

Report of the Infractions Sub-committee

PANAMÁ, REPUBLIC OF PANAMA 25 JUNE 2012

Terms of reference: The Infractions Sub-committee considers matters and documents relating to the International Observer Scheme and Infractions insofar as they involve monitoring of compliance with the Schedule and penalties for infractions thereof (*Rep. int. Whal. Commn* 29: 22).

1. INTRODUCTORY ITEMS

A list of participants is given in Appendix 1.

1.1 Appointment of Chairman

Lars Walløe (Norway) was elected Chair.

1.2 Appointment of Rapporteur

Cherry Allison (Secretariat) was appointed rapporteur.

1.3 Review of Documents

The following documents were available to the sub-committee.

IWC/64/Inf	1	Revised Draft Agenda
	2	Annotated Draft Agenda
	3	National Legislation Details Supplied to the IWC
	4	Draft Summary of Infraction Reports for 2011 Received by the Commission

2. ADOPTION OF THE AGENDA

The Chair noted that in the past some delegations, including Norway and Japan, had referred to the terms of reference of this Sub-committee and had stated their belief that Item 7.1, covering stockpiles of whale products and trade questions, was outside the scope of the Convention. In a spirit of co-operation there was no request for the item to be deleted. The draft agenda was adopted unchanged (Appendix 2).

3. INFRACTIONS REPORTS FROM CONTRACTING GOVERNMENTS, 2011

3.1 Reports for 2011

The Sub-committee reviewed IWC/64/Inf 4, the draft summary of infraction reports received by the Commission for 2011, which is given as Appendix 3 to this report.

The USA provided information on the take of a bowhead calf in September 2011. The Alaska Eskimo Whaling Commission (AEWC) reported that the whale appeared to be an independent animal not associated with a large whale; however, after the whale was struck, another whale surfaced in the same area. After landing the whale, it was determined to be a calf and the other whale which surfaced after the strike was assumed to be accompanying the calf. The AEWC Board of Commissioners met on 4 October, 2011, to take testimony from the crew in question and crews nearby. After receiving testimony, the AEWC Board of Commissioners determined that the crew had taken all possible precautions, but that the absence of a large whale in the area where the calf was struck led to the mistake. No penalty was assessed. The USA noted that this information can also be found in Table 2 of IWC/64/Inf 2.

3.2 Follow-up on earlier reports

Information on the completion of previously unresolved infractions from earlier seasons is given in Appendix 3, Table 3; these include one infraction by Denmark (Greenland), two by Iceland and two by Korea. In addition Norway reported an infraction from 2009 (2009.19), which had not previously been reported to this sub-committee, regarding 14 incidents of the intentional use of a cold grenade harpoon.

In response to a question from Switzerland concerning the fines imposed, Norway clarified that a fine of 12,000 Norwegian krone (~£1,300) was imposed and the value of the illegal catch confiscated was 163,000NK (~£17,300). Iceland agreed to provide information on the fine imposed after the meeting¹.

Iceland clarified that no calves were seen near the two lactating fin whales, and that it was only when the whales were being processed that milk was found in the mammary glands and the whales determined to be lactating. These whales may perhaps have had calves that had been recently weaned.

The Russian Federation suggested that such cases should not be considered an infraction and that the Commission should agree that they should not be listed as such.

The Secretariat clarified that lactating whales are traditionally reported to this sub-committee as the convention forbids the taking of whales with calves. However, it is recognized that in cases when a calf was not seen with the whale, that it is impossible to recognize that a whale was lactating before it was caught.

Denmark noted that the infraction it had reported (see Table 2) regarding a whale that was 1m less than the minimum allowed length of 15.2 m was a similar situation in that it is very difficult to access the exact length of a whale before it is caught.

Sweden recognised the necessity to report a bowhead calf as an infraction, as in table 2. However, it believed that this was an unnecessary rule originating from the time the Convention was signed. Improved knowledge of population dynamics reveals that taking a calf has a much lower population impact than taking a mature female. Norway concurred with this view and made a personal statement noting that the management of whaling is different from other harvest regimes which try to avoid productive animals. In the IWC whale calves may not be taken whereas a female that could produce a calf next year is allowed to be caught.

