

**Comments received on the
Draft Consensus Decision to Improve the Conservation of Whales (IWC/M10/SWG 4)**

Introduction

At the fourth meeting of the Small Working Group (SWG) on the Future of the IWC held in Florida from 2-4 March 2010, it was agreed that all Contracting Governments should be invited to send written comments/proposed text changes to the *Draft Consensus Decision to Improve the Conservation of Whales*, contained in the Chair's Report to the SWG (Document IWC/M10/SWG 4) to the Secretariat by 1 April 2010. These written submissions (which were to be made publicly available), together with issues outlined in Table 1 of the Report of the fourth meeting of the SWG on the Future of the IWC (IWC/62/6), will be considered by the Support Group when it meets from 11-15 April 2010. The Support Group will provide support to the Chair on any new/revised text that may be developed.

Written submissions were received from:

- Australia;
- Denmark;
- Germany;
- Japan;
- Republic of Korea;
- New Zealand;
- Russian Federation;
- UK; and
- USA.

They are provided verbatim in the following pages.

**Australian Government****Department of the Environment, Water, Heritage and the Arts**

Ambassador Cristian Maquieira
Chair, International Whaling Commission
The Red House
135 Station Road
Impington, Cambridge
CB24 9NP
United Kingdom

Dear Ambassador Maquieira

I write to convey Australia's amendments to the draft "consensus documents", which are attached.

Please be advised that our proposed changes should be accepted without prejudice to our final decision, should not be construed as any acceptance of other aspects of the "consensus documents" and, more specifically, the draft schedule amendment.

I would like to reaffirm that our position remains as outlined in the Australian Proposal presented at the Small Working Group meeting in March. Australia's amendments aim to build on the positives in the proposed "consensus document" to strengthen further the conservation objectives as a genuine contribution to the negotiation process.

As we have previously advised, the draft ten-year compromise falls well short of a result that Australia could accept. The Government's considered view is that the approach as it stands demands too many first order concessions from those who are committed to an end to commercial and unilateral 'scientific' whaling, while not doing enough to conserve and protect whale populations. In particular, we are deeply concerned that the current arrangement would sanction whaling in an established IWC sanctuary (the Southern Ocean Whale Sanctuary). It would also allow whaling quotas to be granted on vulnerable populations, and could be viewed as undermining the moratorium in practice. Furthermore, the current arrangement provides no firm mechanism or timetable to address the reform of Article VIII.

In addition, while we remain deeply concerned that these documents are progressing, to date there has been no tangible engagement from whaling countries to define "significant reductions". Related to this are our concerns regarding the characterisation of the "scientific advice". In this regard I have written to you in more detail under separate cover.



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Australia will continue to argue vigorously that whaling should be phased down to zero, with total and permanent elimination of all whaling, other than aboriginal subsistence whaling, within a reasonable timeframe. However, Australia recognises the difficulties to be overcome to meet this goal and acknowledges that it may not be possible to achieve immediately.

While a diplomatic resolution to whaling issues remains very challenging, we believe the opportunity remains for all IWC countries to work together to achieve an outcome that is robust and defensible in conservation terms, and is capable of achieving a genuine resolution to the issues that currently divide the IWC.

Yours sincerely



Donna Petrachenko
IWC Commissioner
Australia

1 April 2010

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Consensus Decision to Improve the Conservation of Whales

VISION STATEMENT: The International Whaling Commission will work cooperatively to improve the conservation and management of whale populations ~~and stocks~~ on a scientific basis and through agreed policy measures. By improving our knowledge of whales, their environment and the multiple threats they face, the Commission will strive to ensure that whale populations are healthy and resilient components of the marine environment.

The long history of overexploitation by industrial whaling in the past left whale populations in many areas in a severely depleted state. This led to the implementation of various management measures by the Commission over the years, including the commercial whaling moratorium. As a result, we have seen **[signs of]** a recovery in a number of these ~~stocks~~ **[populations]** although many remain severely depleted. Furthermore, previously unforeseen threats to whale populations have emerged. There has also been an increase in whaling outside the control of the International Whaling Commission (IWC).

Very different views exist among the members regarding whales and whaling. Some seek to eliminate whaling ~~that is not for~~ **[other than indigenous]** subsistence ~~[whaling]~~ **purposes**, and some support whaling provided it is sustainable. This difference has come to dominate the time and resources of the Commission at the expense of effective whale conservation and management.

This consensus decision among all 88 members of the IWC seeks to reconcile differences in views about how whales are managed ~~as a resource~~ while strengthening the unified goal of maintaining healthy whale populations and recovering depleted ~~stocks~~ **[populations]**. This effort represents a paradigm shift in the way the Commission will carry out its mandate. This shift will bring all whaling under the control of the IWC, create a cooperative environment for addressing issues related to whales, and reform the framework for that cooperation. The focus will be on a shared vision for the Commission's future.

This way forward will improve the conservation of whales worldwide. The Commission will address conservation issues as a priority since whales face new threats to their existence in comparison to when the Commission was established in 1946. Environmental and human-induced threats are increasing and demand a new approach and therefore new efforts by the Commission. In this regard, every member government is committed to the conservation of whales.

Fundamental components of this consensus decision are to: bring whaling by all members under the control of the IWC; reduce catch levels significantly; **[phase down whaling (other than current indigenous subsistence whaling) within a reasonable timeframe, including the phasing down and out of whaling in the Southern Ocean Sanctuary within five years; guarantee the integrity of IWC endorsed sanctuaries; ensure that no new whaling takes place on cetacean species or populations not currently hunted and immediately reduce the take of vulnerable species and populations to zero;]** limit operations to those members who currently take whales; establish caps that are within ~~sustainable~~ **[precautionary limits]** ~~levels~~ for a ten year period **[using agreed IWC scientific procedures]**; enhance monitoring and control measures; create a South Atlantic **[Whale Sanctuary]**; **[establish a timetable and mechanism for addressing the reform of Article VIII and the use of objections and reservations;]** and provide a mechanism for enterprise and capacity building for developing countries. Members agree not to authorize whaling

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outside IWC control and not to exceed the prescribed catch limits (Appendix A). Subsistence whaling by indigenous people that was previously approved by the Commission will continue under existing management measures [**as set out in Paragraph 13 of the Schedule**]. The Commission will now refer to aboriginal subsistence whaling as indigenous subsistence whaling.

The catch limits outlined in this arrangement reflect ~~scientific and~~ policy evaluations of proposals made by the whaling countries for the ten-year period. ~~The scientific evaluation has ensured that the catch limits are consistent with the principle of sustainability and the precautionary approach.~~ The policy evaluation has ensured that the catch limits result in a significant reduction below existing [catch] levels ~~of whaling~~. Whaling by special permit and by objection or reservation will be suspended for the ten year period. Notwithstanding Appendix A, [paragraph 10(e) of the Schedule (] the moratorium [)] will remain in place during the currency of this arrangement. Nothing in this consensus decision prejudices the legal positions of member governments with respect to the International Convention for the Regulation of Whaling.

The IWC will strengthen its capacity as an effective multilateral organisation with a strategic focus that reflects the interests of its membership. The Commission will re-prioritize its work on science and conservation and reorganize its Committees. It recognizes that ensuring healthy whale populations requires responsible collective action. Members will work together to enable the Commission to effectively address the full range of contemporary and emerging threats facing whale populations and to improve their conservation and the recovery of depleted ~~stocks~~ [populations]. The Commission will base conservation and management measures on the best available scientific advice and the precautionary approach.

[The Commission recognizes there will be increased expenses as a result of this arrangement. The preferred method of financing these measures is through the financial contributions scheme. The Commission will make a detailed assessment of how to apportion these costs amongst Contracting Governments, taking into [account] the financial circumstances of different countries [**and the principle that those countries who undertake whaling should bear the costs**]. Proposed budgets will be drafted prior to the 2010 annual meeting based on guidance received from the Small Working Group and the Chair's Support Group.]

FOR CONSERVATION:

The Commission will immediately focus on the recovery of depleted [populations] ~~stocks~~ and take [practical] actions on key issues, including bycatch, climate change and other environmental threats to whales through tools such as conservation management plans. The determination of which conservation management plans to develop will be based upon immediate conservation needs and likelihood of success. In addition, a South Atlantic Whale Sanctuary will be established ~~where whaling will be prohibited~~. [**All whaling should be prohibited in all IWC-recognised whale sanctuaries – including the Southern Ocean Whale Sanctuary, the Indian Ocean Whale Sanctuary and the new South Atlantic Whale Sanctuary.**]

The Commission will establish a Conservation Program Committee. Members agree to participate fully on this Committee and in its associated bodies. [**The Conservation Program Committee will *inter alia* address the range of new and emerging threats to cetaceans, including climate change, marine pollution, bycatch and entanglement, ships strikes and habitat disturbance including noise pollution; as well as recommend an agreed**

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framework to broaden the management tools available to the Commission to address whale-watching.]

