefore propose that the CRC should be empowered to recommend that similar measures could be taken in the IWC.

In relation to Contracting Governments which do not comply with their obligations the CRC should have a broad discretion to make recommendations to the Commission and its relevant Committees for appropriate action to be taken in response to non-compliance. There are fisheries organisations which have available to them the sanction of reducing quota levels, or to set new quota levels by reference to the Contracting Government's past record of compliance (see for example ICCAT recommendation 96-14, and see also the powers of the International Review Panel established under the AIDCP). In our view it will be key to the success of the CRC that it should be able to recommend to the Commission the reduction of catch limits/quotas in response to non-compliance by a Contracting Government. Whilst the system for the proposed allocation of quota has yet to be determined under the RMS, we believe that quotas should be set for a maximum of three years and should automatically revert to zero at the end of that period. The Commission should then take account of advice and/or recommendations from the CRC in deciding whether to set new catch quotas and, if so, at what levels.

We also wish to reiterate our long-standing proposal that in view of the grave damage that a serious violation can do to stocks of some whales, we believe that there should be available to the CRC, in exceptional cases, the power to reduce catch limits to zero pending a definitive resolution of the Commission.

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## Appendix 7

### MINIMUM CONDITIONS UNDER WHICH WHALES COULD BE KILLED

#### United Kingdom

At the RMS Working Group in Copenhagen, the UK agreed to prepare text on each subsection of Option 3 of Annex 12 of IWC/57/RMS4 (as prepared in the RMS Specialist Technical Group on Animal Welfare). The aim is to establish a set of minimum standards that incorporate animal welfare conditions when specifying whale killing techniques.

While we recognise the need to set minimum conditions under which whales could be killed, it is clear that it will be difficult to propose accurate technical specifications without further research. Research priorities, which could be discussed and developed further as part of the WKM&AWI work topics, include:

- morphological differences between species, and sexes and ages of individuals (including any relevant seasonal variations in blubber thickness) and how this relates to efficiency of different killing methods;
- the effectiveness of specified sizes of the penthrite explosive charge (on species of different size and anatomy) at inducing immediate and irreversible insensibility;
- procedures for preventing any animals being struck and lost;
- methods for ensuring that all animals are struck in the optimum location on the body to ensure an immediate death or immediate irreversible insensibility;
- physiological changes to the whale associated with different pursuit times and distance;
- impact of weather conditions on Instantaneous Death Rate or Time To Death; and

- defining training and qualifications for international observers and national inspectors.

Nevertheless, we believe that the conditions below would provide a suitable structure for minimum conditions under which whales could be killed and that these should be included in the RMS and, in time, developed further following technical expert advice.

### **ANNEX TO THE SCHEDULE CONCERNING MINIMUM CONDITIONS UNDER WHICH WHALES COULD BE KILLED**

No whale may be killed (with the exception of ASW) unless the following conditions are met:

#### **Generic principles:**

- The killing method effectively and reliably achieves immediate insensibility or death;
- The killing method is appropriate for species targeted (on advice of the Working Group on Whale Killing Methods and Animal Welfare Issues).

#### **1. Specific criteria or conditions**

*Penthrite grenades used as primary or secondary killing methods shall meet the following technical specifications:*

- a charge which, as a minimum, provides sufficient power to guarantee immediate death or immediate irreversible insensibility for the specific species and the size of the individual targeted;
- a harpoon type able to deliver the correct charge to the specified location and depth of penetration into the cetacean's body, e.g. for minke whales, the minimum harpoon cannon calibre must be 60mm;
- a reliable harpoon grenade, that guarantees detonation of every harpoon fired;
- fuse length must be set for each species, to ensure an exact penetration distance before detonation occurs;
- a grenade head barb mechanism that ensures that the harpoon cannot disengage from the cetacean's body; and
- a strain gauge of the forerunner rope that exceeds the calculated maximum strain for the species being hunted, to ensure that it does not break.

#### **2. Rifles shall meet the following technical specifications**

- Rifles must not be used as a primary killing method. Rifle bullets shall only be used as a secondary killing method when they are guaranteed to be as effective or more effective than using a second harpoon.

The type and calibre of rifles and the type of ammunition necessary to ensure that adequate power is delivered by a single bullet to guarantee immediate death or immediate irreversible insensibility for the specific species, size, age and sex of the individual targeted.

As a secondary killing method for minke whales, the minimum calibre of rifle should be 9.3mm with metal jacketed round-nosed bullets.

#### **3. Whales shall be harpooned or shot only by gunners whose qualifications and training meet the following minimum standards**

Gunners should be able to hit a moving target at sea from a moving vessel and have received a certificate of

competency, which should only be granted when the gunner has fulfilled specified training/refresher training and demonstrates a high level of accuracy in an IWC-approved test, to be taken annually.

Annual certificate renewal is conditional on successful completion of refresher training and testing<sup>3</sup>.

#### **4. All international observers [and national inspectors] shall meet the following training conditions and qualifications**

International observers [and national inspectors] should be a veterinarian or trained in monitoring and interpreting scientifically approved criteria for determining insensibility and death in cetaceans, and collecting data as specified by the IWC.