4. SURVEILLANCE OF WHALING OPERATIONS

The Infractions Reports submitted by the USA, the Russian Federation and St. Vincent and the Grenadines stated that 100% of their catches are under direct national inspection. Catches by Denmark (Greenland) are subject to a random check (1%) and 1% is under inspection by a NAMMCO programme. For the Icelandic catch in 2011, 5.2% of the hunt was subject to a random domestic check and 3.5% under inspection through a NAMMCO programme.

5. CHECKLIST OF INFORMATION REQUIRED OR REQUESTED UNDER SECTION VI OF THE SCHEDULE

The Checklist was developed as an administrative aid to the Sub-committee in helping it to determine whether obligations under Section VI of the Schedule were being met. It is not compulsory for Contracting Governments to fill in the Checklist although, of course, they do have to fulfil their obligations under this Section of the Schedule.

The available information is summarised below:

Denmark: Information on date, species, length, sex and the length and sex of any foetus if present is collected for between 86-100% of the catch, depending on the item. The position of each whale killed is collected for 63% of the catch and the name of the area where whales are hunted is reported for the remainder. Information on killing methods and struck and lost animals are also collected.

USA: Information on date, time, species, position, length, sex, the length and sex of any foetus if present, killing method and number of struck and lost is collected for 87.5-100% of the catch. Biological samples are collected from at least 61% of animals.

Russian Federation: Information on date, time, species, position, length, sex, the length and sex of any foetus if present, killing method and numbers struck and lost is collected for 99-100% of the catch.

St. Vincent and the Grenadines: Information on date, time, species, length, sex, whether the whale is pregnant and/or lactating and numbers struck and lost is collected for 100% of the catch and has been submitted to the Secretariat.

Norway and Iceland: the required information has been submitted to the Secretariat as noted in the Scientific Committee report (IWC/64/Rep 1).

¹ After the meeting Iceland reported that a fine of 362,832 Icelandic krona (~£1,850) per fin whale was imposed for the two whales.

6. SUBMISSION OF NATIONAL LAWS AND REGULATIONS

A summary of national legislation supplied to the Commission is given in Table 1.

Sweden noted the number of countries who either have no legislation or have not submitted it, and encouraged members to submit all relevant legislation as soon as possible. Mexico stated its intention to submit its most recent regulations regarding marine mammals.

Table 1
National Legislation details supplied to the IWC¹

Country	Date of most recent material submitted	Country	Date of most recent material submitted
Antigua and Barbuda	None	Kiribati	None
Argentina	2003	Korea, Republic of	2011
Australia	2000	Laos	None
Austria	1998	Lithuania	None
Belgium	2002	Luxembourg	None
Belize	None	Mali	None
Benin	None	Marshall Islands, Republic of	None
Brazil	2008	Mauritania	None
Bulgaria	None	Mexico	2006
Cambodia	None	Monaco	None
Cameroon	None	Mongolia	None
Chile	1983	Morocco	None
China, People's Republic of	1983	Nauru	None
Colombia	None	Netherlands, The	2002
Congo, Republic of	None	New Zealand	1992
Costa Rica	None	Nicaragua	None
Cote D'Ivoire	None	Norway	2000
Croatia, Republic of	None	Oman	1981
Cyprus	None	Palau, Republic of	None
Czech Republic	None	Panama	None
Denmark (including Greenland)	2010	Peru	1984
Dominica	None	Poland	None
Dominican Republic	None	Portugal	2004
Ecuador	2000	Romania	None
Eritrea	None	Russian Federation	1998
Estonia	2008	San Marino	None
Finland	1983	Saint Kitts and Nevis	None
France	1994	Saint Lucia	1984
Gabon	None	Saint Vincent and The Grenadines	2003
Gambia	None	Senegal	None
Germany	1982	Slovak Republic	None
Ghana, Republic of	None	Slovenia	None
Greece	None	Solomon Islands	None
Grenada	None	South Africa	1998
Guatemala	None	Spain	2008
Guinea-Bissau	None	Suriname	None
Guinea, Republic of	None	Sweden	2004
Hungary	None	Switzerland	1986
Iceland	1985	Tanzania	None
India	1981	Togo	None
Ireland	2000	Tuvalu	None
Israel	None	UK	1996
Italy	None	Uruguay	2002
Japan	2008	USA	2004
Kenya	None		

NOTES:

- Up to the end of March 2012. Dates in the table refer to the date of the material not the date of submission.
- Member states of the European Union (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and UK) are subject also to relevant regulations established by the Commission of the European Union. The date of the most recent EU legislation supplied to the International Whaling Commission is 2005.