FOR MANAGEMENT:

For this ten-year period, the Commission agrees to a cap on whaling based on the prescribed catch limits (Table 4 of Appendix A) that will be set below agreed **[precautionary] sustainable** limits. **[The Commission agrees that no new whaling will be allowed on cetacean species or populations not currently hunted and the take of vulnerable species and populations will be reduced immediately to zero.]** The Commission will use ~~the [IWC-agreed] best available scientific techniques, including its~~ management procedures, to determine these **sustainable [precautionary]** limits. In some cases, provisional measures will be implemented, based on the best available information, pending completion of those procedures (see Appendix B). If the results of those procedures indicate that a catch limit should be lower than the limit in Appendix A or if there is a significant event that negatively affects the status of a **[population] stock**, the Commission will **[automatically]** lower the catch limit for that **[population] stock** prior to the next whaling season based on the advice of the Scientific Committee.

The Commission will establish a Management and Compliance Committee. Amendments to the Schedule to the Convention for monitoring, control and surveillance mechanisms will include provisions for national inspectors, international observers, a Vessel Monitoring System, a DNA registry and market sampling scheme, infractions and sanctions, and whale killing methods and associated welfare issues. These measures are intended to provide strong assurance that member governments abide by the rules of the Commission, including catch limits. In particular, the DNA registry and market sampling scheme provides substantial advantages over a catch documentation scheme due to its ability to link any whale meat sample in the market with a harvested whale and therefore detect and deter any illegal whaling. Further, the Management and Compliance Committee will review the effectiveness of these measures and recommend improvements as needed. In the case of **[indigenous]** subsistence whaling that is done ~~by indigenous communities~~, often in remote parts of the world, monitoring and control must necessarily be different and appropriate to those particular circumstances. Complete and accurate data concerning whaling activities will be reported to the Commission in a timely manner.

The Commission recognizes the non-lethal use of whales, such as whalewatching, as a management option for coastal States and will address all related scientific, conservation, and management aspects of such uses.

FOR SCIENCE:

The provision of sound scientific advice is essential to the functioning of the Commission. The work of the Scientific Committee is internationally recognized as providing the best available knowledge on the conservation and management of whales. This strong tradition will continue.

In developing priorities for the Scientific Committee, the Commission will take into account the conservation status of whale populations and the threats they face **[and the Commission will focus on outcomes that deliver effective conservation and management of whales. The Commission agrees a consensual and principle-based approach to scientific research, following agreed procedures and scientifically rigorous benchmarks,**

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consistent with world's best practice. Where possible, the Commission will make public the results of research and the data collected to encourage transparency and to promote additional research and analyses.] The Scientific Committee will incorporate into its work ecosystem **[and precautionary]** considerations and a range of tools to help mitigate threats. These tools include conservation management plans and marine protected areas. Results from cooperative research programs will help to fill in important knowledge gaps required for whale conservation.

FOR GOVERNANCE:

The Commission will remain the governing body of the organization and will meet every two years beginning in 2011. Four Committees will support the Commission: a Scientific Committee; a Conservation Program Committee; a Management and Compliance Committee; and a Finance, Administration and Communications Committee (see Appendix C). Each Committee Chair and Vice-Chair, along with Chair and Vice-Chair of the Commission, will serve four-year terms. The Committees will elect their own Chairs.

It is agreed that a Bureau will be established to support the Chair of the Commission. In addition to the Chair, the Bureau will be comprised of the Vice-Chair of the Commission, the four Committee Chairs and two additional Commissioners. To ensure that the Bureau will be representative of the regions and interests within the Commission, these two additional Commissioners will be nominated by the Chair for approval by the Commission.

The Commission will afford greater participation to intergovernmental and non-governmental organizations. Representatives from these organizations will be allowed to speak at relevant times during the meeting, under the agenda items that they request and in accordance with Appendix D. The Commission will continue to support the right to legitimate and peaceful forms of protest and demonstration and urge its members to have regard for the importance of protecting the environment, and in particular the fragile Antarctic environment.

With regard to safety at sea, the Commission and its members reiterate that they do not condone, and in fact condemn, any actions that are a risk to human life and property in relation to the activities of vessels at sea, and urge that persons and entities refrain from such acts. The members of the Commission will continue to cooperate and to take action, in accordance with relevant rules of international law and respective national laws and regulations **[and through competent international organisations]**, to suppress and prevent actions that risk human life and property at sea.

TIMELINE

Starting after the annual meeting in 2010, these new measures, as described above, will be implemented for a ten-year period with a review in five years.

FUTURE WORK PLAN:

While this paradigm shift represents significant progress in strengthening the conservation and management of whales, there is more work to do. This consensus decision to conserve whales and bring the management of all whaling under the control of the IWC will provide the Commission with the opportunity to undertake further work on the reform of the Commission and effectively address new and emerging environmental challenges.

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The Commission will maintain momentum in addressing outstanding elements in the reform agenda. **[From 2011, the Commission will meet biennially while the Bureau and the four Committees will meet annually.]** The Commission will continue to address the different views that exist amongst the members on key issues regarding whales and whaling, including research by special permit, ~~the commercial whaling moratorium~~, and objections and reservations. **[A working group, representing a broad cross section of the membership, will be convened immediately to continue reform of the Commission, including reform of the governance of the Commission, ways to uphold the central role of sound science in decision making, the reform of Article VIII of the ICRW and the use of reservations and objections.]** Proposals will be developed **[by the working group,] to address these issues for consideration during the initial five years of the arrangement. [which will report back to the Commission at its annual meeting in 2013 for its consideration.]**

~~The~~ **[A]** five year review will assess the efficiency and effectiveness of the implementation and operation of the arrangement. At that point the Commission will identify work that needs to be undertaken to enable any necessary reforms to be in place prior to expiry of the arrangement.

2010 (IWC/62)

The Schedule amendments in Appendix A will go into effect from 1 January 2011 through 31 December 2020, except that for the Southern Hemisphere the effective dates shall be 1 November 2010 through 31 March 2020.

2011 (IWC/63) & 2013 (IWC/64)

The Commission will continue its work on the critical issues related to its reform. Further work will also be undertaken regarding, inter alia, animal welfare, bycatch, developments in oceans governance, an IWC Cooperation Program (Appendix E), ethics, and socio-economic implications. Further discussions will also take place concerning small cetaceans, international trade, and the sharing of benefits derived from the utilization of whales.

2015 (IWC/65) - "The Five-Year Review"

The Bureau will review progress in addressing work on key issues and the implementation of this arrangement, identify further work that needs to be undertaken to put in place reforms prior to its expiration, and prepare a report for consideration by the full Commission ~~at IWC 65~~ in 2015.

2017 (IWC/66) & 2019 (IWC/67)

The Commission will begin to consider new amendments to the Schedule to replace Chapter VII.

2020 (IWC/68) [Comment: This would need to be an extraordinary meeting of the Commission as it falls on an even year. This must be explicitly recognised.]

The Schedule amendments in Appendix A will expire.

LIST OF APPENDICES:**APPENDIX A – Amendments to the Schedule**

- Annex {LIS} – Licensing, infractions and sanctions
- Annex {IOS} – International observer scheme
- Annex {VMS} – Vessel monitoring scheme
- Annex {DNA} – DNA registry and market sampling scheme

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Annex {WKM} – Whale killing methods and associated welfare issues

Annex {SI} – Scientific information

Annex {OI} – Operational information

APPENDIX B - Potential workplan for the Scientific Committee's assessment
Work on non-indigenous whaling for the period up to 2020

APPENDIX C – Bureau and committee roles

APPENDIX D – Amendments to the Rules of Debate and NGO Code of Conduct

APPENDIX E – IWC cooperation program

DENMARK

At the Intersessional Meeting of the Commission in Florida, the Commission was not able to take a stance on the Danish/Greenlandic quota request on humpback whales due to lack of quorum, so the question will have to be postponed to the next annual meeting.

Denmark therefore wishes to make the following request, i.e. that the 10 humpback whales should be added to Table 4 in the consensus document – together with the Greenland present quotas on minke whales, bowhead whales and fin whales.

Ole Samsing.
Danish IWC Commissioner



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DATUM 26.03.2010

Dear Dr. Grandy,

the Small working Group during its meeting in Florida from 2nd to 4th of March encouraged all participating governments to send proposals for the improvement of the 'Chair's Report to the Small Working Group on the Future of IWC (IWC/M10/SWG 4)'. I submit the following proposals:

1. page 7, article 39:

Please add to the first sentence "based on established laboratory guidelines for submission of genotypes from test samples", such it reads: "Contracting Governments under whose jurisdiction whales are harvested shall maintain a diagnostic DNA register and tissue bank, based on established laboratory guidelines for submission of genotypes from test samples, and will carry out a market sampling scheme, based on the procedures given in Annex {DNA} dated *day/month/year*."

