

**An overview of the  
elements/issues identified as being of importance to one or more Contracting  
Governments in relation to the future of IWC**

Prepared by the Secretariat

**Introduction**

At IWC/60, the Commission agreed by consensus to *inter alia* establish a Small Working Group (SWG) on the Future of IWC (see IWC/60/24). Its Terms of Reference, agreed by the Commission, tasked the SWG with assisting the Commission to arrive at a consensus solution to the main issues it faces and thus to enable it to best fulfil its role with respect to the conservation of whale stocks and the management of whaling. The working group's primary task in this regard is to make very effort to develop a package or packages for review by the Commission.

Contracting Governments were invited to identify elements or issues as being of importance in relation to the future of IWC. The list was developed without allowing value judgements or criticisms to be raised or questions as to the specific meaning of any individual elements. The following 33 elements/issues were identified:

Elements/issues identified as being of importance to one or more Contracting Government in relation to the future of IWC. These are in alphabetical order.

		page	Cross referenced to elements/issues:
1.	Advisory/Standing Committee or Bureau – need for	3	19
2.	Animal welfare	4	25
3.	Bycatch and infractions	8	24
4.	Climate change	9	15, 24
5.	Civil society (involvement of)	10	22, 30
6.	Coastal whaling (i.e. within EEZ)	12	7, 21, 25, 30, 32
7.	Commercial whaling moratorium	13	21, 24, 25
8.	Compliance and monitoring	16	11, 25
9.	Conservation Committee	18	10, 12
10.	Conservation management plans	21	
11.	Convention (purpose of)	22	
12.	Co-operative non-lethal research programmes	24	
13.	Data provision	25	1, 25
14.	Developments in ocean governance	26	15
15.	Ecosystem-based approach to management	27	4, 23
16.	Environmental threats to cetaceans	28	4, 24
17.	Ethics	30	23
18.	Financial contribution scheme	31	
19.	Frequency of meetings	37	1
20.	Marine Protected Areas (MPAs)	40	16, 27
21.	Objections and reservations	41	11
22.	Procedural issues – improvements to	42	5, 28, 18, 1, 19, 29
23.	Research under special permit	44	
24.	Revised Management Procedure (RMP)	50	
25.	Revised Management Scheme (RMS)	53	2, 7, 8, 23, 24, 32
26.	Sanctions	16	8
27.	Sanctuaries	60	20
28.	Science – role of science and functioning of Scientific Committee	62	19
29.	Secretariat – implications for role of/expertise	64	
30.	Small cetaceans	65	
31.	Socio-economic implications	66	7, 25
32.	Trade restrictions	69	7, 25
33.	Whalewatching/non-lethal use	71	

The SWG held a short organisational meeting on Friday 27 June in Santiago shortly after the close of IWC/60 (see Circular Communication IWC.CCG.712 of 16 July 2008). The SWG agreed to have its first substantive meeting in the week beginning 15 September 2008.

To facilitate discussions at the September 2008 meeting, the SWG agreed that it would be useful to develop the following three documents:

1. A background paper to be prepared by the Secretariat summarising the current status of discussions within IWC on each of the 33 elements/issues identified during IWC/60;
2. A background paper collating input from Contracting Governments on what they understand is meant/covered by each of the 33 elements/issues. Contracting Governments were asked via Circular Communication IWC.CCG.712 to provide this input by 1 September;
3. A draft of the discussion document referred to in the Terms of Reference for the Intersessional Correspondence Group on Issues Related to the Scientific Committee (ICG). As part of the discussions on the future of IWC, the Commission also agreed by consensus to Terms of Reference for an Intersessional Correspondence Group on Issues Related to the Scientific Committee (see IWC/60/24).

This paper is therefore the first one requested by the SWG.

In developing the document, the Secretariat has had to make its own judgement on what should be included for each of the elements/issues. Many of the elements/issues identified are inter-related, thus there is cross-referencing between the relevant sections (see table above).

Background information on each element/issue is provided in addition to identifying where differing opinions on them exist among Contracting Governments. The Secretariat considered that this would be helpful, particularly given the number of new Contracting Governments and delegates new to IWC who may not be familiar with all areas of the Commission's work. Throughout the document, extensive reference is made to source material. Source material that has not been published will be made available on IWC's website.

While the Secretariat hopes that it has dealt with each of the issues in a fairly comprehensive manner, given the long history of the Commission and the complex nature of some of the issues, it recognises that it is not unlikely that some omissions may have been made. However, the intention of the document is to provide background information to the deliberations of the SWG and will be supplemented by input from Contracting Governments (see item 2 above).

# 1. Advisory/Standing Committee or Bureau – need for

## Current situation

The Commission decided at IWC/49 in 1997 to establish an Advisory Committee (see Resolution 1997-10<sup>1</sup>). Its Terms of Reference are given in the Commission's Rule of Procedure M.9:

'9. The Commission shall establish an Advisory Committee. This Committee shall comprise the Chair, Vice-Chair, Chair of the Finance and Administration Committee, Secretary and two Commissioners to broadly represent the interests within the IWC forum. The appointment of the Commissioners shall be for two years on alternative years.

The role of the Committee shall be to assist and advise the Secretariat on administrative matters upon request by the Secretariat or agreement in the Commission. The Committee is not a decision-making forum and shall not deal with policy matters or administrative matters that are within the scope of the Finance and Administration Committee other than making recommendations to this Committee.'

Examples of the types of issues that the Advisory Committee has been asked to address/comment upon include: (1) development of draft agenda for the Commission and its sub-groups (excluding the Scientific Committee); (2) proposals of convenors for the Commission's sub-groups; (3) development of proposals for revisions to Rules of Procedure; (4) proposals for NGO accreditation criteria and fee structure; (5) IWC representation at meetings of other intergovernmental organisations (particularly CITES); (6) development of a questionnaire regarding possible relocation of the IWC Secretariat; (7) the procedure for electing a new Chair and Vice Chair.

## Possible need for a Standing Committee/Bureau

The first time the possible need for a Standing Committee or Bureau was raised in the Commission was in the context of discussions on reducing the frequency of IWC meetings. In a number of documents prepared for the Finance and Administration Committee<sup>2</sup> the Secretariat has noted that one of the practical implications of moving to biennial meetings is that Commission decisions could only be made every two years unless by postal ballot or by calling a Special Meeting (for which there is precedence). It noted that other intergovernmental organisations that have meetings of their decision-making bodies every 2-3 years typically have a Standing Committee or Bureau, with restricted membership, to guide implementation of their Conventions and to provide guidance to the Secretariat during the intersessional period. If it went to less frequent meetings, the Commission may need to consider whether it would need Standing Committee/Bureau, and if so, whether (a) the Advisory Committee under the current Rules of Procedure (M.9) could fulfil such a function (noting that current it is not a decision-making body, or (b) whether another body would need to be established.

To date, discussions on meeting frequency have centred on whether or not to take such a step and the implications of moving to less frequent meetings have not really been addressed to any extent, including the need to establish a Standing Committee or Bureau (see section 19).

This matter was also raised in the document prepared by Professor Juma following the March 2008 Intersessional Meeting of the Future of IWC<sup>3</sup>. Professor Juma noted that the March 2008 Intersessional Meeting of the Commission had benefited significantly from the work of the Steering Group established to plan the meeting and to develop a draft agenda. He believed that the Commission could benefit from a standing Bureau elected by the Commission to assist the Chair in planning and running the meetings of the Commission. He further suggested that in addition to helping to plan meetings, such a Bureau could also serve as a communication link between the Chair and the rest of the Commissioners. One option would be to create a new organ that would have geographical as well as thematic representation. Alternatively, the current Advisory Committee could be reconstituted to serve as a Bureau with the requisite representation as determined by the Commission.

During IWC/60 there was little discussion on this matter – rather it was agreed that the need for a Standing Committee or Bureau should be addressed by the small working group as part of the development of a package or packages for review by the Commission. However, several members suggested that the establishment of a Standing Committee or Bureau is independent from whether or not the Commission moves to less frequent meetings.

<sup>1</sup> *Rep. int. Whal. Commn.* 48: 50

<sup>2</sup> IWC/57/F&A 9: A preliminary exploration of the possibilities and implications of less frequent meetings of the Commission and its subsidiary groups; IWC/58/F&A 5: Discussion document: Further thoughts on reducing the frequency of IWC meetings; IWC/59/F&A SS 3: Possible options to consider regarding meeting frequency of the Commission and its subsidiary bodies

<sup>3</sup> IWC/60/12rev: The Future of the International Whaling Commission: Strengthening Ocean Diplomacy

## 2. Animal Welfare

Work on animal welfare within the Commission began in the late 1950s with a focus on the humaneness of the killing methods being used at that time. A working party was formed in 1959 to examine the advantages and disadvantages of the various methods of killing whales which had so far been tried, with a view to recommending a programme of research and development (IWC, 1960)<sup>4</sup>. The history of the IWC's involvement in this issue up to 1986 is summarised by Mitchell, Reeves and Evely (1986)<sup>5</sup> and Donovan (1986)<sup>6</sup>. In 1976 the issue was addressed by the Scientific Committee. However, the Committee believed it should be better addressed by a group of experts and subsequently a Humane Killing Working Group was established

under the Technical Committee at IWC/35 in 1983. The name of the group was changed at IWC/51 in 1999 to 'Working Group on Whale Killing Methods and Associated Welfare Issues'. The Terms of Reference for the Working Group are to '*review information and documentation available with a view to advising the Commission on whale killing methods and associated welfare issues*'<sup>7</sup>.

The Working Group usually meets annually in association with Commission meetings unless a workshop on whale killing methods and associated welfare issues has been scheduled. Workshops have been held (not always in association with Commission meetings) in 1992, 1995, 1999, 2003 and 2006. The 1995 workshop developed an Action Plan on Whale Killing Methods that was revised at the 1999 and 2003 workshops. The 2006 workshop developed a series of recommendations but did not have time to review the 2003 Revised Action Plan on Whaling Killing Methods. The 2003 Revised Action Plan and recommendations from the 2006 workshop are provided below. A 3-4 day workshop on welfare issues associated with the entanglement of large whales will be held in the intersessional period after IWC/61 next year (see IWC/60/Rep 6). The exact timing and venue are to be determined.

The Commission has adopted a number of Resolutions related to whaling killing methods and associated animal welfare issues (see for example 1978-4, 1993-1, 1994-1, 1995-1, 1997-1, 1999-1, 2001-2, 2004-1<sup>8</sup>).

Meetings of the Working Group generally focus on a review of data on whales killed and steps being taken to improve the humaneness of whaling operations and give the opportunity for Contracting Governments to provide information specified in Resolutions 1997-1, 1999-1 and 2001-2. Resolution 1997-1 concerns steps being taken to improve the humaneness of aboriginal whaling operations. Resolution 1999-1 *inter alia* encouraged reporting of data on whales killed (e.g. numbers killed by each method, number killed instantaneously, times to death) and the development of more accurate indicators for determining times to death other than cessation of movement. Resolution 2001-2 encouraged governments to: (1) submit information on variance data on times to death (to the extent possible) and comparative data from the killing of other large mammals; and (2) provide appropriate technical assistance to reduce time to unconsciousness and death in all whaling operations.

### Issues

While differing views are held among Contracting Governments on whether animal welfare falls within the mandate of the Convention, there has been consensus that the Commission could address this issue. Countries providing animal welfare data to the Commission have been doing so on a voluntary basis. However, controversy has arisen in recent years in the context of 'condemnatory' discussions in the Commission and then in the context of the proposal that the collection of animal welfare data should be compulsory as part of the Revised Management Scheme (RMS – see section 25). Some governments taking this view believe that if the Commission as a body is to sanction the killing of whales, then it has an ethical duty and moral responsibility to ensure that this is done in a way so as to minimise suffering.

While countries with whaling activities believe that improving animal welfare aspects of their hunts (e.g. reducing times to death and increasing hunting efficiency) is important<sup>9</sup>, they believe that the data they provide on a voluntary basis are used in a negative manner by some rather than being used for constructive discussion on

<sup>4</sup> International Whaling Commission. 1961. Chairman's Report of the Twelfth Annual Meeting, June 1960. *Rep. int. Whal. Commn* 12:14-22.

<sup>5</sup> Mitchell, E.D., Reeves, R.R. and Evely, A. 1986. Whale killing methods: An annotated bibliography. Introductory Essay. *Rep. int. Whal. Commn (special issue)* 7: 1-12.

<sup>6</sup> Donovan, G.P. 1986. Bibliography of whale killing techniques, Appendix 2. The International Whaling Commission and the humane killing of whales, 1982-1986. *Rep. int. Whal. Commn (special issue)* 7: 141-53.

<sup>7</sup> *Ann. Rep. int. Whaling Comm. 2000*: 17

<sup>8</sup> These Resolutions are all available on IWC's website at: <http://www.iwcoffice.org/meetings/resolutions/resolutionmain.htm>

<sup>9</sup> Note that in the context of RMS discussions, the principle that whaling should not inflict unnecessary suffering has already been agreed (see IWC/54/RMS 2: The possible structure and content of a revised Schedule based on discussions to date).

how to improve killing methods. Because of this, one member has ceased providing data to IWC and is submitting it to a different forum (NAMMCO). Others are considering taking the same approach. Clearly this would have an effect on IWC's ability to address this issue.

## REVISED ACTION PLAN ON WHALE KILLING METHODS

*(Ann. Rep. int. Whaling Comm.2003:101)*

### A. Equipment and Methods

(1) Encourage continued co-operation among Contracting Governments to refine the design of penthrite grenades as far as possible.

(2) Continue improving accuracy of delivery of penthrite grenade harpoons, including assessment of refined sighting equipment suitable for rapid action under conditions encountered at sea. Support and encourage the development and implementation of programmes to provide training in the safe handling and effective use of killing devices including the penthrite grenade and in other aspects of the hunt.

(3) Continue to review constraints on shooting distance and relative orientation of vessel and whale and encourage reducing times to death.

(4) Continue to review effectiveness of secondary killing methods with a view to reducing times to death in whales and encourage the application of the most effective methods.

### B. Indication of insensibility and death

(5) Develop better criteria for determining the onset of permanent insensibility in whales, using physiological and behavioural observations.