#### **5. Vessel hunting platform shall comply with the following requirements for size, structure and stability to ensure accurate shot**

All vessel platforms must provide for an accurate trajectory from the cannon to the target cetacean to ensure a hit to the specified target area. All variables which might affect an accurate shot should be taken into account in determining the suitability of the platform<sup>4</sup>, including:

- Vessel and platform specifications (including height above sea level according to loading of the platform and the height of the cannon above sea level);
- the possible influence of weather conditions on the vessel; and
- the distance between the vessel and the target animal.

#### **6. Cetaceans should only be pursued under the following conditions**

A maximum pursuit time of xx (as established with full consideration of the potential physiological harm caused by pursuit), must be established for each hunted species, as set by the IWC and according to species and to different environmental conditions [to be determined]. If the hunt exceeds this maximum pursuit time, the hunt shall cease immediately and not resume on that individual.

#### **7. The following limits on body length and restrictions on sex of whales taken shall apply**

Cetaceans should not be pursued if they are above or below the length/size set by the IWC and according to species [to be determined]<sup>5</sup>. Every effort should be made to ensure that

<sup>3</sup> To determine this, the IWC should conduct simulation training on land for firing a harpoon and shooting bullets into the target area, using specifically designed software which incorporates the many variables associated with hitting a moving target at sea from a moving vessel.

<sup>4</sup> To determine this, the IWC will need to conduct, or oversee, independent simulations using specifically designed software, to analyse the suitability of different vessel platforms for providing an accurate trajectory from the cannon and the target cetacean to ensure a hit to the target area. All variables including: vessel and platform specifications (including height above sea level according to loading of the platform and the high of the cannon above sea level); the possible influence of weather conditions on the vessel; and distance between the vessel and the target animal should be incorporated into the analysis.

<sup>5</sup> To ensure that under- or over-sized animals, for which the killing methods have not been adequately adapted to ensure an instantaneous death, are not killed using inappropriate weapons, size range for each species should be evaluated by the IWC for each species and for each killing method. In addition where there is significant anatomical difference between sexes (of the same species) that would influence the efficiency of killing methods, this should be evaluated and additional limits considered.

where possible there is an even distribution of the sex of animals taken. There should be no take or targeting of lactating females or calves

### **8. Whaling shall only take place under the following weather conditions<sup>6</sup>**

There must be clear visibility and stable conditions in order to allow the gunner to have a clear and accurate trajectory from the cannon to the target cetacean. Where these conditions do not exist, whaling should not take place. The following variables should be considered:

- sea state including wave height, dominant wave period and wave direction (relative to the vessel), e.g. no whaling in Beaufort sea state of 3 or more
- no whaling in a swell of 1m or more
- stability of the hunting platform,
- visibility including visibility of the whale and determination of its speed and orientation;
- accuracy of the gunner:
- cloud cover;
- precipitation (drizzle/rain/hail/snow);
- fog;
- wind speed and direction;
- air pressure, air temperature, relative humidity;
- ice conditions; and
- motions of the vessel.

### **9. Prescribed body target areas**

In order to guarantee instantaneous death or irreversible insensibility, gunners must aim only at the following body target areas, as determined by the IWC and according to species [to be determined].

The harpoon must enter perpendicular to the body surface, to guarantee penetration. For minke whales (for which some data exist), the head or the upper thorax are the only acceptable target areas<sup>7</sup>. In situations where high calibre bullets are authorised by the IWC as an appropriate secondary killing method for a species, the grouping of rifle shots into a whale must not exceed 100mm in diameter and must be targeted at the brain.

Species should be evaluated by the IWC for each species and for each killing method. In addition where there is significant anatomical difference between sexes (of the same species) that would influence the efficiency of killing methods, this should be evaluated and additional limits considered.

### **10. Cold harpoons/electricity**

The use of electricity for stunning or killing, as either a primary or a secondary killing method, is prohibited.

[The cold harpoon can only be used as a secondary killing method in situations where it will be as effective at inducing death as an explosive harpoon or high calibre rifle bullets]<sup>8</sup>.

### **11. Strike Limit (not landed limit)**

Any whales 'struck and lost' should be recorded in Total Catches Over Time and reported as infractions since Time To Death is not immediate.

Nothing in these conditions shall prevent a Contracting Government from requiring its nationals or vessels to apply more stringent conditions with respect to the killing of whales.

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<sup>6</sup> To determine these minimum criteria, the IWC must undertake an analysis, using software simulations and data already collected, of the influence of the effect of the following variables on the stability of the hunting platform, visibility of the whale and determination of its speed and orientation, and accuracy of the gunner: sea state; visibility; cloud cover; precipitation (drizzle/rain/hail/snow); fog; wind speed and direction; air pressure; air temperature; relative humidity; sea state; wave height; dominant wave period; wave direction (relative to the vessel); ice conditions; motions of the vessel.

<sup>7</sup> For other species, a review of all existing data on kills of sperm, sei, Bryde's, fin and humpback whales should be conducted. The IWC should then undertake extensive simulation research to determine the exact location and penetration depth that the grenade harpoon should strike in order to guarantee immediate death or irreversible insensibility.

<sup>8</sup> Analyses of existing data should be carried out by the WKM&AWI group to establish the relative effectiveness of the three potential secondary whale killing methods (grenade harpoon, cold harpoon, high calibre rifle).