2. page 7, article 39:

The following sentence shall be added to the article: "Contracting Governments under whose jurisdiction whales are bycaught and marketed shall undertake the same provisions as Contracting Governments under whose jurisdiction whales are harvested."

3. page 7, article 39:

A further sentence shall be added to the article: "For the purpose of simplifying the technical demands of the DNA register Contracting Governments under whose jurisdiction whales are harvested or bycaught and marketed shall provide, on a national basis, for a product labelling with a scan able barcode on all whales and products derived from whales."

4. page 22, number 1.7, first line:

Please change "article 38" to "article 39".

5. page 23, number 1.8, number (2):

Please add another bullet point after "label, if present (or verbal description of nature and origin of product offered by vendor);", that reads: "scan able barcode, if available;".

6. page 23, number 1.8:

Please add another number (3) after number (2): "any Contracting Government on whose territory a tissue sample has been taken is obliged to assist the sampling and the establishment and maintenance of the required chain of custody for the time between collection and submission of the sample. Furthermore this Government is obliged to attest whether the data required in subparagraph 2 are correct."

7. page 23, number 1.8:

Please add another sentence at the very end: "The costs of the sample taking and submission to an Contracting Government as well as the costs of analysing the sample have to be borne by the 'collector'."

8. page 24, number 2.1 subnumber (7):

Please delete the words "if necessary" such the sentence reads: "(7) Analysis and matching must be carried out in an IWC-approved laboratory (with appropriate calibration) following the procedures given in Item 1 above."

9. page 24, number 2.2:

Please replace in the first sentence the following words:" (see Item 1.7) under the auspices of the IWC" by "pursuant to article 39" such the sentence reads "The international expert group pursuant to article 39 shall:".

10. page 24, number 2.4:

Please replace in the first paragraph the words “at least two months before each regular Meeting of the IWC” by “at the end of February of each year” such the sentence reads “The authorities responsible for undertaking the market sampling schemes in accordance with Paragraph 22(b) of the Schedule shall submit an annual report of their market sampling activities to the international expert group via the IWC Secretariat at the end of February of each year.”.

With kind regards

By order

A handwritten signature in dark ink, appearing to be 'J. de' followed by a long horizontal stroke.

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April 1, 2010

Dr. Nicky Grandy
Secretary to the Commission
The International Whaling Commission
135 Station Road
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Cambridge
CB4 9NP
United Kingdom

Dear Dr. Grandy,

As attached, I hereby submit Japan's comments on the draft Consensus Decision to Improve the Conservation of Whales.

Best regards,

A handwritten signature in black ink, appearing to read 'Jun Yamashita'.

Jun Yamashita
Alternate Commissioner to the International Whaling Commission
(Deputy Director-General, Fisheries Agency)
Government of Japan

**Japan's comments on the draft Consensus Decision
to Improve the Conservation of Whales**

I. General Comments

The draft Consensus Decision released on February 22, 2010, presents an interim arrangement for a 10-year period during which different whaling categories would be removed and whaling operation would be authorized with catch limits reduced from the current level, under the shared vision to improve the conservation and the management of whale resources. The main premise of the Future of the IWC Process is that all participating member countries are to equally make substantial compromises, setting aside their basic positions, without prejudicing their basic/legal positions. Based on that premise, Japan has been participating in the discussions of the process with good faith, offering substantial compromise proposals, which are products of extremely difficult domestic coordination, and will continue to support this process aiming for a successful settlement at the 62nd Annual Meeting in June of this year. In order to bring the IWC out from the state of dysfunction and restore its normal function as a multilateral resource management organization, all IWC members should continue to discuss this issue faithfully, supporting the framework presented in the draft.

On the other hand, Japan understands that there remains a serious gap on the issue of catch limits among members. In this regard, Japan is prepared to participate in and contribute to further discussion which is needed for consensus-building on this matter. Some members, however, insist that catch limits have to be zero until they are calculated through the Revised Management Procedure (RMP) and that whaling operation should be phased down or even phased out during the 10-year interim period. We do not see any spirit of compromise towards consensus-building in such argument since it completely denies

basic positions of Contracting Governments in the sustainable-use group and the rights of Contracting Governments provided for under the International Convention for the Regulation of Whaling (ICRW). Japan is deeply concerned that there is a serious risk that, if members were to stick to such a demand, which is starkly inconsistent with the intention of the process, the process might be put in jeopardy and collapse eventually.

Another point Japan would like to emphasize is that an unequivocal call for decisive actions to the acts of harassment and interference against its research whaling activities by Sea Shepherd Conservation Society (SSCS) is a crucially important element in the Consensus Decision. As our delegation mentioned at the Forth Meeting of the Small Working Group on the Future of the IWC (SWG4) held in St. Petersburg, FL, USA, the acts of harassment and interference by SSCS have not subsided, but rather they are becoming more radical and dangerous year by year, in spite of the two resolutions and the statement adopted by the IWC and the measures taken by concerned countries. In view of the circumstances, Japan believes that firm commitment by concerned governments to take further concrete measures to stop completely the acts of harassment and interference needs to be included in the Consensus Decision. Therefore, we would hereby like to propose changes to the draft text of the Consensus Decision and its Appendix A (i.e. draft Amendments to the Schedule) as follows.

II. Specific Comments

1. Main body of the Draft Consensus Decision

(1) p1, 4th paragraph, last sentence

"every member government" should be replaced with "every Contracting Government".

(2)p1, last paragraph, 1st sentence (1st - 3rd lines)

"bring whaling by all members" should be replaced with "bring whaling by all Contracting Governments". Further, "those members who currently take whales" should be replaced with "those Contracting Governments who carried out whaling operations in 2009".

(3)p2, 1st paragraph, last sentence (7th - 9th lines)

"legal positions of member governments" should be changed to "legal positions of Contracting Governments". Further, "and other international law including the United Nations Convention on the Law of the Sea (UNCLOS)" should be added right after "with respect to the International Convention for the Regulation of Whaling". Japan considers that nothing in the Consensus Decision should prejudice the legal positions of Contracting Governments with respect to not only ICRW but also other international law, including the treaties/agreements concluded by them. Further, one sentence should be added at the very end of the 1st paragraph, which reads: "The members of the Commission will not take actions under other international organizations or arrangements which may undermine the efficacy and purpose of this decision."

(4)p3, 1st paragraph, 3rd sentence

"member governments" should be replaced with "Contracting Governments".

(5)p4, 2nd paragraph

At the end of this paragraph, one sentence should be added, which reads: "In addition, all concerned Contracting Governments including those of flag States and of port States for vessels engaged in such acts will take concrete and effective measures to prevent, deter and suppress those acts, in accordance with international law."

2. Draft text of the Appendices

(1)p6, paragraph 32, 3rd sentence

"Appendix A of the Schedule" should be changed to "Appendix A of the Schedule".

(2)p7, between paragraph 38 and paragraph 39

At SWG4, a member proposed to insert some provisions regarding measures to be taken against illegal, unreported and unregulated (IUU) whaling between paragraphs 38 and 39. Japan is against any IUU activity including whaling, and is committed to prevent, deter and suppress it. However, as another member pointed out at the meeting, if some concrete measures are to be applied to "IUU whaling," it will be essential to establish the definition of "IUU whaling" and a procedure to identify actual coverage of the measures first. Japan thinks it appropriate to discuss this issue during the 10-year interim period, rather than fix it right now, since it needs careful consideration.

(3)p8, paragraph 45, 3rd line

"from 1 November 2010 through 31 March 2020" should be deleted. The effective dates of whole Chapter VII are defined in paragraph 32. Since the effective dates for the Southern Hemisphere in paragraph 32 and those for the South Atlantic Whale Sanctuary in paragraph 45 are the same, it is not necessary to re-define it in paragraph 45. In accordance with this change, "except that for whaling in the Southern Hemisphere" in the 1st - 2nd lines in paragraph 32 should be changed to "except that for whaling in the Southern Hemisphere and the South Atlantic Whale Sanctuary described in paragraph 45."

(4)p9 - p10, Table 4

A footnote should be added to Table 4, which reads: "In

case whaling operation is adversely affected by acts of harassment or interference by any entity, any unused catch limits for any stock may be carried forward to subsequent years."

(5)p18, Annex {VMS}, Table 1, footnote 8

"the Convention Area" is used twice and "FMC" is used once in this footnote, and it is unclear what they mean. They have to be corrected properly.

(6)p24, Annex {DNA}, two paragraphs under 2.4 Reporting

The first paragraph says that the authorities (of the Contracting Government) shall submit an annual report to the international expert group via the IWC Secretariat at least two months before each regular Meeting of the IWC, and the second one says that the international expert group shall submit an annual report to the IWC and its Contracting Government two months before each regular Meeting of the IWC. Is not there some mutual inconsistency between these descriptions? Furthermore, relationship between the two kinds of "annual report" mentioned in these paragraphs is not clear.