7. OTHER MATTERS

7.1 Reports from Contracting Governments on availability, sources and trade in whale products

The Commission has adopted a number of Resolutions inviting Contracting Governments to report on the availability, sources and trade in whale products:

- 1994-7 on international trade in whale meat and products
- 1995-7 on improving mechanisms to prevent illegal trade in whale meat
- 1996-3 on improving mechanisms to restrict trade and prevent illegal trade in whale meat.
- 1997-2 on improved monitoring of whale product stockpiles.
- 1998-8 *inter alia* reaffirmed the need for Contracting Governments to observe fully the above Resolutions addressing trade questions, in particular with regard to the problem of illegal trade in whale products, and urged all governments to provide the information specified in previous resolutions.

No reports were received by the Secretariat on these resolutions and no comments were made during the meeting.

7.2 Other

No other matters were raised.

8. ADOPTION OF REPORT

The report was adopted by correspondence on 28 June 2012.

Appendix 1

LIST OF PARTICIPANTS

Argentina

Victor Marzari
Miguel Iniguez

Australia

Pam Eiser
Stephanie Ierino
Chris Schweizer
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Austria

Andrea Nouak
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Lars Walløe (Chair)
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Gabriel Despaigne

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Appendix 2

AGENDA

1. INTRODUCTORY ITEMS
 - 1.1 Appointment of Chair
 - 1.2 Appointment of Rapporteur
 - 1.3 Review of Documents
2. ADOPTION OF THE AGENDA
3. INFRACTIONS REPORTS FROM CONTRACTING GOVERNMENTS
 - 3.1 Reports for 2011
 - 3.2 Follow-up on earlier reports
4. SURVEILLANCE OF WHALING OPERATIONS
5. CHECKLIST OF INFORMATION REQUIRED OR REQUESTED UNDER SECTION VI OF THE SCHEDULE
6. SUBMISSION OF NATIONAL LAWS AND REGULATIONS
7. OTHER MATTERS
 - 7.1 Reports from Contracting Governments on availability, sources and trade in whale products
 - 7.2 Other
8. ADOPTION OF THE REPORT

Appendix 3

SUMMARY OF INFRACTIONS REPORTS RECEIVED BY THE COMMISSION FOR 2011

Under the terms of the Convention, each Contracting Government is required to transmit to the Commission full details of each infraction of the provisions of the Convention committed by persons and vessels under the jurisdiction of the Government. Note that although lost whales are traditionally reported, they are not intrinsically infractions.

Catch and associated data for commercial and scientific permit catches were submitted to the IWC Secretariat (IWC/64/Rep1). Aboriginal subsistence catches and infractions are summarised in tables 1a and 1b.

Table 2 gives details of the infractions reported in the 2011 season and Table 3 gives information on the unresolved or previously unreported infractions from earlier seasons.

Table 1a. Summary of Aboriginal subsistence catches and infractions reported for the 2011 season.

Nation	Species	Males	Females	Total Landed	Lost	Total	Infractions/Comments
DENMARK							
WEST GREENLAND	Fin	0	5	5	0	5	1 ¹
	Minke	39	133	173 ²	6	179	None
	Bowhead	0	1	1	0	1	None
	Humpback	4	4	8	0	8	None
EAST GREENLAND	Minke	0	9	9	1	10	None
ST VINCENT AND THE GRENADINES							
	Humpback	1	0	1 ³	1 ⁴	2	None
USA							
	Bowhead	16	20	38 ⁵	13	51	1 ⁶
RUSSIAN FEDERATION							
	Gray	58	68	126	2	128	None

Table 1b. Summary of Commercial catches and other infractions reported for the 2011 season.

