

Comments from Contracting Governments regarding approaches to further RMS discussions

Introduction

When circulating the draft agenda for the RMS intersessional meeting (Circular Communication IWC.CCG.521 of 7 December 2005), it was noted that it was expected that the majority of time during the meeting would be spent on item 5, i.e. an exploration of how to proceed with the development of an RMS. It was also noted that although significant progress has been made on a range of technical matters and that draft Schedule language has been prepared, major policy issues remain and reaching agreement on what an RMS 'package' should comprise continues to be elusive. Given this, it was suggested that before entering into discussions on any of the potential RMS elements it would be useful for the RMS Working Group to give consideration to:

- (1) whether it is likely that progress on an RMS package can be made, and if so how this might be done, including consideration of some form of 'high level' meeting (as suggested in Resolution 2005-4); or
- (2) whether the impasse is such that further collective work should be postponed for the time-being but with individual governments or groups of governments free to work together if they so choose.

Written views on (1) and (2) were sought since it was considered that these would help the Chair to structure discussions. Given that there was little time at IWC/57 in Ulsan to discuss the intentions of Resolution 2005-4 in detail, submissions from Contracting Governments on their understanding of what is meant by a 'high level' meeting and how such a meeting would help resolve issues were particularly encouraged.

Written views were requested to be submitted to the Secretariat by 1 February 2006 so that they could be circulated to Contracting Governments prior to the intersessional meeting. Further views can of course be made known at the meeting.

While it is clearly the responsibility of the Commission to decide on the direction of any further work, the RMS Working Group may wish to develop guidance/recommendations for review by the Commission at IWC/58.

Responses received from Contracting Governments

Responses were received from Belgium, Germany, Japan, Norway and the USA (see Annex).

Action required: The RMS Working Group is invited to review the written comments received and to use them as background information to discussions at the intersessional meeting itself.

Annex

Comments received from Contracting Governments

BELGIUM

Belgium chooses to go on constructively with the RMS work.

Alexandre De Lichtervelde, Commissioner for Belgium

GERMANY

Thank you for the draft agenda of the RMS Working Group meeting, 28.02. – 02.03.2006, in Cambridge. I fully agree with you that the main time will be spent on item 5 where we have to discuss how to proceed. I must confess that I have no answer, but we have discussed this question internally during the previous months. We think that we might consider two aspects which are interlinked:

- the main priorities in the RMS-process;
- the consideration, if appropriate, of a ministerial, diplomatic, or other high-level conference.

If we focus in the RMS-process on Schedule amendments a 3/4 majority is required. But it seems to me that any further progress is unlikely. In a high-level conference, where all fundamental issues in IWC would and could be raised, an unanimous decision is necessary which is also very unlikely. On the other hand we would be stepping onto new ground and would have a lot of new issues for discussion. New ideas might arise.

To go further on, it might be helpful to define the views and priorities of Contracting Governments for the RMS process itself and for a possible high-level conference.

From Germany's point of view, it would be advisable that the two groups (pro whaling and anti whaling) try to focus on those aspects which they consider to be essential and where common ground for a solution or a compromise must be found. In doing so, it might be helpful to make an analysis taking into account the legal situation in the framework of IWC regulations. For Germany and other Contracting Governments especially three issues are of paramount importance:

- Whaling under Special Permits,
- Paragraph 10 e of the Schedule,
- Compliance.

Whaling under Special Permits

For Germany together with other Contracting Governments it is essential that whaling under special permits should be phased out or at least be incorporated into the RMP as it stands now. I wonder which legal options exist to achieve this goal. The obvious option might be the deletion of Article VIII. But this can be done only in the frame of a ministerial, diplomatic or other high-level conference. As long as we have no such conference or no concrete expectations for results of it one could think of a preliminary option in modifying the schedule in order to restrict and minimize whaling under special permits to which all Contracting Governments have to agree to in a self binding procedure without any objections.

Paragraph 10 e of the Schedule

The second essential for Germany and other Contracting Governments is the fact that the moratorium is part of the fundamental legal basis set out in the Schedule. So, we think that it should remain in the Schedule without any modification. A possible compromise might be that on a regional basis and on scientific advice catch limits could be set for identified individual areas as a test for a limited time (e.g. 3 years). This could be reflected in additional sub-paragraphs of Par. 10 e.

As an essential it must be guaranteed that the full rigour of the RMS (e.g. all relevant and appropriate management, control, inspection and supervision measures) should apply to all authorised operations, such that it can be seen to be properly tested. It has to be guaranteed that during this period no scientific whaling operations will be conducted in addition to any quotas generated under the RMP (and outside the control of the RMS). If there are objections against the adopted measures (and especially against the

adopted catch quotas) and if there are additional scientific whaling operations Par. 10 e remains intact without any changes and amendments, and the RMS becomes invalid.

Compliance

On compliance, there might be an option to modify the Convention (Art. IX) with the aim to implement a new regime including a dispute settlement mechanism, and penalties procedures. This can also only be discussed and done in the frame of a ministerial, diplomatic or other high-level conference. Therefore an alternative could and should be discussed, namely to find an agreement for the establishment of preliminary mechanisms in which a compliance review committee will be set up with the aim to recommend sanctions (e.g. quota reduction or withdrawal, license withdrawal) which have to be accepted by all Contracting Governments.

