Report of the Revised Management Scheme Working Group

St. Kitts and Nevis, 10 June 2006

A list of participants is given as Appendix 1.

1. INTRODUCTORY ITEMS

1.1 Appointment of Chair

Doug DeMaster was appointed as Chair of the Revised Management Scheme (RMS) Working Group. He welcomed delegates and observers to the meeting.

1.2 Introductory remarks and objectives of the meeting

The Chair recalled that through Resolution 2005-4 adopted last year, the Commission had agreed that to try to advance the RMS process, the RMS Working Group should meet twice before the Commission at IWC/58, i.e. an intersessional meeting (that took place in Cambridge from 28 February to 2 March 2006), and another in conjunction with IWC/58. The Commission had also agreed to consider, if appropriate, ministerial, diplomatic or other high-level possibilities to resolve RMS issues among the Contracting Governments to the Convention.

With respect to the intersessional Working Group meeting in Cambridge, the Chair recalled that there had been a valuable exchange of views and ideas on a number of the difficult issues surrounding completion of an RMS. He noted however, that while some further work was agreed in relation to compliance and the code of conduct for whaling under special permit, the Working Group had agreed that an impasse had been reached in discussions and that further collective work should be postponed for the time being (except on the two specific activities) but with individual governments or groups of governments free to work together if they so choose. With respect to a high level meeting, the Chair reported that there had clearly been no consensus for such an approach at the present time.

Given the outcome of the discussions in Cambridge, the Chair indicated that the objectives of this meeting were to:

- review the intersessional work agreed on compliance and the code of conduct and to assess whether further progress can be made in these areas and if so how;
- consider any other intersessional activities that may have occurred;
- consider whether there is anything further that can be done to make progress or whether discussions remain at an impasse; and
- develop recommendations, as appropriate, to the Commission.

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.

2. ADOPTION OF THE AGENDA

The Agenda given in Appendix 3 was adopted.

3. REVISE OF INTERSESSIONAL WORK

3.1 Development of a Code of Conduct for whaling under special permit

At the intersessional meeting in Cambridge the Working Group reviewed a paper prepared by Arne Bjørge (Chair of the Scientific Committee), Debbie Palka (Vice Chair of the Scientific Committee), Doug DeMaster (immediate past Scientific Committee Chair) and Greg Donovan (Head of Science at the Secretariat) on '*Further thoughts for a Code of*

Conduct for Whaling under Special Permit' (Document IWC/F06/RMSWG 6). The paper had been requested by the RMS Working Group and was a development of a paper that three of the authors had been requested to develop after the Sorrento meeting. The authors of the paper stressed that the paper did not represent a proposal but was intended to stimulate discussion as to what form a Code of Conduct might take should one believe it was desirable.

Discussions at the Cambridge meeting are summarised under Items 4.4 and 5.5 of IWC/58/RMS 3. Much of the discussion at that meeting had focussed on: (a) whether special permit whaling should be phased out via an amendment to the Convention; (b) whether special permit whaling should be discussed at all in the context of the RMS; or (c) whether a Code of Conduct approach was appropriate. With respect to a Code of Conduct, discussion centred on whether this should be voluntary or mandatory and if the latter, how this could be achieved. The authors of IWC/F06/RMSWG 6 had recognised that the legal aspects were beyond their expertise but noted that their premise was that the code must be binding in some way or else its value would be lost. Of those Governments who believed that a Code of some sort was worthy of consideration, several requested that the authors propose further details, some noted the document made a valuable contribution to RMS discussions on an appropriate level of scrutiny and one commented that the rigour of the outlined process might mean that no whaling under special permit would ever be conducted. Several delegations suggested clarifications and additions to the process either at the Cambridge meeting (IWC/58/RMS 3) or in written comments put forward later (e.g. see IWC/58/RMS 4).

At the Cambridge meeting, the Working Group requested that the authors develop the document further to include more detail, although those Governments that supported the option of phasing out special permit whaling noted that they did not believe the Code of Conduct approach was useful. This further document was submitted to the Working Group meeting at IWC/58 as Document IWC/58/RMS 5 (see Appendix 4).

3.1.1 Introduction of document IWC/58/RMS 5

The Head of Science introduced the paper on behalf of the authors. In introducing the document he stressed several points:

(1) the document had been produced at the request of the RMS Working Group in Cambridge;

(2) it was *not* a proposal for a particular Code of Conduct, but was provided to illustrate how such a code might look – a number of areas require further work, particularly concerning the responsibilities of Contracting Governments, the relationship between the proposed Review Group and the full Scientific Committee, and definitions of appropriate target levels – with respect to legal aspects they had removed suggestions as to how a code may be made binding, following comments in Cambridge and those by Belgium in IWC/58/RMS 4 that this was a Commission matter;

(3) the document tried to take into account comments made at the previous Working Group meeting and in written proposals but this had not always been possible where they were in conflict.