Nation	Species	Males	Females	Total Landed	Lost	Total	Infractions/Comments
ICELAND							
	Minke	45	13	58	0	58	None
NORWAY							
	Minke	163	364	527	6	533	None
REPUBLIC OF KOREA							
	Minke						21 ⁷

¹ See table 2, infraction 2011.1

² Includes 1 animal of unknown sex

³ The Secretariat was informed of the sex of this animal after the meeting of the Infractions Sub-Committee

⁴ The struck and lost whale was not reported until after the meeting of the Infractions Sub-Committee

⁵ Includes 2 animals of unknown sex

⁶ See table 2, infraction 2011.2

⁷ See table 2, infractions 2011.3-7

Table 2. List of infractions from the 2011 season

Ref.	Nation	Species	Sex	Length	Date	Infraction (specify)	Explanation	Penalty/Action	Investigatn. complete?
2011.1	Greenland /Denmark	Fin whale	Fem.	14 m	8/8/2011	Length under 15.2m	Qeqertarsuaq (West Greenland). Reporting form filled out by hunter showed that a fin whale was caught, which was ~1m shorter than the legal minimum catch length of 15.2 m	An administrative warning was given in writing. The whale had already been flensed so no proper control length measurement was possible. It is not possible to measure a swimming whale with an accuracy of 1 meter.	Yes
2011.2	USA	Bowhead	Fem.	6.6m	8 Sept 2011	Calf	A calf was inadvertently taken by a crew from the village of Kaktovik during the fall bowhead whale subsistence hunt. During a hearing by the AEWB Board of Commissioners, it was found that crew in the area observed a whale that appeared to be unaccompanied. After the whale was struck, another whale surfaced in the same area. After landing, it was determined that the struck whale was a calf. Therefore, it is assumed that the other whale which surfaced after the strike was a cow or another adult accompanying the calf.	A hearing by the AEWB Board of Commissioners, held on October 4, 2011, found that the strike of the calf was unintentional and an accident resulting from the fact that the calf appeared to be unaccompanied prior to the strike. No sanction was imposed.	Yes
2011.3	Korea	8 Minke whales	Unk.	5-8 m	02/05/11 17/05/11 21/05/11 24/05/11 27/05/11 19/06/11 11/07/11 16/08/11	Illegal catch	On May 2 nd , a vessel in conjunction with other three vessels caught a minke whale with a harpoon in the coastal waters of ~14 miles from Ulsan, Korea. In similar operations, these vessels caught a total of 8 minke whales in the area up until August 16 th 2011.	8 violators : 6-10 months imprisonment and 2 years probation with momentary penalties (5-35,000 dollars) 2 violators : suspension of prosecution	Yes
2011.4	Korea	2 Minke whales	Unk.	7.8 m Unk	09/04/11 07/11/11	Illegal catch	On April 9 th , three vessels caught a minke whale with a harpoon in coastal waters ~14 miles from Ulsan, Korea. On July 11 th , the same vessels caught one minke whale with a harpoon in coastal waters ~15 miles from Ulsan, Korea.	3 violators : 6-8 months imprisonment and 2 years probation with momentary penalties (7-10,000 dollars) 1 violator : momentary penalty (5,000 dollars)	Yes
2011.5	Korea	Minke whale	Unk.	6 m	21/05/11	Illegal catch	On May 21 st , a vessel caught a minke whale with a harpoon in coastal waters ~15 miles from Youngdeok in Northern Gyeongsang province, Korea.	2 violators: 6-8 months imprisonment, 2 years probation with momentary penalties (2-4,000 dollars) and 80 hours community service 3 violators: momentary penalty (5-7,000 dollars)	Yes