### C. Assessment of cause of death in relation to observed time to death

(6) Where possible, examine the effects of trauma, and its consequences, caused by harpoons and other devices used to capture whales, and its relationship to the reactions of the captured whale.

Develop standardised guidelines for recording major indications of death.

### D. Collection and provision of information on time of death

(7) Encourage collaboration between technical and scientific experts with a view to suggesting evidence based guidelines for the collection and dissemination of information in relation to both primary and secondary killing methods in forms that allow the effectiveness of different methods to be compared. The data should be presented to the maximum extent possible with statistical analysis that allows independent appraisal and analysis.

(8) Encourage collection and presentation of struck and lost rates and standardised estimated time to death records in all aboriginal subsistence catches of whales and undertake assessment of requirements for controls on the use of rifles to kill unsecured whales.

(9) Encourage the incorporation of data collection and reduction of struck and lost rates in initiatives in Greenland relating to the beluga and narwhal hunts.

### E. Assessment of physiological status of hunted animals

(10) Develop suggested guidelines for, and where possible implement collection of representative biological samples from whales in extremis with an aim to determining reliable indices of stress for animals killed in whaling operations.

### F. Next steps

The Workshop participants encourage the IWC to hold a further scientific and technical Workshop in 3-5 years and to call for further improvements in data collection, analysis and reporting in order to evaluate progress made in improving whale killing methods. In the meantime, information should continue to be provided to the appropriate technical Working Group.

**Workshop recommendations from the 2006 Workshop on  
Whale Killing Methods and Associated Welfare Issues**  
(*Ann. Rep. int. Whaling Comm.2006: 86*)

**Workshop recommendations**

The Chair reminded participants of the terms of reference and task for this item. He identified some key considerations and issues, particularly those of a practical nature, identified during the workshop. Proposals of recommendations were received from a number of countries (UK, Norway, Finland, Switzerland, Sweden and New Zealand). Following consideration and debate, the following recommendations were adopted by the Workshop.

- (1) To encourage continued efforts in training and dissemination of good practice around the world, for example in promotion of, and further investigation of, the use of heart shots from a back up rifle where the head of the animal is under the water.
- (2) Recommend the best possible type and calibre weapon is used in aboriginal subsistence whaling and continue weapon technology improvement for use in aboriginal subsistence whaling with particular focus on calibre of weaponry. Encourage the development of the aboriginal subsistence whaling caucus to further the exchange of information and best practice.
- (3) Recommend continued efforts to improve accuracy of placement of primary and back-up shots, to continue improvements towards achieving instantaneous death.
- (4) Recommend continuing efforts to improve back up/secondary killing methods. Recommend that governments continue to support their scientists and vets in studying welfare aspects and monitoring, evaluating and improving welfare techniques, and to publish the data.
- (5) Member countries of the IWC to exchange information on methods for dealing with entrapped, entangled and stranded cetaceans, drawing on the domestic protocols of member countries and to review the methods used to euthanase cetaceans at sea when entangled in fishing gear or marine debris.
- (6) When using explosive devices, for welfare reasons whales should whenever possible be shot from the side at the thorax or neck and all animals should if possible be hauled in as fast as possible to control if the animal needs to be re-shot.
- (7) When using the rifle as back-up, the recommended target areas are the brain, upper neck and in emergency situations possibly the heart.
- (8) As a precaution, the hunters should be recommended to re-shoot as a routine any animals that move or in other ways show any signs of life.
- (9) Recognise the importance of hunter training for the improvement of hunters' safety, animal welfare and minimising struck and lost rate.
- (10) Recognise the importance of maintaining weapons and hunting gear.
- (11) Encourage in two years time, when progress can be assessed, consideration of the holding of a further scientific and technical Workshop.

### 3. Bycatch and infractions

#### Bycatch

Bycatch refers to the incidental catch of cetaceans in fishery gear. The general topic has been discussed by the Scientific Committee and it is recognised as one of the most important threats to small cetacean populations around the world. With respect to large whales, bycatch has been identified as a threat to critically endangered populations such as the western North Pacific gray whale and the western North Atlantic right whale. Data on bycatches are an important component of the input data for the RMP (anthropogenic removals – see Section 24). However, given that the identified issue relates to bycatch and infractions, it has been assumed here that the focus relates to whether bycatches should be regarded as infractions.

#### Bycatch and infractions

In recent years there has been some discussion as to what constitutes an infraction under Article IX.4 of the Convention<sup>10</sup> particularly in relation to whales caught accidentally in fisheries not targeting large whales.

During the Infractions Sub-committee meeting at IWC/53 in 2001, St. Vincent and The Grenadines had reported as an infraction the take of a Bryde's whale by a blackfish (pilot whale) crew that had been unaware that Bryde's whales are protected<sup>11</sup>. Some Sub-committee members were of the view that this was not an infraction as the blackfish fishery was not targeting animals covered by the Convention. They believed that the take could be considered as bycatch. The Secretariat clarified that cases where animals have been deliberately killed (even if particular provisions of the Schedule have only been accidentally broken) have been regarded traditionally as infractions by the Infractions Sub-committee and reported as such. By contrast, cases where animals have been accidentally killed (e.g. ship strikes or bycatches in fishing gear) have not been traditionally considered by the Sub-committee, although governments are urged to provide details of incidental catches and ship strikes in their progress reports to the Scientific Committee. There was general agreement with this clarification.

With respect to bycatch, there were discussions and different views expressed at the 2001 meeting of the Infractions Sub-committee and subsequently regarding whether animals bycaught in fishing operations that are deliberately killed should be reported as infractions. This discussion arose because Japan passed revised legislation in June 2001 that allowed its trap net fishermen to harvest whales found in their traps and to sell these on to the market provided they register the animal by supplying a DNA sample<sup>12</sup>. Some members considered that this new legislation, combined with the ability to commercialise bycatch might act as incentives not to take measures to limit bycatch. In the Republic of Korea, regulations allow for the selling of bycaught animals if an investigation has shown that they have not been deliberately harvested.

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<sup>10</sup> Article IX.4 of the Convention requires that 'each Contracting Government shall transmit to the Commission full details of each infraction of the provisions of this Convention per persons or vessels under the jurisdiction of that Government as reported by its inspectors. This information shall include a statement of measures taken for dealing with the infraction and of penalties imposed'.

<sup>11</sup> *Ann. Rep. int. Whaling Comm. 2001*: 84-85

<sup>12</sup> *J. Cetacean Res. Manage. 4 (Suppl.) 2002*: 14



## 4. Climate change

The issue of the possible effects of climate change on cetaceans was first considered in detail by the Scientific Committee at a workshop held in 1996 (IWC, 1997). This had been in part as a result of a resolution on research on the environment and whale stocks passed in 1993 (IWC, 1994). The Committee had already drawn the Commission's attention to the fact that the species/populations most susceptible to environmental threats would be those already reduced to numbers for which the RMP would set zero catch limits i.e. any mitigation or management actions would need to be outside the normal range of whaling regulations. The RMP (see Section 24 – RMP) takes environmental change into account in that it was tested against proxies for such effects (e.g. by varying 'carrying capacity', including random catastrophic declines and by changing parameters related to productivity and survivorship) and details can be found in (Cooke, 1995; IWC, 1995). The Scientific Committee is reviewing trial structure in the context of RMP testing and environmental change (e.g. see discussions in IWC/60/Rep 1).

After reviewing the available information, the 1996 Workshop had noted that 'at present it is not possible to model in a predictive manner the effects of climate change on cetaceans' but had also noted that the available evidence was sufficient to warrant some concern for cetaceans. In addition to recommending fundamental multidisciplinary research, the Committee also urged that Commission urge its members to take practical action with respect to the ozone layer and greenhouse gas emissions (IWC, 1997).

Subsequently, the Committee has worked in co-operation with other organisations such as CCAMLR and SOGLOBEC on research relevant to climate change and cetaceans. In doing so, it has recognised the fundamental difficulties in developing suitable predictive ecosystem models given major problems in both developing and testing complex ecosystem models (e.g. see (IWC, 2004) as well as acquiring the necessary data (see also Section 15 – Ecosystem approach to management). Attempts to further this work are continuing and this year the Scientific Committee has held a joint workshop with CCAMLR for the Antarctic and will be holding a specific workshop on climate change and cetaceans in spring 2009 (see IWC/60/Rep1).

### References

- Cooke, J.G. 1995. Report of the Scientific Committee, Annex D. Report of the Sub-Committee on Management Procedures. Appendix 3. Simulation trials of the RMP {ICatch Limit Algorithm} in the presence of adverse external influences on whale populations. *Rep. int. Whal. Commn* 45: 113-15.
- International Whaling Commission. 1994. Chairman's Report of the Forty-Fifth Annual Meeting, Appendix 12. Resolution on research on the environment and whale stocks. *Rep. int. Whal. Commn* 44:35.
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- International Whaling Commission. 1997. Report of the IWC Workshop on Climate Change and Cetaceans. *Rep. int. Whal. Commn* 47:293-319.
- International Whaling Commission. 2004. Report of the Modelling Workshop on Cetacean-Fishery Competition. *J. Cetacean Res. Manage. (Suppl.)* 6:413-26.

## 5. Civil society (involvement of)

### Criteria and rules for accreditation and participation of Non-Governmental Organisations (NGOs)

#### Up to IWC/59

Up to and including IWC/59 in Anchorage in 2007, NGOs having offices in at least four countries and with an interest in the work of the IWC could send one observer plus alternates to meetings of the Commission and its various committees, excluding the Finance and Administration Committee and its sub-committees. Only one observer per organization was allowed into a meeting at any one time. NGOs were required to pay a registration fee per organization.

While under the IWC's Rules of Debate (A.2), NGO representatives, as observers, have the same speaking rights as Commissioners (i.e. they may speak if invited to do so by the Chair) in practice, this was interpreted as applying only to intergovernmental organizations (IGOs), who were allowed to make only one substantive intervention per meeting. NGOs were not invited to speak.

#### Post IWC/59

As a result of discussions initiated at IWC/56 in 2004<sup>13</sup>, at IWC/59 the Commission adopted changes to the procedure governing accreditation and participation of NGOs in IWC meetings. *Inter alia*, these changes eliminated the requirement for NGOs to maintain international offices, relaxed the restrictions on total attendees from each NGO allowed into the meeting room at any one time, and set a registration fee per individual observer rather than per organisation<sup>14</sup>. These new criteria took effect after IWC/59.

Although at IWC/59 there had been no decision to allow NGOs speaking rights, at IWC/60 in Santiago in June 2008, the Commission agreed to have a 30 minute session to allow NGOs to address the meeting. Six NGOs broadly representing the range of views held on IWC issues were invited to speak for 5 minutes each. The NGO community at IWC/60 agreed among themselves which organisations would speak. Affording limited speaking rights at IWC/60 was principally in response to discussions at the March 2008 Intersessional Meeting on the Future of IWC<sup>15</sup> (see also section 22 of this document).

#### Participation in the Scientific Committee

Suitably qualified representatives of NGOs attend meetings of the Scientific Committee as invited participants (where they are allowed to speak) or as observers (where they are not allowed to speak). Some Contracting Governments include NGOs on their national delegations.

#### **Code of Conduct**

A 'Code of Conduct for NGOs at IWC Meetings and Complaints Procedure' was adopted by the Commission at IWC/58 in 2006 (see next page). The development of this Code of Conduct was prompted by statements made and documents released during Annual Meetings (particularly at IWC/55 in Berlin and IWC/56 in Sorrento<sup>16</sup>) that were deemed inappropriate by the Commission. Some of these statements involved allegations of vote-buying. Such statements, together with complaints from some members that because of their voting patterns in IWC, they were experiencing threats, coercion and tourism boycotts from certain NGOs, had led to proposals for broadening the use of secret ballots and reinforced strongly-held negative attitudes of some Contracting Governments towards increasing the involvement of NGOs in the Commission's work.

#### **Discussions and recommendations at the March 2008 Intersessional Meeting on the Future of IWC**

During discussions at the March 2008 meeting, the need to better integrate elements of civil society into the Commission's work was recognised and it was suggested that it would be useful to investigate how this is done by other intergovernmental organisations (IGOs). In this context, it should be noted that as part of the process that led to revised criteria for NGO accreditation and participation as described above, the Secretariat reviewed the rules and procedures pertaining to the involvement of NGOs in a number of IGOs in 2006<sup>17</sup>.

Professor Juma in his document prepared following the meeting<sup>18</sup> noted that better integrating civil society into the work of the Commission might be achieved, for example, *'through a new accreditation system that specifies the role NGOs can play under the various organs and functions of the Commission'*. He identified that one of the key issues relates to statements to IWC and that NGOs could, through a system of collective representation, be allowed to make formal presentations to Commission meetings, with the timing and duration of such

<sup>13</sup> IWC/56/F&A 6 and *Ann. Rep. int. Whaling Comm. 2004*: 53-54, 119-120

<sup>14</sup> *Ann. Rep. int. Whaling Comm. 2007*: 58, 141-144

<sup>15</sup> IWC/60/7 Chair's Report of the Intersessional Meeting on the Future of IWC, Renaissance London Heathrow Hotel, UK 6-8 March 2008

<sup>16</sup> *Ann. Rep. int. Whaling Comm. 2003*: 5 and *Ann. Rep. int. Whaling Comm. 2004*: 54

<sup>17</sup> IWC/58/F&A 3 NGO accreditation and participation in IWC Annual Meetings

<sup>18</sup> IWC/60/12rev The Future of the International Whaling Commission: Strengthening Ocean Diplomacy

presentations being determined by the Commission Chair. As indicated above, a limited number of NGOs were allowed to address the Commission at IWC/60.

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**Code of Conduct for NGOs at IWC meetings and complaints procedure**  
(Ann. Rep. int. Whaling Comm. 2006: 154)

The Commission welcomes the attendance of NGOs at its meetings but such attendance carries certain responsibilities. It is the duty of each NGO to behave with due and proper respect for the meeting proceedings and to all Contracting Governments and other governments attending IWC meetings and to abide by this code of conduct. Disruptive behaviour and/or failure to conform to this code of conduct may result in suspension or withdrawal of accreditation.