Finally, he noted that there were some strong similarities in some aspects of the document with a document presented to this year's Scientific Committee meeting that had suggested a way forward for the Scientific Committee to review special permit proposals. While this was inevitable for some aspects, especially related to the scientific review process, the authors did not consider them to be the same: the proposal being discussed by the Scientific Committee was not being discussed in the context of the RMS negotiations. In an RMS context, concepts of binding agreements, consideration of costs and expected responses of Governments to reviews are appropriate. This was not the case for the discussion in the Scientific Committee where the proposal was for a way forward in the near-term that could only focus on trying to ensure that the scientific review process was improved under the present circumstances where there are no obligations on the proponents of proposals other than to submit them for review.

In presenting the revised document, he noted areas in which the original document had been revised in the light of comments made at Cambridge, in writing and in verbal comments received. These included:

(1) comments on the procedure that might be followed if the full Scientific Committee does not agree an abundance estimate;

(2) an increase in the time-frame to ensure the fullest possible review;

(3) more fully specified objectives to be included in the proponents proposal, particularly with respect with the contribution the proposal may make to the work of the Scientific Committee (these additions are those agreed by the Scientific Committee in its discussion this year);

(4) specification of further detail that the proponents of a proposal must supply if they are proposing to use novel methods;

(5) a comment that further work needs to undertaken to agree what conservation-related statistics need to be supplied by the proponents of a proposal, be used by the review group and be a condition for a Contracting Government not to issue a proposal (in response to IWC/58/RMS 4);

(6) further specification of the size and composition of the review group and how it might be chosen, with a note that this requires further consideration in the light of the suggestion in IWC/58/RMS 4 that at least one scientist from each country should be included in the group – while the authors agreed that this was certainly an option they presented their reasons as to why they felt this may be problematic - although they did increase the number of specialist to up to 20 to allow for more complex proposals and added the flexibility of the word 'normally';

(7) further elaboration of the role of the proponent scientists in the review process, including clarification that they would be present at the discretion of the Chair and that their views would be included as an appendix to the review group's report not interspersed within the report;

(8) an addition to the work of the review group by adding that it should comment briefly on the importance of the objectives of the proposal from a scientific and management perspective;

(9) an elaboration of the focus of the review group with respect to sample size considerations to take into account comments in IWC/58/RMS 4 related to minimising the level of lethal sampling to obtaining results of adequate precision.

3.1.2 Working Group discussions

It was the view of the authors as elaborated above, that the process outlined in IWC/58/RMS 5, while having obvious and inevitable similarities in some scientific aspects with the suggestions they presented to the Scientific Committee, was completely different in context (i.e. part of negotiations as one element in an RMS discussion) to the suggestion being considered by the Scientific Committee (an approach to improve the Scientific Committee's immediate difficulties in reviewing permit proposals). They also noted that the document did not constitute a proposal but was rather an illustration of one possible approach, presented at the request of the RMS Working Group in Cambridge.

However, many members of the Working Group disagreed with considering IWC/58/RMS 5 in isolation, stating that they believed the approach in that document and that presented to the Scientific Committee were so integrally linked that it was not possible to discuss them separately. They therefore requested the draft report of the Scientific Committee on this matter be made available and this was duly provided (IWC/58/Rep1 and Annex P). The Scientific Committee had agreed to the *pro forma* suggested in Annex P for proponents of permit proposals to follow when submitting proposals for review by the Committee. It also agreed that the process suggested in the remainder of Annex P provided a useful starting point for discussions next year. However, there was no agreement in the Scientific Committee to use the suggested process at this time.

There was a short discussion about objectives of special permit research. Argentina expressed concern that there was an inconsistency in IWC/58/RMS 5 that suggested that no proposal should be submitted without an agreed abundance estimate and yet one possible primary objective can be the completion of Comprehensive or in-depth assessments. One of the authors explained that such assessments require considerably more information than simply an abundance estimate. He noted that under the section on objectives of special permit catches already adopted by the Commission, reference is made to facilitating the conduct of the Comprehensive Assessment (*Rep. int. Whal.Commn* 37: 25 and *ibid* 38: 27-8). The UK stated that it believed the question remained unanswered. The meeting was reminded that there will be further discussion in the Scientific Committee next year.

Some countries repeated their view from Cambridge that a Code of Conduct was an essential part of the RMS process and must be binding. A number of countries stated that they believed that there was no point in considering the issue of a Code of Conduct until after the Scientific Committee had completed its discussions. Several of these also reiterated their view that a Code of Conduct was not acceptable to them and that the only acceptable approach was to amend the Convention and phase-out special permit catches altogether. They saw no value in IWC/58/RMS 5 or any elaboration of that document.

There was no agreement on any further work to be carried out on this issue at this time.

3.2 Compliance

A Compliance Working Group was established by the Commission at IWC/57 to (1) explore ways to strengthen compliance by analysing the range of possible legal, technical and administrative measures available to the Commission which are consistent with the ICRW; and (2) to explore possible mechanisms to monitor and possibly address non-compliance of Contracting Governments consistent with the ICRW and international law. As no progress had been made prior to the intersessional meeting, the Working Group agreed in Cambridge to the UK's proposal that it work with the Netherlands, Germany, USA, Sweden, Australia, New Zealand and Republic of Korea to develop a document that identifies the specific responses/measures to non-compliance that have so far been mentioned by some Contracting Governments as being desirable and indicates how each of these may or may not be compatible with the provisions of the existing Convention and with the draft Schedule text for the Compliance Review Committee.