Ref.	Nation	Species	Sex	Length	Date	Infraction (specify)	Explanation	Penalty/Action	Investigatn. complete?
2011.6	Korea	9 Minke whale	Unk.	5-8 m	09/04/11 17/05/11 21/05/11 01/06/11 05/06/11 10/06/11 18/06/11 05/07/11 06/07/11	Illegal catch	On April 9 th , a vessel in conjunction with other three vessels caught a minke whale with a harpoon in the coastal waters ~14 miles from Ulsan, Korea. In similar operations, these vessels caught a total of nine minke whales in the area up until August 6 th 2011.	8 violators : 6-8 months imprisonment, 2 years probation with momentary penalties (2-11,000 dollars) and 120 hours community service 3 violators : 10 months of imprisonment and 2 years probation 2 violators : 8-10 months imprisonment with momentary penalties (10-30,000 dollars) 1 violator : 3,000 dollars momentary penalty	Yes
2011.7	Korea	Minke whale	Unk.	5m	16/05/11	Illegal catch	A vessel operated in the area of Song-do Port, Boryoung, in Chungnam province from April 15 th for the purpose of illegally catching minke whales and caught one minke whale with a harpoon in coastal waters ~23miles from Gunsan.	6 violators : pending in court	Pending

Table 3. List of unresolved or previously unreported infractions from earlier seasons and follow-up actions.

Note: infraction 2009.22 has not previously been reported to this sub-committee.

Ref.	Nation	Species	Sex	Length	Date	Infraction (specify)	Explanation	Penalty/Action	Investigatn complete?
2010.1	Greenland /Denmark	Minke	Male	5 m	5/8 2010	Use of cold harpoon	Paamiut (West Greenland). A cold harpoon was used as secondary killing method.	Reported to the police. Investigation resulted in monetary penalties.	Yes
2010.3	Iceland	Fin	Fem.	66 feet	30.6.2010	Lactating.	No calf was seen.	Fine of 362,832 Icelandic kroner (IKR)	Yes.
2010.4	Iceland	Fin	Fem.	65 feet	12.9.2010	Lactating.	No calf was seen.	Fine of 362,832 Icelandic kroner (IKR)	Yes.
2010.14	Korea	Minke Whale	Unk.	Unk.	23 Aug 2010	No Quota	Crew members were caught discarding bags containing whale meat when a patrol vessel approached a vessel in coastal waters 5 miles southeast of Jukbyun, Northern Gyeongsang province. A detailed inspection was conducted and bags of illegally caught and dismembered minke whale were found in the well of the vessel. The crew members were arrested.	3 violators : 6-8 months imprisonment and 2 years probation	Yes
2009.19	Korea	Minke Whale	Unk.	Unk.	23 Nov 2009	No Quota	A fishing vessel caught a minke whale with a harpoon in coastal waters near Yeongdeok-gum GyeongBuk; it was cut up and the meat taken on board a boat	3 violators : 10 months imprisonment and 2 years probation	Yes
2009.22	Norway	14 Minke	Unk.	Unk.	2009	Use of cold harpoon	** See below	The captain was sentenced to a fine of 12,000 NK. In addition, the fishery authorities had refused the vessels application for participation in the whale hunt in 2010. Furthermore the value of the illegal catch (163,000NK) was confiscated.	

** Infraction report 2009

All vessels permitted to take part in the Norwegian minke whale hunt, are instructed to keep a catch log book which shall be sent to the Directorate of Fisheries by the end of the season. Violation of this order may result in denial of permission to take part in the hunt the following year. The information in the catch log book is compared with the information recorded by the Electronic Trip Recorder (Blue Box) developed in 2001-2005(IWC/57/RMS/8). In addition to the log book and Blue Box, inspectors from the Norwegian Directorate of Fisheries conduct periodic and random checks of the hunt at sea and on land.

Each harpoon grenade has a serial number which shall be recorded in the log book when the whale is shot. In 2009 the mandatory subsequent control of the catch log books at the Directorate of Fisheries, revealed that on one vessel only 14 harpoon grenades had been used to catch 26 minke whales.

The Directorate of Fisheries suspected an infringement of the mandatory use of harpoon grenades (IWC/58/WKM&AWI25) in the hunt and reported this incident to the police. The case has thus since 2009 in the legal system. In December 2011 the Supreme Court upheld the sentence in which the captain was found guilty in 14 incidents of intentional use of cold grenade harpoon.

The captain was sentenced to a fine by the court in 2011. In addition, the fishery authorities had refused the vessels application for participation in the whale hunt in 2010. Furthermore the value of the illegal catch was confiscated.