A copy of this code of conduct will be issued to each NGO observer at the beginning of each meeting.

Mobile telephones

Mobile telephones shall be switched off or put in 'silent' mode before entry of the observer into the meeting room.

Use of recording equipment

The use of audio and/or visual recording equipment is permitted during Plenary sessions of the Commission provided that such recording is carried out unobtrusively and without disturbance to the meeting. Flash photography is only permitted during the Opening Plenary.

The use of recording equipment is not permitted in meetings of the Commission's sub-groups unless the Commission decides otherwise.

Documents

Quotations from, or use of draft IWC documents is prohibited. Rule of Procedure Q.1<sup>19</sup> regarding confidentiality of reports of meetings of IWC committees, sub-committees and working groups must be respected.

Only official meeting documents submitted by Contracting Governments or prepared by the Secretariat (including the collated Opening Statements from NGOs) may be distributed through pigeon-holes. The Secretariat is solely responsible for such distribution. NGOs may, however, make 'for information' documents available to participants using tables designated for this purpose. Such documents must indicate which organization is responsible for them. Documents that do not meet this requirement will be removed by the Secretariat.

While 'for-information' documents will not be reviewed by the Secretariat before being placed on the designated tables, those NGOs distributing such documents remain responsible for their content. These documents shall not contain statements that defame any participating organization or person, or cause serious offence to any government.

Behaviour and demonstrations

Behaviour of representatives of NGOs shall not be disruptive to the proceedings of the meeting. The Chair of the proceedings may ask anyone disrupting the meeting to leave the room.

Demonstrations at the meeting venue shall take place at sites designated for such purposes by the host government. In any event, demonstrations shall neither take place within the meeting rooms or their immediate vicinity within the venue of the meeting controlled by the IWC, nor impede access to the meeting venue, nor shall they threaten the physical safety of delegations attending the meeting.

Complaints

Differences in views and philosophy are natural and should be respected. Any participant shall refrain from measures, including verbal, written, or physical attacks designed to deter the exercise of the rights of others to hold and express different views.

Any participant who has a grievance in this regard should submit a written complaint to the Secretary, who will try to resolve the problem with the parties concerned. If this fails, the Secretary will report the matter to the Advisory Committee who shall liaise with the parties concerned to seek a resolution. If this fails, the Advisory Committee will refer to the Commission for decision-making.

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<sup>19</sup> 'Reports of meetings of all committees, sub-committees and working groups of the Commission are confidential (i.e. reporting of discussions, conclusions and recommendations made during a meeting is prohibited) until the opening plenary session of the Commission meeting to which they are submitted, or in the case of intersessional meetings, until after they have been dispatched by the Secretary to Contracting Governments and Commissioners. This applies equally to member governments and observers. Such reports, with the exception of the report of the Finance and Administration Committee, shall be distributed to Commissioners, Contracting Governments and accredited observers at the same time. Procedures applying to the Scientific Committee are contained in its Rules of Procedure E.5.(a) and E.5.(b).'

## **6. Coastal whaling (i.e. within EEZ)**

Currently Norway and Iceland conduct commercial whaling in their own Exclusive Economic Zones (EEZs) under objection and reservation respectively to Schedule paragraph 10(e) defining the commercial whaling moratorium (see also sections 7 and 21).

Although Japan initially lodged an objection to paragraph 10(e), it withdrew this with effect from 1 May 1987 with respect to commercial pelagic whaling, from 1 October 1987 for commercial coastal whaling for minke and Bryde's whales, and from 1 April 1988 with respect to commercial coastal sperm whaling. Following the withdrawal of its objection, Japan has repeatedly requested, but without success, an interim relief allocation of whales to alleviate the hardship created by the imposition of the commercial coastal whaling moratorium on its four community-based whaling communities (Taiji, Abashiri, Ayukawa and Wada). This is clearly a very important issue for Japan and further detail is provided in section 30 dealing with the socio-economic implications of the moratorium.

The restriction of commercial whaling to within countries' EEZs has been discussed in the context of finding a way forward for the IWC (i.e. the 'Irish Proposal') and in the development of the Revised Management Scheme (see sections 25 and 32).

## 7. Commercial whaling moratorium

### The moratorium

In 1982, the IWC decided by three-quarter majority vote to implement a pause or ‘moratorium’ in commercial whaling with effect from the 1986 coastal and 1985/86 pelagic whaling seasons by including the following paragraph into the Schedule:

*10(e) Notwithstanding the other provisions of paragraph 10, catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. This provision will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits.*

Factors involved in this decision included difficulties in agreeing what catch limits to set for non-protected species (due to scientific uncertainties in the information needed to apply the management procedure then in place) and differing attitudes to the acceptability of whaling. The establishment of a moratorium was not a result of a recommendation from the Scientific Committee. Discussions within the Committee in the years prior to the moratorium had focussed on the importance of stock-by-stock management although some members of the Committee believed that an interim cessation of whaling was appropriate<sup>20</sup>. The wording of the moratorium decision implied that with improved scientific knowledge in the future, it might be possible to set catch limits other than zero for certain stocks.

The Governments of Japan, Norway, Peru and the Union of Soviet Socialist Republics initially lodged objections to the moratorium (see section 21). Japan and Peru subsequently withdrew their objections. Because the objections of Norway and what is now the Russian Federation have not been withdrawn, paragraph 10(e) is not binding on these Governments. Of these two countries, only Norway conducts commercial whaling<sup>21</sup>. The Commission has called on Norway on a number of occasions, including through the adoption of Resolutions, to respect the moratorium<sup>22</sup>. Iceland, who was a member of the Commission at the time of the decision to establish a moratorium did not lodge an objection. However, on re-adherence to the Convention in 2002, it re-adhered with a reservation to Schedule paragraph 10(e) (see section 21).

After the moratorium decision was taken, the IWC Scientific Committee embarked on a major review of the status of whale stocks (including an examination of current stock size, recent population trends and productivity) which it called the Comprehensive Assessment. At the outset of its work on this, the Scientific Committee recognised the need to develop management objectives and procedures that learnt from its previous difficulties, and in particular recognised the limitations of both the data it had and the data it was likely to obtain. It spent over eight years developing the Revised Management Procedure, a scientifically robust method of setting safe catch limits for certain stocks (groups of whales of the same species living in a particular area) where the numbers are plentiful. See section 24 for further information on the RMP.

Given this scientific advance which has been accepted by the Commission (the RMP was adopted in 1994) there has been pressure from some countries to remove the moratorium. However, before the RMP is implemented and the moratorium on commercial whaling lifted, the IWC has agreed that a modern supervision and control system should be in place to ensure not only that the regulations are obeyed and catch limits not exceeded but that regulations are also seen to be obeyed. However, despite many years work trying to develop such a system (i.e. the Revised Management Scheme – RMS – see section 25), the Commission has so far failed to reach agreement on an RMS and all work on this has come to a halt for the time being. The commercial whaling moratorium therefore remains in place. Some countries however maintain that paragraph 10(e) is not really still in effect because of the 1990 deadline. Others disagree with this interpretation.

### Practical consequences of lifting the moratorium

The inclusion of paragraph 10(e) into the Schedule set commercial whaling catch limits on all species in all areas to zero. While fully recognising the symbolic nature of paragraph 10(e) for some Contracting Governments, should it be removed, the practical consequences are that commercial whaling catch limits would remain at zero until the Commission decides otherwise. The ‘moratorium’ would therefore effectively remain in place, and a three-quarter majority would still be needed for catch limits to be set at anything other than zero.

<sup>20</sup> See for example: International Whaling Commission. 1980. Report of the Scientific Committee. *Rep. int. Whal. Commn* 30:42-137; International Whaling Commission. 1981. Report of the Scientific Committee. *Rep. int. Whal. Commn* 31:51-165; International Whaling Commission. 1983. Report of the Scientific Committee. *Rep. int. Whal. Commn* 33:43-190.

<sup>21</sup> Since re-adhering to the Convention in 2002, Iceland has issued commercial whaling quotas since it has a reservation to Schedule paragraph 10(e) – see section 21.

<sup>22</sup> The last of these was Resolution 2001-5: Resolution on commercial whaling *Ann. Rep. int. Whaling Comm. 2001*: 56

Moreover, if paragraph 10(e) is removed, catch limits will be zero until the Scientific Committee has completed an *RMP Implementation* for a particular species and area, and the Committee cannot begin an *Implementation* without instructions from the Commission. If implemented today, the RMP would only provide advice that could be used to set catch limits for those few populations/regions for which an *RMP Implementation* has been completed (see section 24). In addition, the lifting of paragraph 10(e) would not affect paragraph 10(d), which would remain in place unless the Commission decides otherwise. Paragraph 10(d) forbids the taking, killing or treating of sperm whales, killer whales and baleen whales (except minke whales) by factory ships or whale catchers attached to factory ships.

### **Linking completion of the RMS and lifting of the moratorium**

The relationship between the RMS and Schedule paragraph 10(e) represents one of the most important obstacles to agreeing an RMS. Views expressed have ranged from: (1) agreement on the RMS should result in simultaneous deletion of paragraph 10(e) from the Schedule and catch limits other than zero should be established for those stocks for which the Scientific Committee provides advice that this is safe to do; to (2) even if an RMS is agreed, paragraph 10(e) should remain until such time as the Commission takes action to remove it. The rationales for these opinions vary from the view that an RMS is meaningless if no whaling is allowed on stocks for which the RMP would set a catch limit other than zero, through a lack of trust that countries may object to one or more provisions of an RMS and thus not be bound by them, to the view that whaling should not be allowed but that an RMS should be in place in case a three-quarter majority is in favour of lifting the moratorium at some point in the future.

Aside from the view of some member governments that commercial whaling is always unacceptable, the primary concern expressed with respect to making adoption of the RMS simultaneous with the lifting of paragraph 10(e), is the possibility that a whaling nation might exercise its right to object to one or more of the RMS provisions and thus be able to whale legally but outside the RMS.

In IWC Chairman Henrik Fischer's proposal for an RMS that was reviewed by the Commission at IWC/56 in 2004<sup>23</sup> (see section 25), he made the following statement and proposal: *'I do not believe that trying to finalise an RMS in isolation of discussions on paragraph 10(e) is appropriate, and consider that a way of linking agreement on an RMS with the lifting of paragraph 10(e) needs to be found. My preferred approach is to modify paragraph 10(e) such that it becomes invalid on a specific day whilst ensuring that any whaling operations are undertaken under the full RMS package as adopted by the Commission'*. The aim of any mechanism developed under Henrik Fischer's proposal was to enable a lifting of paragraph 10(e) whilst ensuring that (a) whaling only occurs under a full RMS and (b) that the objection of a non-whaling country could not prevent the possibility of whaling under an RMS. It was recognised that developing appropriate text to achieve this was not a simple task and at the request of the Commission at IWC/56, the Secretariat explored ways in which this might be done and presented them to the RMS Working Group meeting in Borgholm in November 2004<sup>24</sup>. From the Secretariat's paper and subsequent discussions, it became clear that the 'Chair's Proposal' cannot be achieved without essentially requiring Contracting Governments to give up their right under Article V.3 of the Convention to object to Schedule amendments.

To date the following five options have been under consideration concerning the link between completion of an RMS and the lifting of paragraph 10(e):

- (1) Direct link, i.e. simultaneous deletion of paragraph 10(e) with adoption of an RMS;
- (2) Link to ensure that commercial whaling is only carried out under an RMS (i.e. to avoid objections being lodged);
- (3) A two-stage approach in which an RMS is adopted first followed by a vote to delete Schedule paragraph 10(e) if no objections have been lodged to the RMS within the 90-day period;
- (4) Adopt an RMS but retain paragraph 10(e), then allow a gradual introduction of exemptions for certain stocks under certain conditions by adding further sub-paragraphs, e.g. *10(f) Notwithstanding the provisions of paragraph 10(e), commercial whaling shall be permitted for [species/stock/area] ....'*;
- (5) No link.

These were last discussed at the RMS Working Group Meeting held in Cambridge from 28 February to 2 March 2006<sup>25</sup>. At that meeting, one government believed that given the current Convention, there is no legal mechanism to avoid the possibility of Contracting Governments lodging an objection to the RMS in the scenario where there is a link between adoption of the RMS and lifting of paragraph 10(e). Since for that government,

<sup>23</sup> *Ann. Rep. int. Whaling Comm. 2004*: 82-91

<sup>24</sup> IWC/N04/RMSWG 12: Discussion document: The RMS and lifting of Schedule Paragraph 10(e)

<sup>25</sup> IWC/58/RMS 3: Chair's Report of the RMS Working Group Meeting, University Arms Hotel, Cambridge, 28 February to 2 March 2006.

the adoption of an RMS without objections<sup>26</sup> is a pre-requisite for the lifting of paragraph 10(e), it could not support anything other than a sequential approach. Another saw the need for two votes as inescapable, i.e. the first being a technical decision regarding the adoption of an appropriate RMS, while the lifting of paragraph 10(e) is a political decision. It suggested that option (4) above, could include the possibility of geographic exceptions. Another government saw the absence of mutual trust as a major obstacle to reaching agreement and believed that the fundamental differences among Contracting Governments as to the purpose of the Convention needed to be resolved and the IWC 'normalised'. Given the difficulties of getting around the problem of the objection procedure without amending the Convention, the Secretariat asked whether it could be considered satisfactory for Contracting Governments to make a formal declaration that they would not use their right to object. Different views were expressed as to the validity of such a declaration.

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<sup>26</sup> Some governments also believe that there is a need to amend the Convention with respect to the objection procedure. See section 21.

## 8. Compliance and monitoring; and 26. Sanctions

Article IX of the Convention addresses the reporting and handling of infractions to the provisions of the Convention as follows:

### Article IX

1. Each Contracting Government shall take appropriate measures to ensure the application of the provisions of this Convention and the punishment of infractions against the said provisions in operations carried out by persons or by vessels under its jurisdiction.
2. No bonus or other remuneration calculated with relation to the results of their work shall be paid to the gunners and crews of whale catchers in respect of any whales the taking of which is forbidden by this Convention.
3. Prosecution for infractions against or contraventions of this Convention shall be instituted by the Government having jurisdiction over the offence.
4. Each Contracting Government shall transmit to the Commission full details of each infraction of the provisions of this Convention by persons or vessels under the jurisdiction of that Government as reported by its inspectors. This information shall include a statement of measures taken for dealing with the infraction and of penalties imposed.