Concerning your two questions whether it is likely that progress on a single RMS package can be made or whether further collective work should be postponed for the time-being and individual governments or groups of governments should try to work together I would suggest that we first should try to evaluate the situation:

1. Looking where we are.
2. What essentials in the two main groups (pro and anti whaling) do exist?
3. Where might solutions and compromises be possible and to what extent and content?
4. Is there is a chance to make any further progress on the RMS process?
5. Evaluation of the possibility, the chances and the pros and cons of a ministerial, diplomatic or other high-level conference.

And only if the responses and the reactions to all questions are negative we should use the second alternative and postpone the process for the time-being.

I hope that my thoughts might be a little bit helpful for the preparation of the meeting in Cambridge.

Peter Bradhering, Commissioner for Germany

JAPAN

Japan is committed to the implementation of a reasonable RMS and resumption of sustainable whaling in accordance with scientific advice and international law. Japan has been and is willing to accept a practical, effective and cost efficient monitoring and inspection scheme including national inspectors and international observers to verify catches, a conservative harvesting quota, and a fair sharing of the costs. On this basis Japan has actively participated in this process to develop a framework for the resumption of commercial whaling on a sustainable basis. We have made substantial compromises, supported reasonable draft texts and participated in good faith. The resumption of commercial whaling under a regulated, controlled, transparent and science-based management regime will not mean a return to historic over-harvesting. We believe that the RMS proposal submitted by Japan to IWC 57 represents a fair balance of the required elements to ensure IWC rules are obeyed and that they are seen to be obeyed.

It should be noted that in 1982 the IWC adopted a moratorium on commercial whaling (paragraph 10 e of the Schedule to the International Convention for the Regulation of Whaling) without advice from the Commission's Scientific Committee that such measure was required for conservation purposes. The moratorium was clearly intended as a temporary measure, and the Scientific Committee has developed a robust and risk-averse procedure (RMP) for calculating quotas for abundant stocks of baleen whales which was adopted by the Commission in 1982. Further, the Scientific Committee has advised that some stocks could sustain a harvest. For these reasons, we believe that the continued prevention of the resumption of commercial whaling is contrary to the fundamental purpose of the ICRW and the obligation under international law to implement treaties in good faith.

However, there have been 45 meetings over 14 years (1992 – 2005) to negotiate the “Revised Management Scheme” (RMS) without resolution.

We are deeply concerned that failure of the Commission to come to agreement on an RMS will ultimately cause the demise of the organization and that the current meeting is the last chance to complete an effective RMS.

It is not the time to continue the insistence on an always-increasing list of unnecessary, duplicative and excessively costly measures for controlling whaling operations.

It is not the time to discuss the proposal to amend the Convention or the demand that completion of any RMS must be linked to a legally binding phase out of Article VIII research. These proposals are simply unacceptable for many members of the IWC and the IWC does not have the mandate to amend the Convention or to insist that the rights of Parties to the Convention be abolished. It is unreasonable to be forced to abandon these rights in order to restore the right of sustainable whaling which is the purpose of the Convention.

The RMS WG should discuss how to normalize the IWC instead of spending more time for repeating the same positions. Negotiation and normalization will be achieved only when we agree to discuss specific and reasonable plans to manage whaling. Extreme anti-whaling positions which do not accept any whaling under any situation remove any basis for negotiations.

Finally, Japan does not see any merit in having a high level meeting. We don't see any possibilities that the IWC members will change their well-known positions even if a high level meeting is held. In fact, it is quite possible that such a meeting will hear only the same positions made by "high level" participants and that the current polarization will be strengthened at a higher level.

Submitted by Joji Morishita, Alternate Commissioner for Japan

NORWAY

With reference to Circular Communication IWC.CCG.521, please allow me to give you some comments on the questions you raise concerning the RMS process:

As Norway repeatedly has stated, the lifting of the moratorium must be an integrated part of the RMS. The RMS must respect the Convention and cannot limit or redefine the Parties rights and duties. The RMS must also reflect the sovereign rights and duties of the coastal states as these are defined in international law and reflected in the 1982 UN Law of the Sea Convention.

The implementation of the best available RMP must be an integrated part of the RMS, and the RMP should be modernised in line with the best available scientific knowledge of whale stocks and in line with recent international principles for management of living marine resources, e.g. the WSSD-declaration.

From Norway's point of view, we are far from reaching an agreement on the above mentioned matters. We do not believe that a "high level meeting" would facilitate any solution as long as the Parties' views on the matters are as far from each other as they are today and we do not favour a "high level meeting" in this situation.

Karsten Klepsvik, Commissioner for Norway

USA

- (1) Whether it is likely that progress on a single RMS package can be made, and if so how this might be done, including consideration of some form of 'high level' meeting

The United States remains committed to working towards the completion of a robust, yet practical RMS. The United States views the successful resolution of the issue of scientific research whaling as the fundamental building block of any RMS. It is our view that progress on a single RMS package will not be made until scientific research whaling is addressed. We believe that the Working Group and the full Commission are the best fora to resolve differences, and that Members' points of view are unlikely to change in a high-level meeting. Nevertheless, the United States remains committed to supporting any process that the Commissioners believe will serve to make progress on completing the RMS.

- (2) Whether the impasse is such that further collective work should be postponed for the time-being but with individual governments or groups of governments free to work together if they so choose.

The United States would reluctantly consider a suspension of the RMS Working Group, for an agreed-upon period of time, to allow member countries to work together towards the completion of an RMS. If the stalemate in negotiations cannot be resolved at the current Working Group meeting, then a defined postponement in these negotiations may be the best means to address contentious issues in smaller, more focused discussions among members.

Bill Hogarth, Commissioner for the USA