A paper from the UK on this matter was submitted to the Working Group as Document IWC/58/RMS 6 (see Appendix 5). The UK reported that it had circulated this to the working group on compliance, but in the absence of any comments it was submitting the document to the RMS Working Group as a UK paper. It noted that its paper identifies

the specific responses/measures to non-compliance that have so far been mentioned by some Contracting Governments as being desirable and indicates how each of these may or may not be compatible with the provisions of the existing Convention and with the draft Schedule text for the Compliance Review Committee. It is intended to highlight options available should contracting Governments wish to be bound by such. The UK noted that it does not represent a definitive UK view on the way forward.

The UK stressed that in its view, a framework for dealing with non-compliance of any RMS agreed must be an integral component of any RMS package adopted by the Commission. This will ensure that compliance is dealt with specifically in the Schedule to the Convention, and as such binds members to comply with the RMS. The UK considered that if this is not the case, any RMS adopted can be exploited and it will not be possible to prevent IUU whaling effectively.

The UK believed that work on compliance issues could not really be taken further without better knowledge of the structure of any future RMS. Therefore, given the general impasse with RMS discussions, it suggested that there would be little to be gained by spending time discussing Document IWC/RMS/6. The Working Group agreed and there was no further discussion of the matter.

4. FUTURE WORK

Given the outcome of discussions under item 3, the Working Group agreed that discussions on the RMS remained at an impasse and that no future work could be recommended to the Commission although this would not prevent individual governments or groups of governments working together if they so choose. The Working Group also confirmed its earlier position regarding a high level meeting, i.e. that there is no consensus for such an approach at the present time.

5. ADOPTION OF THE REPORT

The report was adopted on 15th June.

Appendix 1

List of Participants

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Doug DeMaster
Cheri McCarty
Roger Eckert
Emily Lindow
John Field
Heather Rockwell
Bob Brownell

Secretariat
Nicky Grandy
Greg Donovan

Appendix 2
List of Documents

IWC/58/RMS	1	Draft Agenda
	2	List of Documents
	3	Chair's Report of the RMS Working Group Meeting, Cambridge, 28 February to 2 March 2006
	4	Belgium's comments on Document IWC/F06/RMSWG 6: 'Further thoughts for a code of conduct for whaling under scientific permit'
	5	'Yet further thoughts on a Code of Conduct for Whaling under scientific permit' by A. Bjørge (Chair of the Scientific Committee), D. DeMaster (immediate past Scientific Committee Chair), G. Donovan (Head of Science, IWC Secretariat) and D. Palka (Vice Chair of the Scientific Committee
	6	Paper on options for compliance mechanisms, including enforcement, under the RMS. Submitted by the UK
IWC/58/Rep	1	[Extract from the] Report of the Scientific Committee. Item 16.1: Improving the Committee's procedure for reviewing scientific

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. REVIEW OF INTERSESSIONAL WORK
   - 3.1 Development of a Code of Conduct for whaling under special permit
   - 3.2 Compliance
   - 3.3 Other

4. FUTURE WORK

5. ADOPTION OF THE REPORT

Appendix 4
Document IWC/58/RMS 5: Yet further thoughts on a Code of Conduct for Whaling under Special Permit

Arne Bjørge, Doug DeMaster, Greg Donovan and Debi Palka

1. INTRODUCTION

The Chair's proposal for an RMS (IWC/56/26) had suggested that a code of conduct be developed for whaling under scientific permit as part of an RMS package. We were asked to produce an initial draft of what elements might comprise such a code of conduct and we presented our first thoughts towards the development of such a code in IWC/M05/RMSWG 10 (later appended as IWC/57/RMS3 Annex IIH). A subsequent version was presented to the meeting of the RMS Working Group in Cambridge in February (IWC/58/RMSWG6). At that meeting it was suggested that it might be valuable to update and develop that document and this is the result. We hope that this revision may prove of some value for your discussions. As before, we have attempted to minimise consideration of non-scientific aspects to the extent possible given that this is being discussed in an RMS context. Specifically, we do not comment on the issue as to whether lethal research is philosophically desirable or not and nor, by developing such a code, is it our intention to suggest that scientific permit catches should be the norm. However, the very essence of being asked to participate in the development of such a code implies that the possibility that special permits may be issued under certain circumstances exists.

In developing the code, we recognise that the Scientific Committee has developed the management procedure approach (RMP and AWMP) that is regarded as a milestone in modern wildlife management. This approach explicitly incorporates scientific uncertainty in order to ensure that there is no inadvertent depletion of any population. The example of a code given below therefore follows a similar philosophical approach. Any evaluation of the take of whales under scientific permits must account for all potential human induced mortality including direct catches, bycatches, ship strikes etc. to ensure no unwanted depletion of the stocks.

We stress yet again that the approach below is suggested as one possible example. The use of language such as 'shall' is merely to provide an example of what the text of such a code might look like rather than to suggest that this is the answer. There are a number of areas (particularly with respect to detailing the responsibilities of Contracting Governments, the relationship between the proposed Review Group and the full Scientific Committee, definition of terms such as 'acceptably low' and 'acceptable levels', levels of confidentiality at various stages in the process) that require clarification and elaboration if the RMS Working Group believes the approach is worth following up. We have attempted to clarify some of these aspects in this draft, recognising that these suggestions will almost certainly not please everyone.