Thus it is the responsibility of each Contracting Government to ensure that operations under their jurisdiction comply with the provisions of the Convention (which includes the Schedule to the Convention) and to punish those responsible for any infractions. However, each Contracting Government is required to report details of all infractions of the Conventions' provisions to the Commission. These reports are reviewed by the Infractions Sub-committee whose Terms of Reference are as follows:

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

The Infractions Sub-committee meets on an annual basis in association with Commission meetings. At its meetings it *inter alia*: reviews and comments on infractions reports from Contracting Governments relating to the previous year and on follow-up to earlier reports; receives information on the level of surveillance of whaling operations; considers whether obligations under Section VI of the Schedule (Information Required) are being met; and reviews a summary of national laws and regulations related to whales and whaling submitted to the Commission.

### Proposal for a Compliance Review Committee

A proposal to establish a Review Committee to review and report on the compliance of all whaling operations (as a replacement of the existing Infractions Sub-committee) was first introduced at IWC/52 in Adelaide in 2000 in the context of work on the RMS. The proposal was further discussed by the Revised Management Scheme Expert Drafting Group (EDG) that was established at IWC/53 in London in 2001.

The EDG met twice in the intersessional period between IWC/53 and IWC/54 in 2002<sup>27</sup>. With respect to oversight of infractions, the EDG agreed to change the name of the group to the Compliance Review Committee (CRC) and, in the spirit that ‘nothing is agreed until everything is agreed’, there was broad agreement on its duties, i.e.: (i) review: (a) infraction reports from Contracting Governments; and (b) the annual report of the functioning of the international observer scheme, including any alleged infractions, for the most recent completed whaling season; (ii) review other reports submitted by Contracting Governments on matters relevant to the Committee, including alleged infractions; (iii) compare the information in (i) and (ii) above and identify any disagreement in the details of an alleged infraction; (iv) report its view as to whether an alleged infraction is a violation(s) of the provisions of the Schedule; (v) review action(s) taken by a Contracting Government in response to violation(s) of the provisions of the Schedule identified above; (vi) review the actions taken, including progress made, by Contracting Governments in response to previous violations considered by the Commission; (vii) recommend to the Commission actions to be taken to improve compliance with the provisions of the Schedule; (viii) submit a report to the Commission on its deliberations and recommendations. A proposal that the CRC should include a certain number of accredited NGO observers with non-voting rights was subsequently withdrawn in a spirit of compromise and in recognition that NGOs would continue to have observer status.

<sup>27</sup> IWC/54/RMS 1: Report of the Revised Management Scheme Expert Drafting Group



In the context of RMS discussions (see section 25), there has continued to be broad agreement within the Commission on the CRC duties proposed by the EDG although it has been recognised that further duties may need to be added (e.g. review of DNA registers/market sample if such elements are included in an RMS).

Issues relating to compliance that remain outstanding include:

- how the principles of fairness, transparency and due process might be embedded into the work of the CRC – there had been agreement that the CRC should act in accordance with these principles but that it was not necessary to include language to this effect in the Schedule itself<sup>28</sup>;
- whether the CRC should develop and maintain a list of matters that will constitute ‘serious’ infractions and whether it should report on infringements and the seriousness of these infringements to the Commission and advise the Commission what actions, if any, should be taken;
- to what extent, if any, the IWC should have a role in setting penalties and imposing sanctions with respect to infractions (see below).

### Penalties and sanctions

While some Contracting Governments are satisfied with the existing provisions relating to compliance, others have expressed the view that if the moratorium was to be lifted, it is imperative to have a management scheme that would be defensible to the wider public, that the Commission should have some leverage in the way catch quotas are managed, that the Commission should have power to impose sanctions (on Contracting and possibly non-Contracting Governments) and that a legally-binding dispute settlement mechanism should be established through the development of a Protocol to the Convention (see section 11 on the purpose of the Convention)<sup>29</sup>. One proposal that has been made is that in the case of ‘serious’ infractions, there should be a provision which would result in catch limits being set temporarily to zero. With respect to this proposal, it has been noted that according to the Convention, catch limits are set for whale stocks and not for Contracting Governments. Consequently in the case of a stock where the catch limit is share, this approach would penalise all those sharing the quota. At the RMS Working Group meeting in Cambridge in February/March 2006, it was noted that it is possible to partially address this problem by appropriate delineation of the *Small Areas* used in the RMP to encapsulate areas where only one nation was catching (e.g. in its EEZ)<sup>30</sup>.

The specific responses/measures to non-compliance that have so far been mentioned by some Contracting Governments as being desirable and how each of these may or may not be compatible with the provisions of the existing Convention and with the draft Schedule text for the Compliance Review Committee were summarised in a document developed by the UK for the RMS Working Group meeting at IWC/58 in 2006<sup>31</sup>. The intention of the document was to highlight options available. The document was noted but there has been no further discussion on this issue.

<sup>28</sup> IWC/55/COMMS 9: Second Commissioners’ meeting on the RMS – Chair’s Confidential Aide Memoire

<sup>29</sup> See for example IWC/57/RMS 3: Chairs’ Reports of the RMS Working Group Meetings (Borgholm 2004 and Copenhagen 2005); IWC/57/RMS 4: Chairs’ Reports of the meetings of the RMS Small Drafting Group (Borgholm 2004 and Copenhagen 2005)

<sup>30</sup> IWC/58/RMS 3: Chair’s Report of the RMS Working Group Meeting, University Arms Hotel, Cambridge 28 February to 2 March 2006

<sup>31</sup> *Ann. Rep. int. Whaling Comm. 2006*: 105-109

## 9. Conservation Committee

The Conservation Committee was established at IWC/55 in 2003 in Berlin through the adoption of Resolution 2003-1: The Berlin Initiative on Strengthening the Conservation Agenda of the International Whaling Commission<sup>32</sup> (see attached). The Resolution was adopted by majority voting (25 in support, 20 against). While IWC's mandate in relation to the conservation of whale stocks is not disputed, the manner in which the Conservation Committee was established was controversial at the time and remains so.

The rationale given for creating the Conservation Committee was that a series of developments concerning IWC-related issues that have emerged since the Convention was agreed in 1946 (e.g. UNCLOS, regional management agreements, the establishment of sanctuaries and the moratorium on commercial whaling) indicated that there is a conservation agenda to be discussed and examined within IWC. The proponents stressed that the purpose of the Conservation Committee was simply to provide the institutional structure needed to take account of conservation issues within IWC and not to change the fundamental purpose of the Convention. They considered that such an initiative would help the Commission escape its 'current stagnation'. It was noted that conservation issues are not just linked to questions of sustainable use, since various forms of environmental degradation and fisheries practices are threatening the world's populations, and it was hoped that the new Committee would be able to strengthen actions in response to such threats.

Other countries criticised the introductory text to the proposed Resolution which they considered to misrepresent the purpose of the Convention by selective quotation of its pre-ambular text and *inter alia* did not refer to the role of the Commission in managing whaling or to work to develop an RMS which had been given high priority by the Commission. Some believed that rather than helping the Commission to escape the current impasse, adoption of the Resolution would create further polarisation. One country noted that conservation issues could continue to be addressed within the existing structure of the Commission and its sub-groups and that consequently the creation of a new Committee would be unnecessary. It believed that further discussion was necessary and that without consensus the Conservation Committee would not work. When explaining its 'no' vote, one government noted that voting against establishment of the Committee did not mean that countries were against conservation but rather that the proposal to create the Committee would direct attention away from what it considered to be the real purpose of the Convention, i.e. conservation of whale stocks to allow sustainable use.

At the first meeting of the Conservation Committee at IWC/56 in 2004<sup>33</sup>, in the light of concerns raised by those who had opposed Resolution 2003-1, a small group was formed (comprising the Netherlands (Chair), Australia, Iceland, Republic of Korea, New Zealand and South Africa) to examine the language of the Resolution and to discuss the terms of reference of the Conservation Committee. The group agreed to the importance of addressing conservation in the IWC and to respecting different views on whaling. It offered for discussion a collection of possible ways forward, including different ways of defining the concept of conservation, and various alternatives, including Resolutions, that could clarify the work of the new Committee. It agreed that further discussions on the expectations of the work of the Conservation Committee should be continued under the responsibility of the IWC or its Chair to ensure that all views will be taken into account in further discussions. What was considered a new-found willingness to discuss the nature of the Conservation Committee was welcomed by some and the hope was expressed that this preparatory work could lead to a situation in which all Commission members could be engaged. Others however noted that they would not attend any meetings of the Committee unless its name and objectives were changed to include sustainable use of whale stocks.

Issues on the agenda of the meeting of the Conservation Committee at IWC/60 in Santiago included: (1) reviewing progress with the two priority topics agreed at IWC/57 in 2005, i.e. the investigation of inedible 'stinky' gray whales and ship strikes; (2) conservation issues in relation to the southern right whale population of Chile-Peru; (3) a discussion on the possible role of the Committee in relation to the management of whalewatching activities (development of best practice etc.); (4) whale sanctuaries; (5) national progress reports on cetacean conservation; and (6) Australian papers in relation to developing internationally-agreed co-operative conservation management plans and a proposal for a regional non-lethal research partnership for the Southern Ocean (see sections 10 and 12). With respect to ship strikes, a Ship Strikes Working Group has been established to help guide the work and co-ordinate with the activities of the Scientific Committee on this issue. It has also

<sup>32</sup> Ann. Rep. int. Whaling Comm. 2003: 7-10, 58-77

<sup>33</sup> Ann. Rep. int. Whaling Comm. 2004: 46-48, 99-105

led to the establishment of a provisional agreement of co-operation with the International Maritime Organisation<sup>34</sup>.

The differing views over the establishment of the Conservation Committee and its terms of reference remain unresolved and many Contracting Governments, particularly those who support the resumption of sustainable commercial whaling, do not contribute to or take part in discussions or meetings of the Conservation Committee.

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**Resolution 2003-1**  
**The Berlin Initiative on Strengthening the Conservation Agenda of the International Whaling Commission**

(for Annexes see *Ann. Rep. int. Whaling Comm. 2003*: 58-77)

WHEREAS the first objective of the International Convention for the Regulation of Whaling is “the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks”;

MINDFUL that, given the depleted status of great whale populations at the inception of the IWC, and that during the last 25 years, the International Whaling Commission has devoted a overwhelming part of its work to the pursuit of that conservation objective;

NOTING that, through the adoption of more than a hundred conservation-oriented resolutions<sup>(1)</sup>, as well as through various Schedule amendments, the Commission has evolved into an organization internationally recognized, among other things, for its meaningful contributions to the conservation of great whales; furthering that conservation work through those Resolutions and Schedule amendments, the Commission has gradually developed an extensive conservation-oriented agenda<sup>(2)</sup>;

NOTING that since the Convention came into force in 1948 several key conventions have been adopted which may affect great whales, including, *inter alia*, UNLOS, CITES, IOC, ICSU, the CBD, CMS, ACCOBAMS and ASCOBANS;

RECOGNIZING the various challenges referred to in previous Resolutions and Schedule Amendments, it is prudent for the Commission to effectively organize its future work in the pursuit of its objective by devising an appropriate agenda that places special emphasis on its benefits to conservation.

NOW THEREFORE THE COMMISSION:

WELCOMES initiatives to assess the achievements and orientation of the cumulative work of the Commission in the pursuit of its conservation objective;

ENDORSES the proposals made by various Contracting Governments to organize, on the basis of that assessment, the future Conservation Agenda of the Commission and to cooperate in its preparation;

DECIDES to establish a Conservation Committee of the Commission, composed of all Contracting Parties, in conformity with Article III paragraph 4 of the Convention;

DECIDES to entrust the Conservation Committee with:

- (1) The preparation and recommendation to the Commission of its future Conservation Agenda, taking full account of this Resolution;
- (2) The implementation of those items in the Agenda that the Commission may refer to it and
- (3) Making recommendations to the Commission in order to maintain and update the Conservation Agenda on a continuing basis.

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<sup>34</sup> At its recent 100<sup>th</sup> session, the IMO Council approved the Agreement of Co-operation with IWC which will be submitted to the IMO Assembly for final approval at its next session in November 2009. In the meantime, IWC will be extended the privileges and facilities envisaged in the Agreement on a provisional basis.

INSTRUCTS the Conservation Committee to meet before the Commission's Annual Meeting in 2004, in order to organize its work, so that the Conservation Agenda can be considered for adoption by the Commission at that Annual Meeting.

DIRECTS the Conservation Committee to explore how the Commission can coordinate its conservation agenda through greater collaboration with a wider range of other organizations and conventions including *inter alia* CMS, CCAMLR, IMO, IUCN, and UNEP.

REQUESTS the Scientific Committee to advise the Conservation Committee in the performance of the tasks entrusted to it in this Resolution, and to ensure that the appropriate scientific research items, including *inter alia*, whalewatching, environmental issues and behavioural research, under the responsibility of the Scientific Committee, are incorporated in the Conservation Agenda.

REQUESTS the Conservation Committee to begin exploring the possible establishment, by the Commission, of an appropriate trust fund (including the identification of potential contributors), to make available the necessary financial resources to the Commission and, particularly, to the Contracting Governments committed to implementing specific items of the Conservation Agenda related to conservation-oriented research. To that end, the Committee shall give priority to the question of securing assistance for scientific research and capacity building for scientists and institutions from developing countries, and shall take advantage from the experiences obtained in other international environmental and conservation conventions and treaties, in the establishment of similarly-oriented international funds.

DIRECTS the Secretariat to prepare a report, to be considered by the Commission at its next annual meeting, on the implementation of Resolution 1998-6 regarding the establishment of a dedicated "Environment Research Fund" to facilitate research on environmental change and cetaceans, as well as on the results of the appeal it made in its Resolution 1999-5 "to the Contracting Governments, other governments, international organizations and other bodies to contribute financially an in kind" to research programs, and to include in that report a recommendation to the Commission, as to how that Fund could best be considered in the light of the possible establishment of the trust fund referred to in the previous paragraph.