(7)p25, Annex {WKM}, 4th paragraph, 3rd line

It says "form of the Appendix A to the WKM Annex." However, the title of this Annex is "Annex {WKM}," but not "WKM Annex." Also, there is no "Appendix A" to this Annex, therefore, should it be "Table 1"?

(8)p26, Annex {WKM}, last paragraph, 1st line

It says "(see Appendix A)." Should it be "Table 1" as well?

(9)p27, Annex {WKM}, Table 1, footnote

"Appendix A of the Schedule" is used in this footnote, but it should be "Schedule Appendix A."

(10)p28, Annex {SI}, 1st paragraph, last sentence

"at the end of each season" should be changed to "promptly after the end of each season".

(11)p28, Annex {SI}, 2nd paragraph, subparagraph (a)

"animals" should be changed with "whales".

(12)p28, Annex {SI}, 2ns paragraph, subparagraph (a)

"at the end of each season" should be changed to "promptly after the end of each season".

(13)p28, Annex {SI}, 2ns paragraph, subparagraph (d)

"at the end of each season" should be changed to "promptly after the end of each season".

(14)p28, Annex {SI}, 2ns paragraph, subparagraph (e)

"at the close of the season" should be changed to "promptly after the end of each season".

(15)p28, Annex {SI}, 2ns paragraph, subparagraph (f)

"at the end of each season" should be changed to "promptly after the end of each season".

(16)p29, Annex {OI}, 3rd paragraph

"at the end of each season" should be changed to "promptly after the end of each season".

(17)p35, APPENDIX D, 1st paragraph, 3rd sentence

A space should be put between "will" and "call", and a space between "his/" and "her" should be deleted.

(18)p35, APPENDIX D, 4th paragraph, 1st sentence

"its" before "NGOs in matters of concern to them" should be deleted.

(19)p36, APPENDIX D, last paragraph, 3rd - 4th line

"Advisory Committee" should be changed to "Bureau". The establishment of the Bureau will result in the abolishment of the Advisory Committee.

KOREA**Korea's Comment on
Consensus Decision to Improve the Conservation of Whales - DRAFT – NOT AGREED**

Korea would like to express its view on the Chair's draft as follows:

First, the Chair's draft does not fully reflect the objectives and spirit of IWC Convention.

As stated in the preamble of the Convention, the objectives of the IWC are to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry. In addition, the Convention, including Article 5.2.(d), is based on the idea of balance between proper conservation and optimum utilization of whale stocks.

However, the Chair's draft has some flaws which are not in line with the objectives of the Convention not by considering various options for the purpose of the balance of the proper conservation and utilization of the whale stocks but by focusing on the minimizing the catch limit while admitting vested interests of some members which have caught whales.

Second, as Korea emphasized several times during the Florida SWG meeting, the draft is unfair and unduly restricts the contracting parties' rights to sustainable use of whale resources without reasonable grounds by granting fishing opportunity only to the members who currently take whales.

It is our perspective that any contracting party including Korea, if it fulfills the scientific and technical requirements in relation to stock status and related management procedure, should be allowed for the sustainable use under the reasonable catch limits in due course.

Considering cultural diversities and different interests among member nations, we believe that the draft does not respect the negotiation principle and the balance between the conservation and the sustainable use of whale resources.

Therefore, Korea strongly believes that some parts of the Chair's draft should be modified including at least the following sentence. Namely, for the 2nd line of the last paragraph of page 1 of the Consensus Decision to Improve the Conservation of Whales - DRAFT – NOT AGREED,

"limit whaling operations to those members who currently take whales;"

We would like to add a few words so that it can read as follows;

"limit whaling operations to those members who currently take whales and those who complete scientific procedures including the finalization of RMP during the proposed interim period;

VISION STATEMENT: The International Whaling Commission will work cooperatively to improve the conservation and management of whale populations and stocks on a scientific basis and through agreed policy measures. By improving our knowledge of whales, their environment and the multiple threats they face, the Commission will strive to ensure that whale populations are healthy and resilient components of the marine environment.

The long history of over-exploitation by industrial whaling in the past left whale populations in many areas in a severely depleted state. This led to the implementation of various management measures by the Commission over the years, including the commercial whaling moratorium. As a result, we have seen a recovery in a number of these stocks although many remain severely depleted. Furthermore, previously unforeseen threats to whale populations have emerged. There has also been an increase in whaling outside the control of the International Whaling Commission (IWC).

Very different views exist among the members regarding whales and whaling. Some seek to eliminate whaling that is not for subsistence purposes, and some support whaling provided it is sustainable. This difference has come to dominate the time and resources of the Commission at the expense of effective whale conservation and management.

This consensus decision among all 88 members of the IWC seeks to reconcile differences in views about how whales are managed as a resource while strengthening the unified goal of maintaining healthy whale populations and recovering depleted stocks. This effort represents a paradigm shift in the way the Commission will carry out its mandate. This shift will bring all whaling under the control of the IWC, create a cooperative environment for addressing issues related to whales, and reform the framework for that cooperation. The focus will be on a shared vision for the Commission's future.

This way forward will improve the conservation of whales worldwide. The Commission will address conservation issues as a priority since whales face new threats to their existence in comparison to when the Commission was established in 1946. Environmental and human-induced threats are increasing and demand a new approach and therefore new efforts by the Commission. In this regard, every member government is committed to the conservation of whales.

Fundamental components of this consensus decision are to: bring whaling by all members under the control of the IWC; reduce catch levels significantly; limit operations to those members who currently take whales; establish caps that are within sustainable levels for a ten year period; enhance monitoring and control measures; create a South Atlantic sanctuary; and provide a mechanism for enterprise and capacity building for developing countries; and, during the initial five years of the ten year period, develop proposals for resolving the fundamental differences of view amongst them in order to provide for the effective functioning of the Commission over the longer term. Members agree not to authorize whaling outside IWC control and not to exceed the prescribed catch limits (Appendix A). Subsistence whaling by indigenous people that was previously approved by the Commission will continue under existing management measures. The

Commission will now refer to aboriginal subsistence whaling as indigenous subsistence whaling.

The catch limits outlined in this arrangement reflect scientific and policy evaluations of proposals made by the whaling countries for the ten-year period. The scientific evaluation has ensured that the catch limits are consistent with the principle of sustainability and the precautionary approach. The policy evaluation has ensured that the catch limits result in a significant reduction below existing levels of whaling. Whaling by special permit and by objection or reservation will be suspended for the ten year period. Notwithstanding Appendix A, the moratorium will remain in place during the currency of this arrangement. Nothing in this consensus decision prejudices the legal positions of member governments with respect to the International Convention for the Regulation of Whaling.

The IWC will strengthen its capacity as an effective multilateral organisation with a strategic focus that reflects the interests of its membership. The Commission will re-prioritize its work on science and conservation and reorganize its Committees. It recognizes that ensuring healthy whale populations requires responsible collective action. Members will work together to enable the Commission to effectively address the full range of contemporary and emerging threats facing whale populations and to improve their conservation and the recovery of depleted stocks. The Commission will base conservation and management measures on the best available scientific advice and the precautionary approach.

[The Commission recognizes there will be increased expenses as a result of this arrangement. The preferred method of financing these measures is through the financial contributions scheme. The Commission will make a detailed assessment of how to apportion these costs amongst Contracting Governments, taking into the financial circumstances of different countries. Proposed budgets will be drafted prior to the 2010 annual meeting based on guidance received from the Small Working Group and the Chair's Support Group.]

FUTURE WORK PLAN: COMMITMENT TO ADDRESS DIFFERENCES OF VIEWS ON KEY ISSUES:

While this paradigm shift represents significant progress in strengthening the conservation and management of whales, the members of the IWC recognise that re-is more work is needed to resolve the fundamental differences of view amongst them if the Commission is to function effectively over the longer term to do. This consensus decision to conserve whales and bring the management of all whaling, at significantly reduced levels, under the control of the IWC is intended will to provide the Commission with the opportunity to address those fundamental differences of view in order undertake further work onto complete the reform of the Commission and effectively address new and emerging environmental challenges, having regard to the fact that the Convention was adopted over 60 years ago and does not reflect contemporary principles and practice for the conservation and management of natural resources and the protection of the environment.

The members of the Commission undertake to will-maintain momentum in addressing outstanding elements in the reform agenda. To this end, the Commission will during the initial 5 years of the arrangement- establish a mechanism to continue to address and try to resolve the different views that exist amongst the members on key issues regarding whales and whaling. These issues include:

- Whether the Commission should permit a resumption of Under what circumstances, if any, commercial whaling and, if so, on what conditions might be resumed;
- How to deal with the issue of research whaling, including research by special permit;
- How to ensure that conservation and management measures adopted by the Commission are effective for all Commission members, the commercial whaling moratorium, and objections and reservations.