Finally, we would like to stress that whilst there is a strong resemblance in some aspects here to a proposal we submitted to the Scientific Committee as a possible way to improve its present method of reviewing special permits, the situation here is different. This document has been submitted in the context of an overall RMS package with a variety of elements.

2. DEVELOPMENT OF PERMIT PROPOSALS

2.1 Objectives

The first stage of any permit proposal (or indeed any research proposal) should be the development of precise, and to the extent possible, quantified objectives and sub-objectives expressed as testable hypotheses. This is clearly the responsibility of the Contracting Government and their scientists. The reason the proposers consider the proposal to be important must be captured as part of the objectives. As a minimum, the Contracting Government should include a statement as to how the proposed research is intended to provide information that will be used to:

(1) improve the conservation and management of whale stocks;

(2) improve the conservation and management of other living marine resources or the ecosystem of which the whale stocks are an integral part and/or;

(3) test hypotheses not directly related to the management of living marine resources.

Section 2.2.3 further develops the manner in which this might be carried out.

2.2 Submission to the Scientific Committee

2.2.1 Abundance estimates

No proposal for a permit should be submitted to the Committee unless an abundance estimate is available for the species/regions involved. Without an acceptable estimate it will not be possible to be able to satisfactorily assess the possible conservation implications of any catches. The quality of that estimate may depend on the scale of the permit proposal (e.g. a one-off take of one animal versus a multi-year proposed take of hundreds of animals).

Normally (and certainly for large, multi-year takes) estimates should have been obtained following the guidelines developed for abundance estimates for use in the RMP or AWMP, although in certain circumstances alternative methods (e.g. mark-recapture estimates) may be acceptable. If the estimate has not already been accepted by the Scientific Committee, the data upon which the abundance estimates are based should be made available under the Scientific Committee's Data Availability Agreement Procedure A (with its associated protection for data holders and its timeframe). New estimates should be reviewed and either agreed or revised by the IWC Scientific Committee at an Annual Meeting. [It has been suggested by some that a mechanism needs to be developed to ensure that unacceptable delays in reaching agreement on an estimate in the Scientific Committee can not be used to prevent the review of a special permit; it is our belief that the Scientific Committee will review submitted abundance estimates with impartiality as it has for RMP and AWMP *Implementations* – where there is disagreement and this is only a small minority, traditionally the Scientific Committee report reflects the broad agreement and notes a minority statement.]

2.2.2 Preliminary proposal (submission at least 9 months before an Annual Meeting)

Once an abundance estimate(s) is (are) available, the Contracting Government should send an initial proposal to the Chair of the Scientific Committee. This must be submitted to the Chair of the Scientific Committee at least 270 days (i.e. about 9 months) before an Annual Meeting. This must contain details on:

(1) Objectives of the study: – rationale and to the extent possible, quantified objectives and sub-objectives expressed in terms of testable hypotheses [the following section has been considerably expanded for clarity]

The objectives should:

(a) be quantified to the extent possible;

(b) be arranged into two or three categories, if appropriate: 'Primary', 'Secondary' and 'Ancillary';

(c) include a statement for each primary proposal as to whether it requires lethal sampling, non-lethal methods or a combination of both;

(d) include a brief statement of the value of at least each primary objective in the context of the three following broad categories objectives:

  (i) improve the conservation and management of whale stocks;

  (ii) improve the conservation and management of other living marine resources or the ecosystem of which the whale stocks are an integral part and/or;

  (iii) test hypotheses not directly related to the management of living marine resources.

(e) Include, in particular for (i) and (ii) above, at least for each primary objective, the contribution it makes to *inter alia*

  (i) past recommendations of the Scientific Committee;

  (ii) completion of the Comprehensive Assessment or in-depth assessments in progress or expected to occur in the future;

  (iii) the carrying out of *Implementations or Implementation Reviews* of the RMP or AWMP;

  (iv) improved understanding of other priority issues as identified in the Scientific Committee Rules of Procedure (IWC, 2006, p.180)

  (v) recommendations of other intergovernmental organisations.

(2) Background information:

(a) Summary of what is known about the abundance and population structure of the species/area under consideration;

(b) List of all relevant available data (c.f. that required during the RMP/AWMP *Implementation process*). These data shall be made available under Procedure A of the Data Availability Agreement.

(2) Methods[1] to address objectives:

(a) Field methods, including:

- species, number and sampling protocol for both lethal and non-lethal aspects of the proposal;
- an assessment of why non-lethal methods (including analysis of existing data as well as collection of new data), or methods associated with any ongoing whaling operations have been considered to be insufficient;

(b) Laboratory methods;

(c) Analytical methods, including estimates of statistical power where appropriate;

(d) Time frame for project must be specified at the outset and intermediate targets ('milestones') set.