(1) As can be appreciated in the "Compiled List of IWCA Conservation-Oriented Resolutions", attached hereto as Annex I.

(2) As can be appreciated in Annex II of this Resolution, entitled "IWC Conservation Work: An Annotated Compilation":

- Resolutions 1983/App.2; 1990/App.5 and 1998-8
- Resolutions 1980/App.8; 1983/App.4; 1984/App.2; 1990/App.3; 1991/App.5; 1992/App.9; 1993/App.4; 1994-2; 1995-4; 1996-4; 1997-8 and 2001-13
- Resolutions 1992/App.10; 1997-4 and 2001-4
- Resolutions 1993/App.9; 1994-14 and 1996-2
- Resolutions 1999-7 and 2000-2
- Resolutions 1993/App.12 and 13; 1994-13; 1995/10; 1997-7 and 1998-5
- Resolutions 1990/App.6 and 2001-9
- Resolutions 1979/App.3; 1992/App.4; 1993/App.6; 1994-3; 1995-8; 1998-3 and 2000-4
- Resolutions 1980/App.6 and 1981/App.6
- Resolutions 1985/App.2; 1986/App.2; 1987/Apps. 1 to 4; 1998/Apps. 1 to 3; 1989/App. 1 to 4; 1990/Apps. 1 and 2; 1991/Apps. 2 and 3; 1992/Apps. 5 and 6; 1993/Apps. 7 and 8; 1994-8 to 11; 1995-8 and 9; 1996-7; 1997-5 and 6; 1998-4; 1999-2 and 3; 2000-5 and 2001-7
- Resolutions 1978/App.D; 1980/App.5bis; 1998-8; 1999-6 and 2000/App.2
- Resolutions 1978-4/1980-11/1982-4/1991-6/1992-1/1993-1/1994-1/1995-App.1/1995-1/1995-2/1997-1/1999-1/2001-2

## 10. Conservation management plans

The issue of Conservation Monitoring Plans was first raised in the Commission context in a document for the March 2008 Intersessional Meeting on the Future of the IWC and presented at the Annual Meeting in Santiago (Government of Australia, 2008). In short, the concept is that the IWC develops conservation management plans for species/populations that are in need of recovery and for which potential threats are non-whaling related. This would require work by the Scientific Committee, the Conservation Committee and the Commission itself. Coincidentally, the Scientific Committee received a general scientific paper on the development of effective conservation plans (Donovan *et al.*, 2008) and it has agreed that convenors will take this approach into account when developing their agendas for the forthcoming Scientific Committee meeting (IWC/60/Rep1).

### References

Government of Australia. 2008. Conservation Management Plans for Improved Cetacean Management. Paper IWC/60/15 presented to the 60<sup>th</sup> Annual Meeting of the IWC, June 2008. 4pp.

Donovan, G., Cañadas, A. and Hammond, P.S. 2008. Towards the development of effective conservation plans for cetaceans. Paper SC/60/O17 presented to the IWC Scientific Committee, June 2008. 15pp.

## 11. Convention (purpose of)

The last pre-ambular paragraph of the 1946 International Convention for the Regulation of Whaling states that the Convention has been concluded to ‘*provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry*’.

### Differing views over the Commission’s mandate

There is no dispute among Contracting Governments that issues such as the conservation of whale stocks, managing commercial and aboriginal subsistence whaling, assessing whale stocks including their abundance, designating sanctuaries and reviewing special permits all fall within the Commission’s mandate as given by the Convention. However, small cetaceans, whalewatching environmental concerns and animal welfare are all areas in which the Commission has significant activities but for which Contracting Governments hold different opinions regarding competency of the organisation to address them, different views over the nature of the work that should be conducted and the different importance given to them by members. Those questioning IWC’s activities in these areas do not view them as unimportant but rather that they are issues that might be best dealt with elsewhere, particularly at a time when, in their view, IWC is not focusing on what they consider to be its core mandate as given in the last pre-ambular paragraph to the Convention. Others believe strongly that IWC has an important role to play in these areas.

### Views on amending the Convention

There have been a number of attempts within the Commission with respect to the revision of the Convention. For example, as early as 1977, a working group had been established to consider revision of the Convention but it was agreed to postpone further discussion until after the conclusion of negotiations on the UN Law of the Sea<sup>35</sup>. In 1986, the USSR had suggested that the IWC convene a special group of experts to make recommendations on revision of the convention *inter alia* with respect to scientific research, conservation and the Law of the Sea; there was no broad consensus on this although the matter was left on the Agenda<sup>36</sup>. In 1987, a working group was established to examine the issue and again no consensus was reached on the need for revision but the life of the working group was extended<sup>37</sup>. In 1991, after considerable discussion and again no consensus on the need to revise the Convention, the Commission agreed to change the focus of the discussions towards a revision of the Schedule in the context of incorporating the as yet unfinished revised management procedure<sup>38</sup>.

At the present time, some Contracting Governments consider that the Convention continues to be ‘fit for purpose’ and have not expressed any need for changes in its provisions. Others, however, believe that the Convention requires some ‘modernisation’ to reflect the changes in attitudes, concerns and priorities that have occurred since the 1940s when the Convention was drafted and when all members were whaling nations. In particular, some Contracting Governments have expressed a desire to see *inter alia*: (1) removal or restriction of the use of Article VIII relating to scientific permit whaling; (2) the Commission itself having enforcement powers, including the ability to impose sanctions on individual member governments when provisions of the Convention and Schedule are contravened; (3) a new dispute settlement provision; (4) prevention of countries from opting out of IWC rules either through the objection procedure (Article V.3) or through reservations; and (5) greater recognition of countries’ rights to use whale resources in a non-lethal manner (i.e. whalewatching). The implementation of such changes through negotiating a Protocol to the Convention has been raised on a number of occasions, although the difficulties in doing this have been recognised, particularly at the RMS Working Group Meeting held in Cambridge from 28 February to 2 March 2006<sup>39</sup>. Section 5.2 of that document is provided below for information.

### 5.2 Procedures to amend the Convention (from IWC/58/RMS 3)

#### 5.2.1 Views provided by the USA

In preparation for discussions at the RMS Working Group on high level meetings and procedures to amend the Convention, the USA had had some informal consultations within the USA Government. The Chair invited the USA to report to the Working Group. The USA introduced the following viewpoints, but stressed that they do not reflect final US policy and are offered as one means to guide discussion on the issue.

#### Amendments to the ICRW (Convention)

- With respect to amendments to the Convention: the Convention itself is silent on amendment to it (although there is a clear amendment process for the Schedule), which means that customary international

<sup>35</sup> *Rep. int. Whal. Commn.* 28: 23

<sup>36</sup> *Rep. int. Whal. Commn.* 37: 11

<sup>37</sup> *Rep. int. Whal. Commn.* 38: 10-11

<sup>38</sup> *Rep. int. Whal. Commn.* 42: 11-13

<sup>39</sup> IWC/58/RMS 3: Chair’s Report of the RMS Working Group Meeting, University Arms Hotel, Cambridge, 28 February to 2 March 2006

law regarding amendments, as reflected in Article 40 of the Vienna Convention on the Law of Treaties, would generally be considered applicable. Article 40 is not as detailed as an amendment article tailored to a specific treaty would ordinarily be, and so some questions are left to be resolved by the Parties to the specific treaty. But it seems fairly clear that:

- Any Party can propose an amendment to all of the other Parties (presumably directly or through the Secretariat) and all existing Parties could participate in the deliberation on the amendment. (Non-Parties to the treaty would not participate.)
- An amendment to the text of the treaty would need to be: 1) adopted by the Parties (see below) at a meeting or conference (this could be an ordinary IWC meeting or a specially held one) **AND SUBSEQUENTLY** 2) ratified or accepted by a certain number of Parties before it could enter into force.
- In the case of the ICRW, a decision would need to be made by the Parties regarding how to proceed on potential adoption of the amendment. An amendment needs to be “adopted” by some specified number or majority of Parties, and normally treaties specify what this majority should be. The ICRW does not. The Rules of Procedure provide that all decisions except those that amend the Schedule are to be decided by majority. But this does not necessarily need to be interpreted to mean that *adoption of amendment to the treaty* could be decided by majority. If anything, it would be very strange if it took three-quarters to amend the Schedule and less than that to amend the treaty itself. In summary, where, as here, the treaty is silent on adoption of amendments to it the Parties need to decide on the formula (presumably some super majority or all Parties) required for adoption of amendments. (Note that while many treaties specify super-majorities like two-thirds or three-quarters, many require adoption by all Parties). Given the ICRW’s decision making rules, presumably a majority or consensus agreement *would* decide what number or super-majority would be necessary to adopt the amendment, e.g., the majority or consensus of members present and voting would decide that the amendment is considered adopted if it receives three-quarters support from those present and voting, or if it receives consensus support, or whatever the majority decided upon as the formula for adoption.
- The majority would also need to decide what number of ratifications or acceptances are needed before the amendment would enter into force. There is precedent to examine in the 1956 protocol on aircraft, which required that “all the Contracting Governments to the 1946 Whaling Convention” ratify or adhere to the protocol in order for it to enter into force.
- After entry into force of the amendment, only those Parties who ratified it or accepted it are legally bound to it. (At this point whether or not a Party supported the initial “adoption” is legally irrelevant—only subsequent ratifications and acceptances matter.)
- A government that becomes Party to the treaty after the amendment enters into force would become Party to the treaty as amended *unless they specify otherwise when joining*. Also, even if they become Party to the treaty as amended, they are not Party to the amendment *vis-à-vis* other Parties to the treaty who are not Party to the amendment.
- Amendments are often written up in a document called “Protocol of amendment,” which is typically just the amendment and any preamble to it the Parties want to preface the actual amendment text with. But “Protocol” does not necessarily have any particular meaning, and other words can be used.

### 5.2.2 Working Group discussion

The Working Group members thanked the USA for sharing these points which generally confirmed their own views regarding what would be involved in amending the Convention. It was accepted that negotiation of amendments could, if the Commission decided, be done by Commissioners, i.e. a ‘high-level’ Ministerial or Diplomatic meeting would not necessarily be required.

Several delegations commented that it is clear that if there was a decision to amend the Convention, then it would be important to require that all Contracting Governments had to ratify the amendment before it could enter into force. It was noted by some that such a requirement would make it difficult if not impossible to amend the Convention along the lines proposed by some Contracting Governments, and caution was expressed about embarking on such a process. It was also noted that the internal national processes involved in ratification can further complicate the process and lead to delays. However, although some believed that the time might not yet be right to consider a high level meeting, it should be kept in mind as an option for the future. Others believed that entering into discussions to amend the Convention would change the RMS process fundamentally and risk dividing the organisation into two.

The Chair of the Commission<sup>40</sup> expressed the view that changing the Convention by Protocol and changing the Convention itself require two different procedures. This was disputed by others who believed that there is no difference in a legal sense.

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<sup>40</sup> Henrik Fischer (Denmark)

## **12. Co-operative non-lethal research programmes**

The issue of regional research partnerships was first raised in the Commission context in a document for the March 2008 intersessional meeting on the Future of the IWC and then presented at the 2008 Annual Meeting in Santiago (Government of Australia, 2008). In short, the idea is to further develop the work that the Scientific Committee already does in determining research needs and priorities with a stronger focus on regional research partnerships of interested member governments to collaborate in undertaking an agreed programme of work using agreed non-lethal methods. The objective is to have the proposed work reviewed by the Scientific Committee and independent peer review. As an initial start, Australia will be co-ordinating a Southern Ocean research partnership and present the results of a planning meeting to the Scientific Committee in 2009.

### **Reference**

Government of Australia. 2008. Regional Non-Lethal Research Partnerships: a proposal for the Southern Ocean. Paper IWC/60/16 presented to the 60<sup>th</sup> Annual Meeting of the IWC, June 2008. 3pp.



### 13. Data provision

The issue of data provision has its origins in Articles VI, VI, VII and VIII of the Convention and originally centred on information related to whaling activities. The details of the information required were included in the Schedule and additions were made, particularly with respect to effort and biological data over the years; the latter data were often accompanied by the proviso 'where possible' (e.g. see current Schedule Section VI 'Information Required') and the provision of the results of the analysis of collected samples is seen as being submitted on a voluntary basis. In the development of the RMP, the Scientific Committee paid particular attention to the nature of the data required and has developed two documents:

- (1) Requirements and Guidelines for Conducting Surveys and Analysing Data Within the Revised Management Scheme; and
- (2) Guidelines for Data Collection and Analysis under the Revised Management Scheme other than those Required as Direct Input for the Catch Limit Algorithm.

These have been agreed by the Scientific Committee and the Commission and revised as necessary; the most recent published versions are given as (IWC, 2005) and (IWC, 1995).

In addition to new data collected in the context of the RMP, the Scientific Committee has put considerable effort into ensuring that all data (past and present) required for management decisions (including aboriginal subsistence whaling) are available for the Committee to examine; this has resulted in the Data Availability Agreement ((IWC, 2004) which works well.

With respect to the Commission, difficulties with respect to data provision have centred around data related to animal welfare issues. This is dealt with under the sections on Animal Welfare Issues (1) and the RMS (25).

#### References

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- International Whaling Commission. 2004. Report of the Scientific Committee. Annex T. Report of the data availability working group. *J. Cetacean Res. Manage. (Suppl.)* 6:406-08.
- International Whaling Commission. 2005. Report of the Scientific Committee. Annex D. Report of the Subcommittee on the Revised Management Procedure. Appendix 3. Requirements and Guidelines for Conducting Surveys and Analysing Data within the Revised Management Scheme. *J. Cetacean Res. Manage. (Suppl.)* 7:92-101.

## 14. Developments in ocean governance

The Secretariat is not sure what is intended to be included with respect to this element, but assumes that it refers to developments in ocean governance since 1946 when the International Convention for the Regulation of Whaling was negotiated.

Of these, perhaps the most significant is the 1982 United Nations Convention on Law of the Sea (UNCLOS). In relation to IWC and the ICRW, important Articles of UNCLOS include Article 64 on highly migratory species, Article 65 on marine mammals and Articles 116 to 120 in relation to the conservation and management of the living resources of the high seas.