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A working group to consider Proposals these issues will be convened at IWC 63 and will develop proposals for consideration by the Commission at its meeting in 2014. The Working Group will report on progress to the Commission at its annual meetings. At its meeting in 2014, the Commission will consider what steps should be taken in the light of the Working Group's report to resolve the different views amongst Commission members and promote the effective operation of the Convention developed to address these issues for consideration during the initial five years of the arrangement.

At its meeting in 2014, the Commission The five-year review will also assess the efficiency and effectiveness of the implementation and operation of the arrangement. At that point the Commission will identify what further work that needs to be undertaken to enable any necessary reforms to be in place prior to expiry of the arrangement.

RUSSIAN FEDERATION

In consideration of specific problems of aboriginal whaling Russia can't realize some recommendations from the document Chair's Report to the Small Working Group on the Future of IWC. I suggest taking into account the following proposals in the draft Consensus Decision to Improve the Conservation of Whales (marked by **bold** type).

Page 9.

Table 4. Catch limits.

² This is the maximum number of animals that may be struck in any one year (**except “stinky” whales**). The total number of animals that may be landed over the 10 seasons from 2011-2020 is 1,240 **plus “stinky” whales**.

Russian IWC Commissioner
V. Ilyashenko

28 March 2010

Marine and Freshwater Biodiversity
Nobel House
17 Smith Square
London SW1P 3JR
Web: www.defra.gov.uk

31st March 2010

Dear Dr Grandy

Re: UK comments to the Chair's Consensus Decision document

Please find below UK comments on Appendix A to the Chair's Consensus Decision document (IWC/M10/SWG4). References to paragraph numbers are to paragraph numbers in the text of the Appendix or those of its various annexes as appropriate.

Whilst appreciating the hard work put into the Chair's proposal (IWC/M10/SWG 4) for a compromise solution to the IWC's divisions, we are concerned that the proposal as it stands discards the progress made by the IWC towards scientifically based approaches to conservation and management, in favour of arbitrary catch limits based on political compromise. These catch limits would, for all practical purposes, be locked in place for 10 years regardless of the scientific information on the state of the populations. This would represent a reversal of the precautionary principle, to which our governments are firmly committed, both nationally and as EU members.

At the end of the 10-year period, the Commission would face the same situation as we have now: there would be still be no effective management procedure in place, and the Commission would again have to try to negotiate arbitrary catch limits, or face a return to whaling outside IWC control through the use of Article VIII and other exemptions.

Although the Chair's proposal contains a provision that catch limits could be modified during the 10-year period if "the results of the established management procedures" so indicate, this provision does not provide a safeguard. The only "established" management procedure currently in place is the "New Management Procedure" (NMP) which is specified in Schedule paragraphs 10a-c, but which would be put out of effect by paragraph 33 of the Chair's proposal. The NMP, adopted in 1975, has been demonstrated scientifically to be inadequate; its shortcomings were among the main reasons for the adoption of the moratorium in 1982, and for the subsequent development of the Revised Management Procedure (RMP) by the Scientific Committee.

We believe that to set non-zero catch limits without a precautionary scientific basis would be a retrograde step for the Commission. We propose that non-zero catch limits for commercial whaling not be considered before the RMP is formally in place, and that negotiations over arbitrary catch limits without scientific basis be suspended. The RMP provides that catch limits are set for a maximum of five years at a time, and revert to zero on expiry unless renewed.

The required Schedule amendments to put the RMP in place are as follows:

(1) Replace existing paragraphs 10(a) through 10(c) with:

10. (a) ¹ Whaling is only be permitted for those species, areas and seasons for which catch limits are in force and listed in this Schedule. With the exception of catch limits for indigenous subsistence whaling set in accordance with paragraph 13, these catch limits shall have been calculated by the Scientific Committee in accordance with the Revised Management Procedure published in the *Journal of Cetacean Research and Management* (Suppl.) 1:251-254², and adjusted downwards to account for other human-induced mortalities as estimated by the Scientific Committee. Catch limits for all species in all other areas and seasons are zero.

(2) If the Chair's proposal (SWG4) is subsequently to be adopted, the proposed new paragraph 32 must be amended such that the new Chapter VII does not override the new paragraph 10(a).

Paragraph 33. This paragraph envisages the possibility of reducing catch limits if the application of the RMP shows that they should be lower than those initially set or if other significant developments in the status of stocks are brought to the attention of the Scientific Committee. There is no formal mechanism for achieving such reductions and they could be opposed. While by no means offering a guaranteed safeguard, the text might be improved if it were to say that '*Contracting Governments now agree that, where the Scientific Committee advises that catch limits for any stock or population should be reduced, the Commission must so reduce it for the remaining years of operation of this Chapter of the Schedule*'. The final sentence might properly be revised to replace 'in 2009' by '*during the 2009-10 Southern Hemisphere season or the 2010 Northern Hemisphere season as appropriate*'.

¹ The wording for the new 10(a) is based on Resolution 1994-5 adopted by consensus and subsequent Resolutions on the RMS. Paragraphs 10(d) and (e) are not affected by this proposal.

² The missing number in the penultimate line of section 4.4 is 0.4020 as recommended by the Scientific Committee (JCRM 4 (Suppl) p.5). and accepted by the Commission (IWC Annual Report 2001, p. 22, 25). Even if it is accepted that non-zero catch limits are initially set for stocks for which the RMP process is incomplete or out of date, it is important to ensure that the subsequent application of the RMP is as agreed by the Commission in 1992.

Paragraph 34. Again, there is a need to try to ensure that action will be taken by the Commission if annual catch limits are exceeded. To this end we would suggest the following rewording: ‘34. *Contracting Governments undertake and agree that where, in the absence of specific carry-over provisions, annual catch limits as set in Table 4 are exceeded, the Commission must reduce the catch limit for the following year by the amount of the excess.*’ (how is this to be done if the Commission meets only every two years?).

Paragraph 35. Here again, we need to make some form of commitment that if the conditions set out at the top of this paragraph apply, the Commission will indeed reduce catch limits. We suggest that the part of the paragraph below the conditions should read: ‘*the Commission now agrees that it must reduce the relevant catch limit for the following whaling season [by at least 20%]. Such a reduction will apply in addition to any reductions made in respect of exceeding the catch limit as provided for in Paragraph 34.*’

Paragraph 38. The last two sentences of this paragraph severely undermine the effectiveness of the Vessel Monitoring Scheme and should be deleted.

Paragraph 39. We believe that this paragraph is insufficiently transparent. In our view the DNA Register and the associated market sampling programme should be run independently of the Contracting Government authorising the whaling operation. Otherwise there is a risk that whales which should not have been taken (if any) will simply not have their DNA registered and that any gaps in the registry which are shown up by the market sampling survey will simply be ignored. A much greater degree of international oversight is required.

Paragraph 42. This leaves open the possibility that the recording of information on whale killing methods and associated welfare issues should be done by the International Observer, National Inspector, or Captain. The text should make it clear that the responsibility rests in the first place with the International Observer, he/she not being present it defaults to the National Inspector and he/she not being present it defaults to the Captain.

Paragraph 45. In our view the last sentence of this paragraph should read: ‘*This definition notwithstanding, the Sanctuary shall not comprise any waters under the jurisdiction of range states unless they formally notify the Secretariat to the contrary.*’ The substance of this text was agreed by Argentina.

Table 4. We have commented earlier about the intention to set non-zero catch limits in advance of consideration of the effective operation of the RMP. We believe it undesirable to include ASW (or ISW) catch limits in Table 4 since this effectively does away with the five-year quota block which has governed the setting of quotas and of the annual reviews which are applied to some. These catch limits are set on a basis which is more generous than that which would result from the RMP and it is therefore appropriate that they are reviewed at regular intervals. We should prefer to see ASW quotas removed from this table and placed back in Paragraph 13, with the addition, as the Commission might decide at IWC62, of a quota for Humpbacked Whales from the West Greenland feeding aggregation.

We believe that it is also a highly retrograde step to include within Table 4 catch limits for stocks which are currently the subject of whaling under Special Permit. The Commission has repeatedly questioned the need for such whaling operations and those Contracting Governments which have undertaken them should be actively encouraged to put forward plans to phase out these operations.

Generally, we deeply regret that the Support Group has not found it possible to address the difficulties arising from whaling under objection or reservation. It would as things stand be possible for any Contracting Government currently taking whales to object to any part of this Chapter and hence not be bound by it. We consider that this Chapter must include a 'Sunset Clause' such that an objection by any Contracting Government which is currently authorising the taking of whales or by any other Contracting Government on the grounds that it might, during the life of the arrangement, wish to take whales should render the whole arrangement null and void.