(3) Assessment of potential effects of catches on the stocks involved:

Where appropriate (i.e. for multiple-year [>2 or feasibility studies] proposals involving many [e.g. >ca 50 animals or more than 1% of the lower confidence interval of the abundance estimate, whichever is fewer], the potential effects of the catch shall be evaluated using a simulation approach similar to that used in the RMP/AWMP, including consideration of uncertainty

- For the proposed time-frame of the proposal
- For a situation where the proposal is continued (a) for twice the envisaged time at the same level of removals, (b) three times the envisaged time at the same level of removals and (c) 100 years at the same level of removals.

The computer code (and full description) used in any simulations will be lodged with the IWC Secretariat. [The proposal will provide information on the risk of e.g. the targeted population(s) declining to below an agreed level [2](e.g. 0.54K) or slowing the time taken for the recovery of population(s) to an agreed level (e.g. 0.54K) by more than *x* years.]

2.3 The review process

Once a proposal is received, the Chair, in consultation with the Convenors, will draw up a Review Group of appropriate specialists who may or may not be part of the Scientific Committee (the number shall be normally no more than 20[3], depending on the complexity of the proposal) to take part in the review process, primarily via a Workshop (see below). In addition, at least one of the Chair, Vice-Chair and Head of Science shall participate and Chair the Review Group. The Secretariat's computing department will assist the Review Group if necessary. The choice of experts shall be made by the Chair, Vice-Chair and Head of Science in conjunction with the convenors for that year[3], with special emphasis on the field and analytical methods provided in the proposal and estimation of the effect of catches on the stocks(s). The selection process shall occur in the following manner [This is newly specified]:

(1) The Chair shall circulate the proposal to the Vice-Chair, Head of Science and Convenors, normally within **1 week** of receipt;

(2) The Convenors shall examine the proposal and in particular the field and analytical methods and, normally within **3 weeks**, suggest names for consideration for the specialist group – if these experts are not members of the Committee they shall include a rationale for their choice – the suggestions will be available to all Convenors;

(3) The Chair, Vice-Chair and Head of Science will develop a proposed final list (with reserves) for consideration by the Convenors within **2 weeks** and begin the process of establishing the time and venue of the Workshop taking into account the availability of the proposed experts**;**

(4) The Convenors will send final comments within **1 week**;

(5) The Chair, Vice-Chair and Head of Science will agree a final list (with reserves); the proposal (with a note concerning any restrictions) will be sent to the selected experts and reserves - the process thus far will have taken about 8 weeks since the proposal has been received.

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[1] Where novel or non-standard methods are proposed, sufficient information must be given to allow these to be properly evaluated

[2] [2] 0.54K was presented as one possible example and it relates to its use in the objectives behind the RMP and AWMP. Belgium has commented that it believes it would be better not to suggest any value here.

[3] It has been suggested that it is not appropriate to limit the participation on this group of at least one scientist nominated by each Contracting Government. This is certainly an option, although in our opinion this would lessen the effectiveness of the initial scientific review (experience has shown that Workshops function best when the number of participants is relatively small) and may encourage a more political stance in the group, as has sometimes been the case in the full Scientific Committee which commented on the difficulties in separating out the scientific from the more political aspects when reviewing proposals last year.

2.3.1 Review workshop (at least 180 days before an Annual Meeting)
The initial proposal shall be circulated to the Review Group. Data used to justify the proposal should be made available to the Review Group under the Committee's Data Availability Agreement Procedure A. The Contracting Government may request that the proposal remains confidential at this stage.

The relevant Contracting Government shall host a Review Workshop at least 180 days (i.e. about six months) before the start of the Annual Meeting; the dates and venue shall be chosen in consultation with the Chair of the Scientific Committee, who has the final say. Adequate time must be allowed to enable the Review Group of scientists to read the proposal and dates must be chosen to allow all of the nominated scientists to participate (or, if necessary, replacements nominated by the Chair and Convenors). Travel and subsistence costs shall be met by the requesting Government via the IWC Secretariat.

Up to 10 scientists involved in the development of the original proposal may participate in the Workshop in an advisory role. The level and timing of their participation will be at the discretion of the Chair, although the final report will clearly attribute the opinions and recommendations of the Review Group from the opinions and comments of the proponents of the proposal (see below).

The primary objective of the Workshop will be to review the proposal *in the light of the stated objectives*. In particular, the Workshop should focus on:

(1) brief comments on its view of the importance of those objectives from a scientific and management perspective;

(2) whether the proposed field, laboratory and analytical methods are likely to achieve the stated quantified objectives within the proposed time-frame, including, where appropriate,

(a) additional power analyses;

(b) comments on whether the sample size is appropriate, taking into account the need to minimise the level of lethal sampling required to obtain answers of sufficient precision;

(c) comments on the proposed time-frame;

(3) the provision of advice and suggestions on components of the programme that might be achieved using non-lethal methods, including, where possible, power analyses, approximate logistics and costs, and time-frames;

(4) the provision of advice on the likely effects on the stock or stocks involved under various scenarios of the length of the programme – this may involve a different analysis to that provided in the original proposal.

Given (1) – (4) above, the Workshop may choose to develop a revised proposal or alternative proposals to meet the stated objectives of the original proposal. This may or may not include lethal methods and may include changes to the sample size and methods of the original proposal or its time frame. It will also include a specified time-table with 'milestones'. It may also include comments on the feasibility of *any* approach to achieve the stated objectives.