Other developments include:

- The Precautionary Principle - at the Earth Summit meeting at Rio in 1992, World leaders agreed Agenda 21, which advocated the widespread application of the Precautionary Principle in the following terms: *'In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'* (Principle 15);
- The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora
- The 1992 Convention on Biological Diversity;
- The establishment of regional fisheries management bodies including CCAMLR, IATTC, ICCAT, CCSBT, NAFO, NEAFC, NAMMCO<sup>41</sup>.
- Promotion of an ecosystem-based approach to management (see section 15).

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<sup>41</sup> Convention for the Conservation of Antarctic Marine Living Resources; Inter-American Tropical Tuna Convention, International Convention for the Conservation of Atlantic Tuna; Convention for the Conservation of Southern Bluefin Tuna; Northwest Atlantic Fisheries Organisation, North-East Atlantic Fisheries Commission; North Atlantic Marine Mammal Commission

## 15. Ecosystem-based approach to management

The issue of an ecosystem-based approach to management has been raised in an IWC context by a number of governments but as yet there has been no serious general discussion of exactly what this means or how this might be achieved. If it is interpreted as developing and using predictive ecosystem models to determine multi-species catch limits then this represents a major long-term challenge. In the multi-species context of interactions between fisheries and cetaceans, the Scientific Committee held a modelling workshop (IWC, 2004) that concluded that science is still not at the level where this is achievable either in terms of developing and testing models or in obtaining the necessary data for all (or even many) species within ecosystems. There are, however, ways in which information on the ecosystem and its processes can be used to inform single species management and these are being investigated by the Scientific Committee, for example in collaboration with other bodies such as CCAMLR and via its working group on ecosystem modelling (IWC/60/Rep1, Annex K1). Obtaining information of food and feeding is/has been an important component of the scientific permit programmes of Japan, Iceland and Norway; the ability of these programmes to provide data of the appropriate scope and quality for use in the development of ecosystem models or to allow inferences to be made with respect to single species modelling has been the subject of much debate within the Scientific Committee and no consensus view has been reached (see Sections 4 – Climate change and 23 – Scientific permits).

### Reference

International Whaling Commission. 2004. Report of the Modelling Workshop on Cetacean-Fishery Competition. *J. Cetacean Res. Manage. (Suppl.)* 6:413-26.

## 16. Environmental threats to cetaceans

The Commission and the Scientific Committee have increasingly taken an interest in the possible environmental threats to cetaceans. As early as 1980, the Commission adopted a Resolution on the preservation of the habitat of whales and the marine environment (IWC, 1981) and the primary focus within the Scientific Committee at that time related to the possible effects of chemical pollutants on cetaceans. While environmental threats continued to be dealt with by the Scientific Committee in an *ad hoc* manner, in 1993 the Commission adopted Resolutions on research on the environment and whale stocks and on the preservation of the marine environment ((IWC, 1994a;1994b). A number of resolutions on this topic have been passed subsequently (e.g. (International Whaling, 1998;1999a;1999b; IWC, 1996;1997;2001). As a result, the Scientific Committee formalised its work on environmental threats in 1997 by establishing a standing working group that has met every year since then. Its work is increasingly being incorporated into the agendas of the other sub-committees and working groups.

The primary topics that are being/have been addressed by the Scientific Committee include:

- (a) effects of climate change on cetaceans including ozone depletion and UV-B radiation e.g. see section 4 – Climate change;
- (b) effects of chemical pollutants on cetaceans e.g. see (Reijnders *et al.*, 2006; Reijnders *et al.*, 1999);
- (c) impact of noise e.g. (IWC, 2007)
- (d) physical and biological habitat degradation e.g. (IWC, 2006)
- (e) effects of fisheries e.g. (IWC, 2004)
- (f) Arctic issues e.g. (IWC, 2002)
- (g) disease and mortality events e.g. IWC, 2008).

In addition, the Committee has examined effects of environmental threats in the context of the RMP and AWMP (e.g. (Cooke, 1995; IWC, 1995) and it is continuing to examine this issue (see IWC/60/Rep1) – this is also discussed in Section 24 – RMP.

### References

- Cooke, J.G. 1995. Report of the Scientific Committee, Annex D. Report of the Sub-Committee on Management Procedures. Appendix 3. Simulation trials of the RMP {ICatch Limit Algorithm} in the presence of adverse external influences on whale populations. *Rep. int. Whal. Commn* 45: 113-15.
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- International Whaling, C. 1999a. Chairman's Report of the Fiftieth Annual Meeting. Appendix 7. IWC Resolution 1998-6. Resolution for the funding of work on environmental concerns. *Ann. Rep. Int. Whaling Comm.* 1998: 44-45.
- International Whaling, C. 1999b. Chairman's Report of the Fiftieth Annual Meeting. Appendix 8. IWC Resolution 1998-7. Resolution on coordinating and planning for environmental research in the Antarctic. *Ann. Rep. Int. Whaling Comm.* 1998: 45.
- International Whaling Commission. 1981. Chairman's Report of the Thirty-Second Annual Meeting, Appendix 10. Resolution on preservation of the habitat of whales and the marine environment. *Rep. int. Whal. Commn* 31:32.
- International Whaling Commission. 1994a. Chairman's Report of the Forty-Fifth Annual Meeting, Appendix 12. Resolution on research on the environment and whale stocks. *Rep. int. Whal. Commn* 44:35.
- International Whaling Commission. 1994b. Chairman's Report of the Forty-Fifth Annual Meeting, Appendix 13. Resolution on the preservation of the marine environment. *Rep. int. Whal. Commn* 44:36.
- International Whaling Commission. 1995. Report of the Scientific Committee. *Rep. int. Whal. Commn* 45:53-103.
- International Whaling Commission. 1996. Chairman's Report of the Forty-Seventh Annual Meeting. Appendix 11. IWC Resolution 1995-10. Resolution on the environment and whale stocks. *Rep. int. Whal. Commn* 46:47-48.
- International Whaling Commission. 1997. Chairman's Report of the Forty-Eighth Annual Meeting, Appendix 8. IWC Resolution 1996-8. Resolution on environmental change and cetaceans. *Rep. int. Whal. Commn* 47:52.
- International Whaling Commission. 2001. Chairman's Report of the Fifty-Second Annual Meeting. Appendix 1. Resolutions adopted during the 52nd annual meeting. IWC Resolution 2000-7. Resolution on environmental change and cetaceans. *Ann. Rep. Int. Whaling Comm.* 2000:56-57.
- International Whaling Commission. 2002. Report of the Scientific Committee. Annex J. Report of the Standing Working Group on Environmental Concerns. Appendix 5. Arctic science and cetaceans: an update. *J. Cetacean Res. Manage. (Suppl.)* 4:320-24.

- International Whaling Commission. 2004. Report of the Modelling Workshop on Cetacean-Fishery Competition. *J. Cetacean Res. Manage. (Suppl.)* 6:413-26.
- International Whaling Commission. 2006. Report of the IWC Scientific Committee Workshop on Habitat Degradation, 12-15 November 2004, Siena, Italy. *J. Cetacean Res. Manage. (Suppl.)* 8:313-35.
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- Reijnders, P., Wells, R., Aguilar, A., Bjorge, A., Donovan, G., O'Hara, T., Rowles, T. and Siebert, U. 2006. Final report on POLLUTION 2000+: Phase 1. Paper SC/58/E38 presented to the IWC Scientific Committee, May 2006, St. Kitts and Nevis, West Indies.
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## 17. Ethics

Discussions on the ethics of whaling seem to have begun in the Scientific Committee at IWC/30 in 1978 at the request of the Government of Panama<sup>42</sup>. The Scientific Committee had been charged with considering ethics, 'particularly but not exclusively as related to cetacean neuro-anatomy, cetacean intelligence potential and cetacean social bonds'. Some of its members felt that they were no more qualified than any other body to comment on the general ethics of killing animals, but a sub-committee was established to consider the subject in relation to management. The work of the sub-committee was limited however because of time constraints and the limited behavioural expertise and reference material available. A minority report expressed disappointment at the failure to give full consideration to the subject.

A meeting on cetacean behaviour and intelligence and the ethics of killing cetaceans was held in Washington D.C in April/May 1980. The outcome was reviewed by the Commission at IWC/31 in 1979<sup>43</sup>. It was apparent that at there had been widely differing views on the need and justification for whaling although significant progress had been made in clarifying issues. The Commission endorsed a recommendation that a workshop be established by the Scientific Committee and held in 1981/82 for further detailed examination of those matters identified as being of greatest significance to the assessment and management of cetaceans. While the Washington meeting had recommended that a dialogue with philosophers be established with regard to the ethics of whaling, no further action was taken on this at IWC/31.

In April 1982, the Scientific Committee held a Workshop on the Behaviour of Whales<sup>44</sup>. This workshop concentrated on three areas identified as being of major importance to the Commission, i.e. minke whales subject to pelagic whaling; sperm whales subject to coastal whaling; and western Arctic bowheads. The aim was to provide advice on how current assessment methods or management measures for these stocks might be revised to account for cetacean behavioural phenomena.

It would appear that following the 1982 workshop, the issue of the ethics of whaling was not raised specifically in the Commission until IWC/50 in 1998 when Resolution 1998-4 on whaling under special permit was adopted<sup>45</sup>. This Resolution *inter alia* requested the IWC Secretary to undertake a comprehensive review of the ethical considerations taken into account by other international scientific organisations with respect to scientific research. The Secretary's report was presented to the Commission at IWC/51 in 1999<sup>46</sup>. The general conclusion drawn was that the broad sense of the legislation, guidelines and codes of conduct which existed at that time emphasised the need to: (1) cause the minimum of stress and distress, suffering and pain; and (2) consider if the research results could be achieved using fewer animals or by other (non-lethal) means. With respect to the latter many member governments believe it unnecessary to kill whales for research purposes and the Commission has passed a number of Resolutions requesting governments to refrain from issuing special permits (but see section 23). Others take the view that the catches are essential to obtain information necessary for rational management and other important research needs.

<sup>42</sup> *Rep. int. Whal. Commn.* 29: 27, 51, 92-95, 98

<sup>43</sup> *Rep. int. Whal. Commn.* 31: 25

<sup>44</sup> *Rep. int. Whal. Commn.* 33: 64

<sup>45</sup> *Ann. Rep. int. Whaling Comm.* 1998: 43

<sup>46</sup> *Ann. Rep. int. Whaling Comm.* 1999: 28

## 18. Financial contribution scheme

At the 51<sup>st</sup> Annual Meeting in Grenada in 1999, a proposal was made to revise the formula used to assess financial contributions so as to bring it more in line with the system used in the UN and alleviate the financial burden of IWC membership of developing countries. The formula in place at that time only took account of membership, whaling activities and the size of delegations to the Commission's Annual Meeting. It did not take into account the development status or wealth of countries. At its 52<sup>nd</sup> Annual Meeting in Adelaide in 2000, the Commission established a Contributions Task Force (CTF) charged with developing a revised set of principles to guide the IWC in developing an alternative contributions formula<sup>47</sup>.

### The Contributions Task Force

At its first meeting in May 2001, the CTF noted: (1) the significance of the debate on the Revised Management Scheme (RMS) and that the outcome of these discussions could have substantial and long-term implications for membership, workload and funding of the organisation; and (2) that the introduction of a revised contributions formula might also have an impact in these areas. In addition, although some members of the group supported the incorporation of whalewatching as a factor in any new contributions formula, the CTF recognised that the current disagreement within the Commission over its competency to cover whalewatching activities (which often include small cetaceans) would create problems in doing so. The CTF therefore agreed that it should conduct its deliberations in the context of existing conditions within the IWC. It subsequently: (1) identified four guiding principles upon which it proposed a new contributions formula should be based (openness; stability; fairness; and user pays); (2) recommended that any new scheme should include the following four main elements: an annual membership component; a wealth factor related to capacity of a country to pay; consumptive use; and delegation size at Annual Meetings; and (3) developed four models for consideration by the Contributions Sub-committee at IWC/53.

At its 53<sup>rd</sup> Annual Meeting in London, 2001, the Commission endorsed the guiding principles and agreed that the CTF should continue to work to develop: (1) a new contributions formula based on the models selected by the Contributions Sub-committee; and (2) performance criteria against which future models would be assessed. The CTF then met in Cambridge in December 2001 and in Antigua and Barbuda in March 2002.

At IWC/54 in Shimonoseki in May 2002, the number of models being considered by the CTF was reduced to two. These models placed Contracting Governments into bands (groups) for their capacity to pay ('wealth factor') and used bands to allocate shares for delegation size at Annual Meetings. With respect to taking into account whaling activity, both models converted catches into minke whale 'equivalents' and both presented options on how to weight the different types of whaling (i.e. aboriginal subsistence whaling and 'other'). The Commission again agreed that the CTF should continue with its work but in the meantime adopted the 'Interim Measure' to calculate financial contributions until such time as another mechanism was agreed. The Interim Measure is described in the section below.

A summary of the status of discussions as of the end of IWC/54 is provided in Table 1. While some progress had been made in relation to all components of a revised contributions scheme, unresolved issues remained in relation to all components, including the two most difficult issues, i.e. the development of appropriate factors for wealth and treatment of whaling.

The CTF met twice between IWC/54 and IWC/55, i.e. in Cambridge in December 2002 and in Madrid in March 2003. At these meetings, it took a 'fresh look' at the ways in which the revised scheme was being put together based on a document prepared by the Secretariat<sup>48</sup>. The 'fresh look' involved some re-examination of certain aspects of the contribution scheme on which there had been broad agreement, but also suggested approaches on how to handle issues related to the treatment of whaling and the inclusion of whalewatching and small cetaceans as requested by the Commission at IWC/54. The status of the main agreements reached by the CTF and remaining issues after these two meetings is summarised in Table 2. One of the biggest changes resulting from the 'fresh look' was the proposal to move away from banding data (i.e. in the case of economic data and attendance at meetings) to the use of the real data themselves. The use of actual economic data in particular was seen by the Task Force as having advantages over the use of bands in terms of stability and fairness<sup>49</sup>. The CTF remained unable to reach agreement on the % of the total contribution that each of the four elements (membership, wealth/capacity to pay, use and meeting attendance) should represent. Further work also

<sup>47</sup> Membership of the CTF has changed over the years. Its current members are Antigua and Barbuda, Argentina (Chair), Chile, Japan, Nicaragua, Norway, Spain, UK, USA.