The Schedule text is silent on costs but the Support Group appears to envisage that costs arising from the application of this arrangement will be borne by the Commission and thus shared through financial contributions. We accept that there will be some set-up costs for the Commission, such that they can receive and handle the information supplied by Contracting Governments authorising whaling operations. We can accept that these costs should be defrayed by the Commission but we believe that all other costs should be borne by the countries carrying out the whaling operations. This is in line with the 'user pays' principle which applies in the majority of similar agreements.

We continue to be willing to seek a way forward which will reduce the polarisation of the IWC and lead to better conservation and management of whale stocks. We do not believe that the arrangement currently proposed by the Chair can be seen as benefitting conservation of whales and other cetaceans in the long term.

Yours sincerely,

Richard Cowan
UK Commissioner to the IWC

UNITED STATES**U.S. Suggested Changes to the Chair's Proposal**

After reviewing the text of the Chair's Proposal, and receiving comments from interested members of the public, the United States recommends several key changes to the text of the Chair's Proposal. The changes can be found in the attached document. The United States reiterates its position that it strongly opposes commercial and lethal scientific whaling, and will not agree to any compromise that would lift the moratorium on commercial whaling. The United States intends to raise these suggested changes to the proposal at the next meeting of the Chair's Support Group.

Submission of these recommended changes does not represent or otherwise imply United States support of the Chair's proposal. The United States will reserve judgment on any proposal pending the manner in which the issues raised by these proposed changes are addressed, the extent to which whaling activities under negotiation either end or significantly decline over the period of the proposed agreement, and the manner in which the existing loopholes in the convention can be closed.

The key changes proposed by the United States are:

1. To make explicit that the Consensus Decision and Schedule Amendment do not represent an endorsement or approval by any government of commercial or lethal scientific whaling;
2. To foreclose the possibility of a contracting government avoiding the requirements of the Consensus Decision and Schedule Amendment by taking an objection or by availing itself of the scientific whaling exemption;
3. To ensure that the strengthened Conservation Program Committee cannot be changed or terminated by a simple majority vote of the Commission;
4. To ensure that the conservation status of whales is not undermined in other international organizations such as CITES;
5. To set a specific timetable for the Commission to draft a new convention or otherwise adopt permanent reforms that resolve the contentious issues, such as commercial and lethal scientific whaling, whaling in sanctuaries, bycatch, small cetaceans, and others;
6. To ensure there is an appropriate scientific basis for any caps that would be established under the arrangement.;
7. To clarify that the changes in the Consensus Decision and Schedule Amendment are not intended to change the way indigenous subsistence whaling occurs or is managed by the IWC;
8. To improve the participation rights of observers; and
9. To require that all whale meat or other products that are the proceeds of any whaling that occurs will be solely for domestic use.

In addition, the United States will raise two other significant issues for discussion in the Support Group meeting. The Support Group must determine what will happen at the end of the ten-year agreement if a new convention or permanent reforms have not been agreed by the Commission. In addition, the Support Group must determine how the additional costs of the measures contained in the Consensus Decision and Schedule Amendment will be allocated among contracting governments.

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The United States Comments on the Draft Consensus Decision:

The United States submits for discussion by the Support Group the following underlined text changes to the draft Consensus Decision and Schedule Amendment. In addition, there are two other significant issues that the United States believes must be discussed: what would happen after the expiration of the interim period; and how the members of the IWC will share the costs of the new activities described in the document. Submission of these comments does not represent or otherwise imply United States support of the Chair's proposal.

Consensus Decision to Improve the Conservation of Whales

VISION STATEMENT: The International Whaling Commission will work cooperatively to improve the conservation and management of whale populations and stocks on a scientific basis and through agreed policy measures. By improving our knowledge of whales, their environment and the multiple threats they face, the Commission will strive to ensure that whale populations are healthy and resilient components of the marine environment.

The long history of overexploitation by industrial whaling in the past left whale populations in many areas in a severely depleted state. This led to the implementation of various management measures by the Commission over the years, including the commercial whaling moratorium. As a result, we have seen a recovery in a number of these stocks although many remain severely depleted. Furthermore, previously unforeseen threats to whale populations have emerged. There has also been an increase in whaling outside the control of the International Whaling Commission (IWC).

Very different views exist among the members regarding whales and whaling. Some seek to eliminate whaling that is not for subsistence purposes, and some support whaling provided it is sustainable. This difference has come to dominate the time and resources of the Commission at the expense of effective whale conservation and management.

This consensus decision among all 88 members of the IWC seeks to reconcile differences in views about how whales are managed as a resource while strengthening the unified goal of maintaining healthy whale populations and recovering depleted stocks. It does not represent an endorsement or approval by the IWC or any of its members of commercial or scientific whaling and does not lift the moratorium. This effort represents a paradigm shift in the way the Commission will carry out its mandate. This shift will bring all whaling under the control of the IWC, create a cooperative environment for addressing issues related to whales, and reform the framework for that cooperation. The focus will be on a shared vision for the Commission's future.

This way forward will improve the conservation of whales worldwide. The Commission will address conservation issues as a priority since whales face new threats to their existence in comparison to when the Commission was established in 1946. Environmental and human-induced threats are increasing and demand a new approach and

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therefore new efforts by the Commission. In this regard, every member government is committed to the conservation of whales.

Fundamental components of this consensus decision are to:

- Retain the moratorium on commercial whaling;
- Bring all whaling by members under the control of the IWC, suspending immediately unilaterally determined whaling under special permit and whaling under objections and reservations;
- Limit operations to those members under whose jurisdiction whaling operations were authorized in 2009; establish catch limits that are below sustainable levels for a ten year period and reduce current catch levels significantly;
- Focus on the recovery of depleted whale stocks and take actions on key conservation issues, including bycatch, climate change and other environmental threats;
- Enhance monitoring and control measures;
- Prevent the import or export of whales, whale parts or whale products through a domestic use requirement;
- Recognize the non-lethal value and uses of whales, such as whale-watching, as a management option for coastal states and address related scientific, conservation and management issues of such uses;
- Establish a South Atlantic Whale Sanctuary;
- Set a decisive direction to the future work of the IWC including measures to reform the governance of the Commission; and
- Provide a mechanism for enterprise and capacity building for developing countries.

Members agree not to authorize whaling outside IWC control and not to exceed the prescribed catch limits (Appendix A). Subsistence whaling by indigenous people that was previously approved by the Commission will continue under existing management measures. The Commission will now refer to aboriginal subsistence whaling as indigenous subsistence whaling.

The catch limits outlined in this arrangement reflect scientific and policy evaluations of proposals made by the whaling countries for the ten-year period. The scientific evaluation has ensured that the catch limits are consistent with the principle of sustainability and the precautionary approach. The policy evaluation has ensured that the catch limits result in a significant reduction below existing levels of whaling. Whaling by special permit and by objection or reservation will be suspended for the ten year period. Notwithstanding Appendix A, the moratorium will remain in place during the currency of this arrangement. Nothing in this consensus decision prejudices the legal positions of member governments with respect to the International Convention for the Regulation of Whaling.

The IWC will strengthen its capacity as an effective multilateral organisation with a strategic focus that reflects the interests of its membership. The Commission will re-prioritize its work on science and conservation and reorganize its Committees. It recognizes that ensuring healthy whale populations requires responsible collective action. Members will work together to enable the Commission to effectively address the full range of contemporary and emerging threats facing whale populations and to improve their conservation and the recovery of depleted stocks. The Commission will base conservation and management measures on the best available scientific advice and the precautionary approach, and the ecosystem approach for biodiversity conservation, consistent with the Revised Management Procedure (RMP).

[The Commission recognizes there will be increased expenses as a result of this arrangement. The preferred method of financing these measures is through the financial contributions scheme. The Commission will make a detailed assessment of how to apportion these costs amongst Contracting Governments, taking into the financial circumstances of different countries. Proposed budgets will be drafted prior to the 2010 annual meeting based on guidance received from the Small Working Group and the Chair's Support Group.]

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The new Chapter VII to the Schedule is the result of extensive negotiations amongst Contracting Governments to the ICRW holding a variety of views regarding the proper implementation of the ICRW through the Schedule. Chapter VII as a whole represents a delicate balance of elements that the Contracting Governments are able to accept as a compromise. Thus, Contracting Governments pledge to refrain from exercising their rights under Article V of the Convention to file objections to the Schedule amendments arising from this Consensus Decision or in any other way to exempt themselves from these provisions. As a result, the Contracting Governments view the new Chapter VII as a comprehensive compromise representing a delicate balance of interests such that a rejection of any particular provision while accepting the benefits of other aspects of the compromise text would be inconsistent with the object and purpose of the new amendment.

FOR CONSERVATION:

The Commission will immediately focus on the recovery of depleted stocks and take actions on key issues, including bycatch, climate change and other environmental threats to whales through tools such as conservation management plans. The determination of which conservation management plans to develop will be based upon immediate conservation needs and likelihood of success. In addition, a South Atlantic whale sanctuary will be established where whaling will be prohibited.