The Workshop report is the responsibility of the Review Group. The Review Group should attempt to reach consensus on the individual issues referred to above, but where this is not possible the rationale behind the disagreement should be clearly stated. The scientists involved in the development of the original proposal may include an appendix of their views if they feel it to be necessary.

Following Annual Scientific Committee meeting
The Contracting Government shall submit a revised (if necessary) proposal of the original scientific permit proposal, explaining how the recommendations from the Workshop have been taken into account and specifying milestones, at least 120 days before the Annual meeting. The Review Group will have 30 days to comment on the revised proposal; if they feel it is necessary to hold a meeting to do this it will be at the expense of the proposing Government. The report of the review workshop, the revised proposal, and the Review Group's response shall be submitted to SC members no later than 90 days before the annual meeting.

The report of the review workshop (and its comments on any revised proposal) can be discussed and commented upon, but not amended by the full Scientific Committee.

The review workshop report, any revised proposal and the comments from the SC will then be submitted to the Commission and become publicly available at the opening of the Commission meeting in the usual manner.

Responsibility of Contracting Governments
We would suggest that Contracting Governments should at least:

(1) refrain from issuing a permit for lethal aspects of any proposal until the above process has been completed;

(2) refrain from issuing a permit if the Review Group or a majority of the Review Group agrees that it does not have a 'reasonable' likelihood of achieving the stated objectives within the time frame proposed;

(3) refrain from issuing a permit if the Scientific Committee agrees that there is a fundamental flaw in the analysis of the Review Group that requires further attention by that Group;

(3) only issue a permit if the Review Group agrees that there is an acceptably low risk of e.g. the targeted population(s) declining to below an agreed level [e.g. 0.54K[4]] or slowing the time taken for the recovery of population(s) to an agreed level [e.g. 0.54K] by more than *x* years.

Periodic independent review and data availability

Once a programme has been undertaken, periodic review of the actual progress against expected progress is important at regular intervals. The period between reviews will depend on the nature of the research and milestones set. Therefore, when reviewing the final research proposal, the Review Group should develop a specified time-table for subsequent reviews by it or a similar Review Group nominated by the Chair and Convenors in the manner described above for the original proposal. The data obtained under scientific permits shall be made available for such periodic reviews under the IWC's Data Availability Agreement Procedure A. One function of such reviews will be to comment on whether the research remains likely to meet its objectives and, if appropriate, to suggest changes (including suspension) to methods, sample sizes etc.

Consideration of subsequent permit proposals

Contracting Governments should agree to implement extensions to or follow-up research programmes (that are based on the results of existing permits) only after the results of the initial research programme have been subject to review by the Review Group and the Scientific Committee.

[4] 0.54K was presented as one possible example and it relates to its use in the objectives behind the RMP and AWMP. Belgium has commented that it believes it would be better not to suggest any value here.

Appendix 5
Paper on options for compliance mechanisms, including enforcement, under the RMS (Document IWC/58/RMS 6)

Submitted by the UK

The following table has been produced to identify the specific responses/measures to non-compliance that have so far been mentioned by some Contracting Governments as being desirable and indicates how each of these may or may not be compatible with the provisions of the existing Convention and with the draft Schedule text for the Compliance Review Committee.

It is intended to highlight options available should contracting Governments wish to be bound by such. It does not represent a definitive UK view on the way forward.

A compliance framework- for dealing with non-compliance of any RMS agreed- must be an integral component of any RMS package adopted by the Commission. This will ensure that compliance is dealt with specifically in the Schedule to the Convention, and as such binds members to comply with the RMS. If this is not the case then any RMS adopted can be exploited and will not be able to prevent IUU whaling effectively.

ITEM	PROPOSAL/S	OUTSTANDING ISSUE/S	COMPATIBILITY WITH CONVENTION	EXAMPLE OF INTERNATIONAL BEST PRACTICE[5]
Establishment of CRC	The Commission shall establish a Compliance Review Committee to review and report on the compliance of all whaling operations with the provisions of the Schedule and penalties for infractions thereof. (RMS SDG4)		Compatible with the Convention	
Composition of CRC	The RMS Expert Drafting Group agreed that the CRC should be open to all Contracting Governments	[Other proposals on the composition of the Committee would include, in addition to governments, representatives from the whaling industry and NGOs]	Compatible with the Convention (The proposal to include industry and NGO representatives with States would be new for an IWC Committee but is not prohibited under the IWC)	AIDCP: The International Review Panel (IRP) responsible for the review of compliance at the AIDCP includes representatives of the Parties ("governmental members"), three elected representatives of non-governmental environmental organizations with recognized experience, and three elected representatives from the tuna industry ("non-governmental members"). All non-governmental members can participate in the discussion of the IRP without being granted the right to vote. CITES: compliance issues are discussed in meetings with broad access to NGO representatives (Standing Committee, COP). CITES grants NGOs the right to intervene on the floor and to summit relevant documents to Parties.
Procedure	CRC should have the power to meet as regularly as necessary and to convene inter-sectional meetings if requested by Parties or of its own motion	Decision-making Procedures of the CRC	Compatible with the Convention	AIDCP: the IRP meets three times a year and may convene additional meetings at the request of at least two of the Parties, provided that a majority of the Parties support the request
Tasks of the CRC	*i. Develop and maintain a list of matters*	Alternative proposal that the definition of	Compatible with the Convention	In other fisheries organizations, designation of