<sup>48</sup> TF/DEC 2002/01: A fresh look – some further thoughts from the secretariat on the financial contributions scheme

<sup>49</sup> While the use of bands for economic data has an attraction of simplicity, it may result in problems of stability and fairness when countries are near a border and unfairness when the bands are broad. With modern computers the need for the banding approach for simplicity is largely unnecessary.

remained regarding the development of an appropriate index to represent, more realistically perhaps than a combination of GNI and GNI per capita as used in the Interim Measure, the capacity-to-pay of Contracting Governments.

At IWC/55 in Berlin in June 2003, the Commission reviewed the CTF's intersessional work and agreed that it should continue to try to make progress. However, given the ongoing efforts to make progress on an RMS and the potential implications for any revised contributions formula, the work of the CTF was subsequently put on hold until these implications could be assessed. At IWC/57 in Ulsan in June 2005, given the unresolved nature of the work on developing an RMS, the Commission agreed to resume work on revising the contributions formula by holding a CTF meeting at IWC/58. However, despite the Commission agreeing to intersessional work of the CTF after IWC/58 it had not been possible to schedule any meetings. At IWC/59 in Anchorage in May 2007, the Chair of the F&A Committee therefore questioned whether governments believed that the Interim Measure could be improved upon. There were no proposals to resume the work of the CTF. The status of the work on revision of the contributions scheme therefore remains as it was at the end of IWC/55<sup>50</sup>.

### The Interim Measure

The Interim Measure adopted by the Commission at IWC/54 in 2002 employs a two-stage process. It takes the 'old' pre-September 2002 formula for calculating contributions as its starting point (Stage 1) and then modifies the resulting amounts for each Contracting Government by a factor relating to 'capacity-to-pay' and a further factor for involvement in whaling (Stage 2). In Stage 2, each Contracting Government is placed into one of four 'capacity-to-pay' groups based upon a combination of GNI (Gross National Income) and GNI/*per capita*<sup>51</sup>. During the first two years of the Interim Measure (i.e. 2002/03 and 2003/04), Group 1 and 2 countries' contributions calculated using the 'old' formula were reduced by 50% and 25% respectively. For the third (2004/05) and following years, the Interim Measure provided for a further reduction of 25% and 10% respectively. This procedure results in a shortfall which is redistributed among the whaling countries and countries in Groups 3 and 4 as follows: 10% to whaling countries, 30% to Group 3 countries and 60% for Group 4 countries. The Interim Measure has been used to calculate financial contributions for the financial year 2004-05 onwards.

At IWC56 in 2004, the Commission agreed to take into account the special position of 'very small countries' in calculating financial contributions (Resolution 2004-4<sup>52</sup>) and criteria to define them were agreed at IWC/57 in 2005. They have been applied in the calculation of financial contributions for the financial year 2005-06 onwards.

The criteria defining the capacity to pay groups and 'very small countries' were updated to take account of inflation at IWC/60 in Santiago in June 2008<sup>53</sup> (they had not been updated since 2002) and are shown below.

#### Capacity-to-pay groups:

- Group 1 - countries with GNI < US\$ 11,850,000,000 and GNIPC < US\$ 11,850
- Group 2 - countries with GNI > US\$ 11,850,000,000 and GNIPC < US\$ 11,850
- Group 3 - countries with GNI < US\$ 1,185,000,000,000 and GNIPC > US\$ 11,850
- Group 4 - countries with GNI > US\$ 1,185,000,000,000 and GNIPC > US\$ 11,850

A "very small country" is a country with a population < 100,000, AND a GNI < USD 5.925 billion, AND a GNIPC > USD 11,850

The Commission agreed that in future, the criteria defining the above groups should be reviewed and updated as appropriate on an annual basis.

### IWC/60

In addition to updating the criteria defining the capacity to pay groups and 'very small countries' as mentioned above, at IWC/60, St. Vincent and The Grenadines gave notice that it would submit to the Commission next year a proposal for a reasonable reduction in its financial contributions that it hoped could be adopted by consensus. It explained that it is the only country in capacity-to-pay Group 1 that conducts aboriginal subsistence whaling (that it does at a very limited level) and that its contribution, because of this, is above that of most Group 2 countries. It considered that this is not fair and that the situation must be rectified.

<sup>50</sup> This is summarised in document IWC/57/F&A 8: Summary and status of work to revise the financial contributions scheme

<sup>51</sup> Using World Bank data.

<sup>52</sup> Resolution 2004-4: Proposal to take into account the special position of very small countries in calculating financial contributions. *Ann. Rep. int. Whaling Comm. 2004*: 68

<sup>53</sup> See IWC/60/F&A 4: The Interim Measure for calculating financial contributions: review of cut-off points defining capacity-to-pay groups and IWC/60/Rep 2: Report of the Finance and Administration Committee.



On a number of occasions, several Contracting Governments have suggested that while the Interim Measure does alleviate the financial burden of IWC membership compared with the previous scheme, any new scheme should more closely resemble the UN system.

Table 1. Summary of (1) the status of discussions as of the end of IWC/54 on elements to be included in a new contributions scheme and (2) the remaining issues

'Elements'	Current status of discussions	Remaining issues
<b>Annual Membership</b>	Should be set at a level to reflect a real commitment to the organisation without creating an obstacle to membership by developing countries. It will include participation of up to two (or three?) delegates per country at the Annual Meeting.	<ul style="list-style-type: none"> <li>• What % of the total contribution the Annual Membership fee should represent.</li> </ul>
<b>Wealth Component/ Capacity to Pay</b>	<p>Countries should be placed in four Groups using a combination of two economic measures, GNP and GDP/capita as follows:</p> <ul style="list-style-type: none"> <li>• Group 1: GNP &lt; US\$ 10 billion <b>and</b> GDP/capita &lt; US\$ 10,000</li> <li>• Group 2: GNP &gt; US\$ 10 billion <b>and</b> GDP/capita &lt; US\$ 10,000</li> <li>• Group 3: GNP &lt; US\$ 1,000 billion <b>and</b> GDP/capita &gt; US\$ 10,000</li> <li>• Group 4: GNP &gt; US\$ 1,000 billion <b>and</b> GDP/capita &gt; US\$ 10,000</li> </ul> <p>However, at least one country (Monaco) is unhappy with this grouping believing that it is unfair to countries with small economies but large per capita incomes<sup>54, 55</sup>.</p>	<ul style="list-style-type: none"> <li>• Monaco objected to the current economic groupings since it considers that it is unfair to countries with small economies but large <i>per capita</i> incomes, and proposed some revisions in document TF/DEC 2002/02</li> <li>• What % of the total contribution the wealth component should represent.</li> </ul>
<b>User pays</b>	<p><b>Consumptive Use</b></p> <p>This should be based on the number of whales caught in the preceding year, expressed as 'minke whale units'.</p> <p>No agreement has yet been reached on whether all whaling should be treated equally or whether there should be differentiation between different whaling types (e.g. aboriginal subsistence whaling and 'other').</p>	<ul style="list-style-type: none"> <li>• Review of minke whale conversion formula</li> <li>• At IWC/54 the Commission instructed the Task Force to '<i>consider how whaling should be described taking into account the following points:</i> <ul style="list-style-type: none"> <li>• <i>The difference between ASW and other whaling is a matter of scale;</i></li> <li>• <i>That there is no rational difference between ASW and other whaling;</i></li> <li>• <i>For ASW, the primary purpose is subsistence rather than profit;</i></li> <li>• <i>All whaling is equal;</i></li> <li>• <i>Whaling includes all whaling that has an economic return thus the definition includes commercial, scientific and bycatch;</i></li> <li>• <i>Local use should be treated differently to commercial use;</i></li> <li>• <i>Scientific whaling contributes valuable data to the IWC; and</i></li> <li>• <i>Bycatch is not whaling</i></li> </ul> </li> <li>• <i>and to propose how whaling could be weighted in any final contributions scheme</i>', i.e. what % of the total contribution the whaling component should represent – the Task Force has considered 10-25%.</li> <li>• At IWC/54, the Commission also requested the Task Force to develop proposals including and excluding whalewatching and small cetaceans.</li> </ul>
<b>Meeting Attendance</b>	<p>This should be based on the following scale: 1-2 delegates (0 shares); 3-5 (1 share); 6-9 (2 shares); 10-15 (3 shares); 16-24 (4 shares); 25+ (5 shares).</p> <p>For the purposes of calculating financial contributions:</p> <ul style="list-style-type: none"> <li>• the IWC Chair should not be included in his/her delegation for the purposes of calculating financial contributions</li> <li>• the size of the host country's delegation should be assessed using an average of their delegation size over the previous three years<sup>56</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>• What % of the total contribution the meeting attendance component should represent. The Task Force has noted that meeting attendance is a volatile variable and could create instability in the system if too high a percentage is derived from this component.</li> </ul>

<sup>54</sup> At IWC/56, the Commission agreed to recognise the status of 'very small countries' and Monaco and San Marino were transferred from Group 3 to Group 2 (see Resolution 2004-4)

<sup>55</sup> At IWC/60, the cut-off points defining the four groups and the criteria defining a 'very small country' were revised to take account inflation occurring since the criteria were initially developed – see text.

Table 2. Summary of the status of (1) main agreements<sup>57</sup> reached by the Task Force and (2) remaining issues after its meetings in December 2002 and March 2003

Issue	Main agreements reached by the Task Force	Remaining issues
<b>ELEMENTS OF THE CONTRIBUTIONS FORMULA</b>		
<b>Annual Membership</b>	<ul style="list-style-type: none"> <li>The Task Force reconfirmed its earlier agreement that one of the elements of the contributions formula should be an annual membership charge that: (1) would be the same for all Contracting Governments (i.e. a flat fee); and (2) should be set at a level to reflect a real commitment to the organisation by Contracting Governments without creating an obstacle to membership by developing countries.</li> </ul>	<ul style="list-style-type: none"> <li>The % of the total contribution this element should represent.</li> </ul>
<b>Wealth/capacity to pay</b>	<ul style="list-style-type: none"> <li>The Task Force agreed that there are real advantages in terms of stability and fairness in using actual economic data for each Contracting Government rather than to divide Contracting Governments into groups based on a combination of GNI and GNI <i>per capita</i>, i.e. the banding approach proposed earlier and used in the Interim Measure.</li> <li>Inclusion of a specific separate factor to take external debt into account was not supported by the Task Force.</li> <li>The Task Force agreed not to recommend use of purchasing power parity (ppp) at present in recognition of problems with the quality of some existing ppp data and that new data will be available following a data-collection exercise of the World Bank during 2003. However, the Task Force also agreed that the Finance and Administration Committee might wish to review the use of 'ppp' at some point in the future.</li> <li>The Task Force reaffirmed that the intention is to use the most recent data available from the World Bank and recognised that updating could be critically important, especially for countries whose economies are under strain.</li> <li>The Task Force agreed that to ensure transparency, it will be essential that documents defining the contributions scheme and presenting the contributions required from Contracting Governments, state clearly the exact source and effective date of economic data used.</li> </ul>	<ul style="list-style-type: none"> <li>Development of an appropriate index that will represent realistically the capacity to pay of Contracting Governments.</li> <li>Confirmation of how frequently the World Bank updates its data, whether there is a regular target date for publication of these data, and to what extent the target date is consistently achieved.</li> <li>The % of the total contribution this element should represent</li> </ul>
<b>Use</b>	<ul style="list-style-type: none"> <li>The Task Force determined that the data available for both whalewatching and small cetaceans are not sufficient or consistent enough to include in a contributions formula, and, in light of the difficulties presented by the question of competence in relation to both issues, agreed that neither should be included in any proposal it might make to the Commission.</li> <li>Regarding bycatch, some Task Force members believed that bycatch should not be taken into account while others believed that by-caught animals entering the market should be included, although they recognised the problems with the availability of good data. The Task Force was unable to reconcile these opposing views, and for the purposes of the present work did not include bycatch.</li> <li>The Task Force agreed that ship-strikes should not be included as removals.</li> <li>At its March 2003 meeting, while some Task Force members re-stated their principled positions with respect to how to treat different types of whaling, in a spirit of compromise and as a way to move forward but without conceding on their positions, the Task Force expressed their willingness to treat all whaling equally (i.e. give equal weighting) in any further simulations.</li> <li>The Task Force confirmed that they preferred to use minke whale units rather than actual numbers of whales caught, but agreed that the Scientific Committee should review the conversion factors from time to time (e.g. every 5 years).</li> <li>The Task Force, confirmed its previous agreement to use the catches from the previous year (converted to minke whale units).</li> </ul>	<ul style="list-style-type: none"> <li>The % of the total contribution this element should represent</li> </ul>

<sup>56</sup> At IWC/60, the procedure for assigning shares in relation to meeting attendance of host governments was revised – see *Ann. Rep. int. Whaling Comm. 2007*: 61.

<sup>57</sup> The Task Force noted that in the context of developing a revised contributions formula, 'nothing is agreed until everything is agreed'.