The Commission will establish a Conservation Program Committee. Members agree to participate fully on this Committee and in its associated bodies. The Conservation Program Committee will, *inter alia*, address new and emerging threats to cetaceans, including climate change, marine pollution, fishing activities including bycatch and entanglement, ship strikes and habitat disturbance including noise pollution; as well as recommend an agreed framework to broaden the management tools available to the Commission to address non-consumptive uses of whales.

FOR MANAGEMENT:

For this ten-year period, the Commission agrees to a cap on whaling based on the prescribed catch limits (Table 4 of Appendix A) that will be set below agreed sustainable limits. The Commission will use the best available scientific techniques, including its management procedures, to determine these sustainable limits. In some cases, provisional measures will be implemented, based on the best available information, pending completion of those procedures (see Appendix B). If the results of those procedures indicate that a catch limit should be lower than the limit in Appendix A or if there is a significant event that negatively affects the status of a stock, the Commission will lower the catch limit for that stock prior to the next whaling season based on the advice of the Scientific Committee.

The Commission will establish a Management and Compliance Committee. Amendments to the Schedule to the Convention for monitoring, control and surveillance mechanisms will include provisions for national inspectors, international observers, a Vessel Monitoring System, a DNA registry and market sampling scheme, infractions and sanctions, and whale killing methods and associated welfare issues. These measures are intended to provide strong assurance that member governments abide by the rules of the Commission, including catch limits. In particular, the DNA registry and market sampling scheme provides substantial advantages over a catch documentation scheme due to its ability to link any whale meat sample in the market with a harvested whale and therefore detect and deter any illegal, unreported and unregulated whaling.

This Consensus Decision is not an endorsement or approval of commercial or scientific whaling; rather, it will bring previously unregulated whaling under the control of the IWC. Any whaling not regulated by the IWC undermines the purpose and effectiveness of the organization. Further, the Management and Compliance Committee will review the effectiveness of these measures and recommend improvements as needed. In the case

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of subsistence whaling that is done by indigenous communities, often in remote parts of the world, monitoring and control must necessarily be different and appropriate to those particular circumstances. Complete and accurate data concerning whaling activities will be reported to the Commission in a timely manner.

The Commission recognizes the non-lethal use of whales, such as whalewatching, as a management option for coastal States and will address all related scientific, conservation, and management aspects of such uses.

FOR SCIENCE:

The provision of sound scientific advice is essential to the functioning of the Commission. The work of the Scientific Committee is internationally recognized as providing the best available knowledge on the conservation and management of whales. This strong tradition will continue.

In developing priorities for the Scientific Committee, the Commission will take into account the conservation status of whale populations and the threats they face. The Scientific Committee will incorporate into its work ecosystem considerations, and when providing advice, take into consideration those management tools provided by the Commission to help mitigate threats. These tools may include conservation management plans and marine protected areas. Results from cooperative research programs will help to fill in important knowledge gaps required for whale conservation.

FOR GOVERNANCE:

The Commission will remain the governing body of the organization and will meet every two years beginning in 2011. Four Committees will support the Commission: a Scientific Committee; a Conservation Program Committee; a Management and Compliance Committee; and a Finance, Administration and Communications Committee (see Appendix C). Each Committee Chair and Vice-Chair, along with Chair and Vice-Chair of the Commission, will serve four-year terms. The Committees will elect their own Chairs.

It is agreed that a Bureau will be established to support the Chair of the Commission. In addition to the Chair, the Bureau will be comprised of the Vice-Chair of the Commission, the four Committee Chairs and two additional Commissioners. To ensure that the Bureau will be representative of the regions and interests within the Commission, these two additional Commissioners will be nominated by the Chair for approval by the Commission.

The Commission will afford greater participation to intergovernmental and non-governmental organizations. Representatives from these organizations will be allowed to speak at relevant times during the meeting, under the agenda items that they request and in accordance with Appendix D. All IWC official documents shall be made public, and the Secretariat shall distribute to the members of the Commission contributions from intergovernmental and non-governmental organizations via the Commission's website relevant to the agenda of the meetings of the Commission and its subsidiary bodies. The Commission will continue to support the right to legitimate and peaceful forms of protest and demonstration and urge its members to have regard for the importance of protecting the environment, and in particular the fragile Antarctic environment.

With regard to safety at sea, the Commission and its members reiterate that they do not condone, and in fact condemn, any actions that are a risk to human life and property in relation to the activities of vessels at sea, and urge that persons and entities refrain from such acts. The members of the Commission will continue to cooperate and to take action, in accordance with relevant rules of international law and respective national laws and regulations, to suppress and prevent actions that risk human life and property at sea.

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Although the IWC remains the preeminent international organization with respect to the conservation and management of whales, there are other environmental treaties and international organizations that are also relevant to the conservation of great whales. The compromise reached by the Contracting Governments is dependent upon maintaining the status quo with respect to whales in these other organizations. Specifically, with respect to the Convention on International Trade in Endangered Species (CITES), the Contracting Governments will take a common position and support maintaining the listings of whales in the current respective appendices. The Contracting Governments further direct the Secretariat to communicate to the CITES Secretariat that the IWC supports maintaining those listings, and supports suspending any potential review of those listings. No amendment of the Schedule arising from this Consensus Decision supersedes or invalidates prior IWC Resolutions relating to CITES and international trade, including Resolution 2007/4, which affirms that the moratorium on commercial whaling remains in place and that the reasons for the moratorium are still relevant.

TIMELINE

Starting after the annual meeting in 2010, these new measures, as described above, will be implemented for a ten-year period with a review in five years.

FUTURE WORK PLAN:

While this paradigm shift represents significant progress in strengthening the conservation and management of whales, there is more work to do. This consensus decision to conserve whales and bring the management of all whaling under the control of the IWC will provide the Commission with the opportunity to undertake further work on the reform of the Commission and effectively address new and emerging environmental challenges. To this end, a Working Group will be required to address by 2015 all contentious issues including, but not limited to, whaling in sanctuaries, lethal whale research conducted by special permit, whaling under objections and reservations, bycatch and small cetaceans. It will also address ways to modernize the IWC, including measures to reform the governance of the Commission. The Working Group shall identify ways to make progress to uphold the central role of sound science in decision-making, particularly to address the gaps in the science to enable the Commission to effectively conserve whale populations. The Commission shall at its next meeting and each meeting thereafter until these issues are resolved, discuss the recommendations of the Working Group.

The Commission will maintain momentum in addressing outstanding elements in the reform agenda. The Commission will continue to address the different views that exist amongst the members on key issues regarding whales and whaling, including research by special permit, the commercial whaling moratorium, and objections and reservations. Proposals will be developed to address these issues for consideration during the initial five years of the arrangement.

The five year review will assess the efficiency and effectiveness of the implementation and operation of the arrangement. At that point the Commission will identify work that needs to be undertaken to enable any necessary reforms to be in place prior to expiry of the arrangement.

2010 (IWC/62)

The Schedule amendments in Appendix A will go into effect from 1 January 2011 through 31 December 2020, except that for the Southern Hemisphere the effective dates shall be 1 November 2010 through 31 March 2020.

2011 (IWC/63) & 2013 (IWC/64)

The Commission will continue its work on the critical issues related to its reform. Further work will also be undertaken regarding, inter alia, animal welfare, bycatch, developments in oceans governance, an IWC Cooperation Program (Appendix E), ethics, and socio-economic implications. Further discussions will also take

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place concerning small cetaceans, international trade, and the sharing of benefits derived from the utilization of whales.

2015 (IWC/65) - "The Five-Year Review"

The Bureau will review progress in addressing work on key issues and the implementation of this arrangement, identify further work that needs to be undertaken to put in place reforms prior to its expiration, and prepare a report for consideration by the full Commission at IWC 65 in 2015.

2017 (IWC/66) & 2019 (IWC/67)

The Commission will begin to consider new amendments to the Schedule to replace Chapter VII.

2020 (IWC/68)

The Schedule amendments in Appendix A will expire.

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APPENDIX A – Amendments to the Schedule

CHAPTER VII. REFORMED CONSERVATION AND MANAGEMENT MEASURES

32. This chapter shall be in effect from 1 January 2011 through 31 December 2020, except that for whaling in the Southern Hemisphere the effective dates shall be 1 November 2010 through 31 March 2020. In the event of an inconsistency between this chapter and chapters I -VI, the provisions of this chapter shall prevail. Further, the strengthened conservation and management measures in this chapter supersede paragraphs 2-5, 9, 10(a) through 10(c), 11, 12, 21(c), 24-30 and Appendix A of the Schedule. The catch limits and carryover provisions of Table 4 also supersede catch limits for those stocks identified in paragraph 13; all other provisions in paragraph 13 shall continue to apply. The provisions of this chapter shall be reviewed in 2015 and at such times as determined by the

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Commission. These provisions may also be reviewed when new and important information is presented by the Scientific Committee.