5 The following agreements were reviewed; Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR); Agreement on International Dolphin Conservation Program (AIDCP); Inter-American Tropical Tuna Convention (IATTC); International Convention for the Conservation of Atlantic Tuna (ICCAT); Indian Ocean Tuna Convention (IOTC); Northwest Atlantic Fisheries Organization (NAFO); Northeast Atlantic Fisheries Convention (NEAFC); Fisheries Forum Agency (FFA); U.N. Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (Straddling and Migratory Fish Stocks Agreement); Multilateral High-Level Conference: Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (MHLC Convention); Convention for the Conservation of Southern Bluefin Tuna (CCSBT); U.N. Food and Agricultural Organization Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement); Western and Central Pacific Fisheries Convention (WCPFC).

(As defined by RMS SDG4)	*that will constitute "serious infractions"*	serious infractions is spelt out by the IWC for inscription in the text of the Schedule		"serious infractions" is commonly decided by Contracting Governments that allows a certain degree of stability for the list adopted. See Straddling and Migratory Fish Stocks Agreement, WCPFC, NAFO and NEAFC.
	ii. Review: (a) infraction reports from Contracting Governments; and (b) the annual report of the functioning of the International Observer Scheme, including any alleged infractions, for the most recent completed whaling season;	In order to ensure proper enforcement of the obligation to report to the Commission on matters of compliance, the Commission should adopt a method ensuring uniform reporting on infractions, including full information on measures taken to investigate, prosecute and punish infractions.	Compatible with the Convention	IATTC, CITES, CCAMLR, WCPFC
	iii. Review other reports submitted by Contracting Governments on matters relevant to the Committee, including alleged infractions	There should be a corresponding duty on Contracting Governments to co-operate fully with the CRC in its examination of reports of infractions and in particular provide full information on infractions and punitive and preventive measures taken.	Compatible with the Convention	IATTC, CITES, CCAMLR, WCPFC
	iv. Compare the information in (ii) and (iii) above and identify any disagreement in the details of an alleged infraction		Compatible with the Convention	IATTC, CITES, CCAMLR, WCPFC
	v. report its view as to whether an alleged infraction is a violation(s) of the provisions of the Schedule	Complementary proposal requesting that a definition of what constitutes an infraction be adopted by the IWC and enshrined in the text of the Schedule	Compatible with the Convention	IATTC Compliance Committee reviews compliance and makes recommendations Other agreements define the threshold of what constitutes an infraction by adopting a uniform definition of infractions (ICCAT, CCAMLR, AIDCP)
	vi. review action(s) taken by a Contracting Government in response to violation(s) of the provisions of the Schedule identified above	Contracting Governments should have responsibility for follow-up on infractions and findings of violation, and should be under an obligation fully to co-operate with the Committee in this review,	Compatible with the Convention	In other agreements, recommendations pertaining to sanctions and action to be taken as a response to infractions are made (CCAMLR, Straddling Fish Stocks Agreement, WCPFC, NEAFC).
	vii. review the actions taken, including progress made, by Contracting Governments in response to previous violations considered by the Commission	Responsibility of Contracting Governments for follow-up on infractions and findings of violation should be made clearer through the establishment of requirements for uniform reporting on infractions.	Compatible with the Convention	AIDCP PARTIES ARE TO INFORM THE INTERNATIONAL REVIEW PANEL OF THEIR ENFORCEMENT ACTION AND OF THEIR RESULTS. Information is already provided between other relevant conventions and institutions, such as CITES. Similarly, NAFO shares information on IUU with the FAO and regional fisheries bodies. See also CCAMLR, ICCAT NEAFC.
	viii. review the operation of the DNA register and tissue archives established pursuant to Paragraph X, and make appropriate recommendations		Compatible with the Convention	

	ix. Review the results of market surveys conducted pursuant to paragraph Y, paying particular attention to cases where products from individual whales are found that are not included on the DNA register established pursuant to paragraph X		Compatible with the Convention	
	x. Review the operation of the catch documentation system established pursuant to paragraph Z and make appropriate recommendations	Any RMS adopted by the IWC must include a global catch verification scheme, Coordinated by the IWC Secretariat, in order that only legally caught whale products can enter the market. It is essential that all whaling activities (including scientific whaling should it continue under an RMS) be subject to this scheme. The IWC should ensure that a real-time centralised VMS system is in place and that standardised tamper-proofing of VMS units on board all vessels is compulsory.	Compatible with the Convention	AIDCP
	xi. Recommend to the Commission actions to be taken to improve compliance with the provisions of the Schedule		Compatible with the Convention	CCAMLR, WCPFC
	xii. Submit a report to the Commission on its deliberations and recommendations.		Compatible with the Convention	CITES
	c) The Compliance Review Committee shall report on infringements and the seriousness of these infringements to the Commission and advise the Commission what actions, if any, should be taken.	Obligation on Commission to take into consideration report of the CRC when proceeding with its decision-making procedures. Findings and recommendations from CRC to be distributed to individual Governments and made available to the public	Compatible with the Convention	Institutions comparable to the CRC in other international fisheries organizations are given greater authority. AIDCP, recommendations from the International Review Panel (IRP) have to be taken into consideration by each Party when deciding on appropriate sanctions for violations.[6] Under extraordinary and unforeseen circumstances, the IRP is even given the authority to recommend necessary measures on the implementation of the Dolphin Mortality Limits to Contracting Parties who may only act "as recommended by the IRP".[7] The findings of the IRP are published yearly and made available to the public.[8]
Proposals for co-ordination of National/Internatio	The SDG Text on the CRC contains no provisions in this respect, however proposals have been tabled by a number			