33. In order to improve the conservation of whales, the number of whales taken for each of the years indicated above shall not exceed the catch limits shown in Table 4. With the exception of catch limits for indigenous subsistence whaling, all catch limits in this table have been set at or below sustainable levels as determined by the Revised Management Procedure or best available science. No Contracting Government will unilaterally authorize any whaling in excess of the limits shown in Table 4 or outside the provisions of chapter VII. If the results of the established management procedures indicate that a catch limit should be lower than the number in Table 4, or if there is a significant event that negatively affects the status of any population, the Commission shall reduce the number of whales taken for each subsequent whaling season during the currency of this chapter, in accordance with the advice of the Scientific Committee. Catches from the stocks included in Table 4 shall not be authorized by Contracting Governments that did not authorize whaling operations in those areas in 2009. Other than the catch limits in Table 4, all other catch limits for all species in all other areas and seasons shall remain zero.

34: Each Contracting Government agrees that it will not authorize, whether pursuant to Article VIII or otherwise, any whaling in excess of the limits set forth in Table 4 or outside the provisions of this Chapter. If any Contracting Government acts inconsistently with this paragraph, then such Contracting Government shall be prohibited from authorizing any whaling pursuant to Table 4.

35: Each Contracting Government agrees that it will not authorize whaling pursuant to Table 4 unless it authorized whaling operations in 2009 under paragraph 13, an objection or reservation to paragraph 10(e), or Article VIII of the Convention.

36. In the absence of specified carryover provisions, any overages of an annual catch limit specified in Table 4 shall be deducted from that annual catch limit the following whaling season.

37: Domestic Use Only. Use of any meat or products derived from any whale taken in accordance with Table 4, or taken under any other circumstances, including before 2010, shall be limited to domestic use in the country or territory that authorized such take, and/or under whose jurisdiction such take occurred, for which whaling is authorized. Contracting Governments agree not to import, export or re-export any whale part or product of any whale for commercial purposes.

3538. If:

- a. a vessel or vessels under the jurisdiction of a Contracting Government strike or take whales in excess of the catch limit authorized by that Government pursuant to a licence issued in accordance with Annex {LIS} dated *day/month/year*; and
- b. the Management and Compliance Committee advises the Commission that the relevant Contracting Government has failed to implement and apply sufficiently severe sanctions or to take appropriate enforcement action, in accordance with its obligations under Annex {LIS} dated *day/month/year*;

the Commission will lower the relevant catch limit specified in Table 4 for the following whaling season. Such a deduction would apply in addition to any overages automatically deducted from the relevant catch limit under paragraph 3436.

3639. National Inspectors. Each Contracting Government under whose jurisdiction whaling operations are carried out shall have in place a national inspection scheme to ensure compliance with the provisions of the Convention and national regulatory measures.

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3740. International Observers. Whaling operations shall be subject to the International Observer Scheme detailed in Annex {IOS} dated *day/month/year*.

3841. Vessel Monitoring. Vessels conducting whaling operations shall be equipped with a satellite vessel monitoring system for reporting on vessel movements and activities. The system shall be designed to ensure real-time and simultaneous transmission to the Flag State, the Secretariat and the international observer as specified in Annex {IOS} dated *day/month/year* and Annex {VMS} dated *day/month/year*. Given the specific context of activities under this Chapter, including with respect to scale of operations and safety of life at sea, in circumstances where a vessel captain considers that the transmission of vessel monitoring information may endanger the safety and life of crews, such captain may at his sole discretion, suspend these transmissions. Such suspensions, as well as daily positioning data, shall be recorded by the observer and included in the report referred to paragraph 3.2 of Annex {IOS} dated *day/month/year*. Where there is no observer present, this information must be recorded by the captain and submitted to the international observer present at the land station.

3942. DNA Registry and Market Sampling. Contracting Governments under whose jurisdiction whales are harvested shall maintain a diagnostic DNA register and tissue bank, and will carry out a market sampling scheme, based on the procedures given in Annex {DNA} dated *day/month/year*. These procedures shall include the annual transmission of DNA profiles to a centralized archive maintained by the Secretariat for audit purposes. External audit conducted under the auspices of the IWC by an international expert group established pursuant to a recommendation of the Scientific Committee shall follow the procedures also documented in the Annex.

4043. Infractions and Sanctions. Contracting Governments shall have in place licensing, infractions and sanctions arrangements as set out in Annex {LIS} dated *day/month/year*.

41. Exception. ~~The provisions of paragraphs 37 through 39 and 44 shall not apply to whales taken under paragraph 13.~~ **44. Indigenous Subsistence Whaling.** The Contracting Governments agree that the term “indigenous subsistence whaling” shall henceforth be used for “aboriginal subsistence whaling” and that the two terms shall have the same meaning. Indigenous subsistence whaling on whale stocks listed in paragraph 13(b) shall be conducted pursuant to paragraph 13 and other relevant Commission agreements with respect to that paragraph. The number of whales struck or landed, as appropriate, for each of the years included in paragraph 32 shall not exceed the numbers shown for those whale stocks in Table 4 or the number produced by a strike limit algorithm adopted by the Scientific Committee. Recognizing Article V, each Contracting Government agrees that it will not authorize whaling operations by nationals subject to its jurisdiction on the stocks listed in paragraph 13(b) unless such whaling by its nationals is indigenous subsistence whaling pursuant to paragraph 13 and other relevant Commission agreements with respect that paragraph. The catch limits and carryover provisions of Table 4 also supersede catch limits for those stocks identified in paragraph 13; all other provisions in paragraph 13 shall continue to apply. Except where explicitly provided otherwise, the other provisions of this Chapter shall not apply to indigenous subsistence whaling.

4245. Whale Killing Methods. Hunting of whales shall be undertaken so that the hunted whale does not experience unnecessary suffering and so that people and property are not exposed to danger. In order to verify that the best methods are used and to provide for continuous improvement of methods, the national inspector, international observer or the captain of the vessel shall record information on whale killing methods and associated welfare issues as described in Annex {WKM} dated *day/month/year*. Information on whale killing methods and associated welfare issues shall be included in the annual report to the Commission.

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4346. Scientific Information. Contracting Governments under whose jurisdiction whales are harvested shall submit the scientific information described in Annex {SI} dated *day/month/year*. This information shall be conveyed to the Secretariat annually.

4447. Operational Information. Contracting Governments under whose jurisdiction whales are harvested shall submit the operational information described in Annex {OI} dated *day/month/year*. This information shall be conveyed to the Secretariat annually.

4548. South Atlantic Sanctuary. In accordance with Article V(1)(c) of the Convention, whaling, whether by pelagic operations or from land stations, is prohibited in a region designated as the South Atlantic Whale Sanctuary ~~from 1 November 2010 through 31 March 2020~~. This Sanctuary comprises the waters of the South Atlantic Ocean enclosed by the following line: starting from the Equator, then generally south following the eastern coastline of South America to the coast of Tierra del Fuego and, starting from a point situated at Lat 55°07,3'S Long 066°25,0'W; thence to the point Lat 55°11,0'S Long 066°04,7'W; thence to the point Lat 55°22,9'S Long 065°43,6'W; thence due South to Parallel 56°22,8'S; thence to the point Lat 56°22,8'S Long 067°16,0'W; thence due South, along the Cape Horn Meridian, to 60°S, where it reaches the boundary of the Southern Ocean Sanctuary; thence due east following the boundaries of this Sanctuary to the point where it reaches the boundary of the Indian Ocean Sanctuary at 40°S; thence due north following the boundary of this Sanctuary until it reaches the coast of South Africa; thence it follows the coastline of Africa to the west and north until it reaches the Equator; thence due west to the coast of Brazil, closing the perimeter at the starting point. With the exception of Argentina, Brazil and South Africa, this provision does not apply to waters under the national jurisdiction of coastal states within the area described above.

49. Conservation. The Commission shall establish a Conservation Program Committee. Further, the Commission shall address conservation issues as a priority, and will immediately focus on the recovery of depleted stocks and take actions on key issues, including bycatch, climate change and other environmental threats to whales through tools such as conservation management plans. The determination of which conservation management plans to develop will be based upon immediate conservation needs and likelihood of success.

50. IUU Whaling. Contracting Governments shall, to the extent consistent with their obligations under international law, take all necessary measures, including such amendments to their national laws and regulations as are required, to deter illegal, unreported and unregulated (IUU) whaling. Information on vessels conducting IUU whaling operations shall be included in the annual report to the Commission and included on a list of IUU vessels maintained by the Secretariat.

APPENDIX D – Amendments to the Rules of Debate and NGO Code of Conduct:

Amendment to the Rules of Debate:

A2. A Commissioner or Observer may speak only if called upon by the Chair, who may call a speaker to order if his/ her remarks are not relevant to the subject under discussion. The Chair will invite NGOs to speak as time allows and taking into consideration regional representation and a wide range of views.