6See Article XVI Paragraph (2) of the AIDCP.

7 See Annex IV Paragraph IV (2) of the AIDCP

8 See Annex VII Paragraph 12(f) of the AIDCP,.

nal measures to secure compliance	of Contracting Governments (see next column)			
		Withdrawal of parties right to vote where a party is fails to act to regularise an established violation of the Convention	Already in place at the IWC for failure to pay financial contributions on time: See Rules of Procedure E.2	Under discussion in CITES.
		Withdrawal of the right to participate in the work of Committees and sub-Committees.	Compatible with the Convention.	Under discussion in CITES.
		Blacklisting IUU vessels (list of IUU vessels can be published and distributed to other fisheries organizations, Parties can be required to deny port access to vessels involved in IUU fishing, etc.)	The IWC has the power to make recommendations (Article VI ICRW), which are not regarded as binding decisions. However, short of amending the treaty, the Contracting Governments could, following the example of other organisations like CITES, IATTC and AIDCP, commit themselves to treating such findings as authoritative.	CCAMLR, AIDCP, ICCAT, NEAFC, NAFO. Several organizations recognize that a vessel can be presumed to undermine the effectiveness of the agreement/conservation measures (NEAFC, NAFO, ICCAT, AIDCP, CCAMLR)
		Withdrawal of fishing licenses or registrations	The IWC has the power to make recommendations (Article VI ICRW), which are not regarded as binding decisions. However, short of amending the treaty, the Contracting Governments could, following the example of other organisations like CITES, IATTC and AIDCP, commit themselves to treating such findings as authoritative.	ICCAT, FFA, AIDCP, CCAMLR, WCPFC
		Trade Restrictions	The IWC has the power to make recommendations (Article VI ICRW), which are not regarded as binding decisions. However, short of amending the treaty, the Contracting Governments could, following the example of other organisations like CITES, IATTC and AIDCP, commit themselves to treating such findings as authoritative.	ICCAT: Commission may reduce quotas, revoke licenses, or impose trade restrictions against Members for non-compliance (ICCAT Recommendation 96-14 Regarding Compliance in the Bluefin Tuna and North Atlantic Swordfish Fisheries - Entered into force: August 4, 1997; ICCAT Resolution 03-15 Concerning Trade Measures - Transmitted to Contracting Parties on December 19, 2004) IATTC: The IATTC can also adopt trade measures for non compliance[9] and all IATTC resolutions are considered binding by Parties. MHCL: See Article 25 §12 of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (entered into force on 19 June

9 *IATTC Resolution Concerning the Adoption of Trade Measures for Non-Compliance*, Res. C-05-04, June 2005 available at <http://www.iattc.org/>

				2004), available at <http://www.ocean-affairs.com/ > [hereinafter MHLC Convention]. CITES: trade restrictions can be adopted as a last resort to entice compliance. CCAMLR: Resolution 19/XXI urges Parties and non-Parties to prohibit landing and transhipments of fish and fish products from boats flagged by States found to be non-compliant. 2004 Conservation Measure 10-06 also prohibited chartering of vessels involved in IUU fishing and importing their catches.
		Reduction or cessation of catch quota - [Proposal of quotas to be set for a maximum of three years and will automatically revert to zero at the end of that period – the Commission will take account of advice and/or recommendations from the Compliance Committee in deciding whether to set new catch quotas and, if so, at what levels. Decisions will require three-quarters majority]	The Commission has the power to set quotas and the Convention does not prevent the Commission from taking into account a Contracting Government's record of compliance in doing so.	AIDCP - Automatic loss or reduction of Dolphin Mortality Limits (DMLs) for fishing in excess of DMLs CITES: in cases where trade volumes are considered unsustainable for a species, the Standing Committee can decide to adopt maximum export quotas. See also NAFO and ICCAT
		Publication of parties in a non-compliance list and public notification of non-compliance.	Compatible with the Convention	CITES
		Organization of missions to assess compliance.	Compatible with the Convention	CITES
		Financial penalties	The IWC has the power to make recommendations (Article VI ICRW), which are not regarded as binding decisions. However, short of amending the treaty, the Contracting Governments could, following the example of other organisations like CITES, IATTC and AIDCP, commit themselves to treating such findings as authoritative. The IWC already applies financial penalties for delay in payment of yearly contributions (see IWC Financial Regulation F, "Arrears of Contributions").	ICCAT