Issue	Main agreements reached by the Task Force	Remaining issues
<b>Meeting attendance</b>	<ul style="list-style-type: none"> <li>The Task Force agreed that the use of real data based on the previous year's attendance by each Contracting Government is preferable to the use of bands.</li> <li>The Task Force recalled the Commission's agreement at IWC/54 that attendance for the host country should be based on an average of the previous three years and that the Chair of the Commission be excluded for the purposes of calculating financial contributions.</li> <li>The Task Force agreed that only delegates should be allowed entry into the Commission meeting rooms. Support Staff (who do not have access to the meeting rooms) may need distinguishing badges, e.g. to facilitate admission to the conference venue and/or delegation rooms.</li> </ul>	<ul style="list-style-type: none"> <li>The % of the total contribution this element should represent</li> <li>Whether there should be any free delegates and if so, how many.</li> </ul>
<b>PERFORMANCE CRITERIA</b>		
	<ul style="list-style-type: none"> <li>The Task Force identified a number of statistics that may prove useful in characterising the performance of different simulations and that could be used to assess them in terms of the general principles of stability and fairness, i.e.:               <ul style="list-style-type: none"> <li>The average, median (i.e. middle), maximum and minimum contribution;</li> <li>The standard deviation from the 'average' contribution;</li> <li>The 5<sup>th</sup> and 95<sup>th</sup> percentiles of contributions;                   <ul style="list-style-type: none"> <li>The 5<sup>th</sup> percentile means that 95% of countries are paying more than this particular value</li> <li>The 95<sup>th</sup> percentile means that 5% of countries are paying more than this particular value</li> </ul> </li> <li>The ratio of maximum to minimum contribution;</li> <li>The percentage of the budget contribution allocated to the top 5, 10, 15, 20 paying countries.</li> </ul> </li> <li>The Task Force focused on two of these, i.e. the ratio of maximum to minimum contribution and the percentage of the budget allocated to the top 5 paying countries.</li> </ul>	<ul style="list-style-type: none"> <li>Which performance criteria to use and what the acceptable ranges of the criteria selected might be.</li> </ul>
<b>SELECTION OF A MODEL</b>		
	<ul style="list-style-type: none"> <li>The Task Force noted that all recent simulations were run based on the structure of Model 7 (see Annex 2) and that it appeared that the group is converging on this as the model to put forward to the Commission.</li> </ul>	

## 19. Frequency of meetings

The possibility of moving away from annual meetings of the Commission and its subsidiary bodies has been raised on a number of occasions over the years. Most recently discussions were renewed with the adoption at IWC/56 in Sorrento in 2004 of Resolution 2004-7 on '*the Frequency of Meetings of the International Whaling Commission*'<sup>58</sup>.

To assist discussions, the following documents were prepared by the Secretariat for meetings of the F&A Committee at IWC/57 in 2005, IWC/58 in 2006 and at a Special Session at IWC/59 in 2007:

- IWC/57/F&A 9: A preliminary exploration of the possibilities and implications of less frequent meetings of the Commission and its subsidiary groups;

This document reviewed the structure of other Conventions and identified a number of practical implications should IWC meetings be held less frequently. These included: (1) revisions to the Schedule, Rules of Procedure and Financial Regulations; (2) consideration of the need for a Standing Committee or Bureau to guide implementation of the Convention between meetings (see section 1 of this document); (3) the need to develop a longer budgetary cycle; (4) implications for the term of the Commission Chair and Vice-Chair; (5) implications for setting and reviewing catch limits for aboriginal subsistence whaling and, should it be resumed, commercial whaling.

- IWC/58/F&A 5: Discussion document: Further thoughts on reducing the frequency of IWC meetings

This document: (1) summarised the background and discussions on the issue; (2) identified further considerations in relation to the Scientific Committee and the Commission and its other sub-groups; (3) identified cost implications of less frequent meetings for both the Commission as a body and for Contracting Governments; (4) considered an appropriate timing for any move to less frequent meetings; and (5) dealt briefly with the necessary amendments to the Schedule, Rules of Procedure and Financial Regulations. This document also included IWC/58/F&A 5 add: A very hypothetical set of examples of how a 2-year cycle might work with respect to the review of catch limits.

- IWC/59/F&A SS 3: Possible options to consider regarding meeting frequency of the Commission and its subsidiary bodies.

In addition to providing some options for consideration by the F&A Committee regarding the frequency of meetings of the Commission and its subsidiary bodies, this document also discussed briefly the timing and implications of any decision.

### Discussions at IWC/57 and IWC/58

Discussions in the F&A Committee and in the Commission during IWC/57 and IWC/58 were similar. At IWC/58, a number of delegations spoke in support (principally related to cost savings) of moving to biennial meetings as soon as possible, noting that this should not lead to an increase in intersessional meetings. Several countries noted that savings from meeting only every two years could be used to help meet other expenses such as those for interpretation and document translation. Others, while not against the concept of moving away from Annual Meetings, identified similar concerns as those expressed at IWC/57 in Ulsan, including that the mechanics of such a move should be well thought through, that a decision should not be taken in haste, that consideration would need to be given to the size and composition of any Standing Committee/Bureau that the Commission may establish to guide it between meetings (see section 1) and that there needed to be recognition that Special Sessions of the Commission may be needed on occasion. One country noted that reducing the frequency of meetings may hinder the Commission's efforts to break the current deadlock, including development of an RMS, and that it would lead inevitably to an increase in intersessional meetings that would discriminate against developing countries who would find them difficult to attend.

Some delegations supported the continuation of Annual Meetings of the Commission. Noting that IWC is a resource-management organisation, one delegation believed that IWC should conduct its business on an annual basis; another did not believe that the cost savings were sufficient to make a move to a two-year cycle worthwhile. Another delegation suggested that the length of the Annual Meeting series could be reduced by, for

<sup>58</sup> Ann. Rep. int. Whaling Comm. 2004:71

example, not holding sub-group meetings. It suggested that this would be of advantage to those countries that are unable to attend both the sub-group and Commission meetings and would also contribute to cost savings.

Different views were expressed on whether the Scientific Committee should continue to meet on an annual basis.

The Commission agreed to hold a special session of the F&A Committee at IWC/59 as a way of coming to a decision on this matter. However, it was also agreed that any move to a two-year cycle would not take effect until after 2008.

#### **Discussions at IWC/59**

The options proposed by the Secretariat in document IWC/59/F&A SS 3 are summarised in the following table.

As previously there was no consensus on how to proceed, with some countries favouring retention of the *status quo* and others supporting a move to biennial meetings of the Commission and its sub-groups (excepting the Scientific Committee) as soon as practicable<sup>59</sup>. The Commission therefore agreed to retain this item on the agenda of future meetings and to include this issue in discussions on the future of the organisation.

#### **Discussions at IWC/60**

Similar views were expressed as previously and it was agreed that the matter of frequency of meetings should be included as one of the elements to be considered by the small working group on the future of IWC. It was noted that although an Annual Meeting is scheduled next year, no offers to host a meeting in 2010 were received which may, by default provide an opportunity to move to less frequent meetings (unless the Commission requests the Secretariat to arrange for a meeting).

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<sup>59</sup> See IWC/59/F&A 6: Report of the Special Session of the Finance and Administration Committee on the Frequency of Meetings and *Ann. Rep. int. Whaling Comm. 2007*: 57-58

## Summary of options, considerations and potential cost savings proposed in document IWC/59/F&amp;A SS 3

Option	Frequency of meetings of:			Considerations	Potential cost savings
	Scientific Committee	Commission sub-groups	Commission		
1	Annual	Annual	Annual	No need to amend the Schedule or Rules of Procedure/Financial Regulations.	None
	Positive decision to keep <i>status quo</i>				
2	Annual	Annual, but not necessarily for all sub-groups	Annual	No need to amend the Schedule or Rules of Procedure/Financial Regulations.  Probably not possible to dispense with all sub-group meetings, e.g. it will probably be necessary to have an annual F&A Committee meeting if the Commission continues to meet annually. Annual meetings of the ASW Sub-committee may also be needed in the short-term. However, consideration could be given to some groups meeting in alternate years or to some issues (e.g. infractions) being dealt with directly in Plenary.	Unless the Commission revises its priorities, particularly for the Scientific Committee, it may be difficult to reduce significantly the overall length of the Annual Meeting series. Cost savings would therefore be minimal for both Commission and Contracting Governments and observers.
	Retain annual meetings but reduce overall length of meeting series				
3	Annual	Biennial	Biennial	Moving to biennial meetings of the sub-groups has no particular implications.  Moving to biennial meetings of the Commission has a number of practical implications relating to: (1) developing a 2-year budget; (2) agreeing a 2-year research programme; (3) how the Commission makes decisions intersessionally (e.g. should a Standing Committee or Bureau be established to help guide implementation of the Convention and provide guidance to the Secretariat during the intersessional period?); (4) term of office of the Chair and Vice-Chair; (5) review of proposals for research under scientific permit; (6) setting and reviewing catch limits for aboriginal subsistence whaling and, should it be resumed, commercial whaling.  Minor amendments would be needed to the Schedule and Rules of Procedure and Financial Regulations as identified in IWC/57/F&A 9.	<u>For the Commission:</u> Around £33,500/year. Although there would be savings from the sub-groups and Commission meeting every 2 years, there would be a loss of income from NGOs.  <u>For Contracting Governments &amp; observers:</u> Would be quite significant for those attending the sub-group and Commission weeks. For a delegation of 3 persons cost savings on travel and subsistence would be in the order of £4,650/year, not including salary costs for time at the meeting and time spent preparing for the meeting.
4	Biennial	Biennial	Biennial	As for Option 3.  If the current priorities and workload of the Scientific Committee were retained, it may be necessary to (a) increase the number of intersessional workshops and (b) have a longer meeting (say additional 3 days) because of the need to review more reports from intersessional meetings.	<u>For the Commission:</u> Around £117,000 per year. As with Option 3, although there would be savings from meeting every 2 years, there would be a loss of income from NGOs.  <u>For Contracting Governments &amp; observers:</u> Would be significant and roughly double those for Option 3, depending on size of delegation to the Scientific Committee.
5	Annual	Annual	Annual	None for the time-being.	None at present
	Too much uncertainty about organisation to make a decision now but keep under review.				

## 20. Marine Protected Areas (MPAs)

The designation of 'Marine Protected Areas' or MPAs has become common in marine conservation but there is no general definition as to what comprises an MPA or the measures they may incorporate; this flexibility is important as it will depend on the objectives of the MPA concerned and its scale (e.g. single species, all cetaceans, all aspects of the habitat, breeding ground, feeding ground, migratory path, whole range). The topic of MPAs has arisen in a number of Scientific Committee discussions but particularly in the context of the review of the Southern Ocean Sanctuary (including a review undertaken by outside experts ((Zacharias *et al.*, 2006) and the Scientific Committee had agreed that:

'Marine sanctuaries and reserves are a subset of Marine Protected Areas (MPAs). While marine reserves aim to provide protection from removal and disturbance, IWC Sanctuaries are waters closed to commercial whaling. The Working Group recognises the value of exploring the rapidly developing theory and application of MPAs in relation to the review of the IWC Sanctuaries. However, the application of MPA scientific concepts to IWC Sanctuaries requires further investigation. The Working Group further recognised that MPAs and IWC Sanctuaries can vary widely in their goals, objectives, scales and management implications. The Working Group recommended that the goals of IWC Sanctuaries should be clearly articulated in Sanctuary proposals and that Sanctuary adoption should include measurable criteria that can be evaluated and monitored using systematic inventory .... and research programmes that will be refined at periodic intervals. Finally, the Working Group seeks clarification from the Commission on more clearly measurable objectives for IWC Sanctuaries.' (IWC, 2004)

It has been commented that in an IWC context, the Commission is limited by the Convention to regulations concerning whaling, whereas the actual/potential threats to cetaceans are broader than this (see section 16 on environmental threats to cetaceans) and thus that incorporation of Marine Protected Area concepts would require co-operation with other bodies (e.g. for ship strikes, the IMO). Further discussion of existing IWC Sanctuaries can be found in Section 27.

### References

- International Whaling Commission. 2004. Report of the Intersessional Meeting to Review the Southern Ocean Sanctuary, Sorrento, Italy, 30 June to 1 July 2004. *J. Cetacean Res. Manage. (Suppl.)* 7:403-10.
- Zacharias, M.A., Gerber, L.R. and Hyrenbach, K.D. 2006. Review of the Southern Ocean Sanctuary: Marine Protected Areas in the context of the International Whaling Commission Sanctuary Programme. *J. Cetacean Res. Manage.* 8(1): 1-12.



## 21. Objections and reservations

### Provisions in the Convention

#### Objections

Article V of the 1946 International Convention for the Regulation of Whaling addresses amendments to the Schedule to the Convention which governs whaling under the auspices of Contracting Governments.

The provisions of Article V.3 allow any Contracting Government to 'object' to any amendment to the Schedule, provided such an objection is lodged within 90 days of notification of the decision. Should this happen, further time is allowed for other Contracting Governments to object. The government or governments that object are not then bound by that particular decision. The specific text is provided below:

#### **Article V**

3. Each of such amendments shall become effective with respect to the Contracting Governments ninety days following notification of the amendment by the Commission to each of the Contracting Governments, except that (a) if any Government presents to the Commission objection to any amendment prior to the expiration of this ninety-day period, the amendment shall not become effective with respect to any of the Governments for an additional ninety days; (b) thereupon, any other Contracting Government may present objection to the amendment at any time prior to the expiration of the additional ninety-day period, or before the expiration of thirty days from the date of receipt of the last objection received during such additional ninety-day period, whichever date shall be the later; and (c) thereafter, the amendment shall become effective with respect to all Contracting Governments which have not presented objection but shall not become effective with respect to any Government which has so objected until such date as the objection is withdrawn. The Commission shall notify each Contracting Government immediately upon receipt of each objection and withdrawal and each Contracting Government shall acknowledge receipt of all notifications of amendments, objections, and withdrawals.

Currently objections are held by: (1) Japan and the Russian Federation with respect to the second sentence of Schedule paragraph 6 concerning the prohibition of using the cold grenade harpoon for killing minke whales (although the cold grenade harpoon is not now used by either country); (2) Japan with respect to Schedule paragraph 7(b) that establishes the Southern Ocean sanctuary to the extent that it applies to Antarctic minke whales; and (3) Norway and the Russian Federation with respect to paragraph 10(e) of the Schedule (the commercial whaling moratorium).

#### Reservations

The Convention is silent on reservations, although they have been made by Argentina, Chile, Peru, Ecuador and Iceland when adhering to the Convention<sup>60</sup>. The reservations made by Argentina, Chile, Peru and Ecuador are in relation to sovereign rights in their territorial waters. The reservation of Iceland is with respect to paragraph 10(e) of the Schedule to the Convention, i.e., the commercial whaling moratorium<sup>61</sup>.

Iceland's re-adherence to the Convention with a reservation to paragraph 10(e) was controversial. Contracting Governments held differing views on Iceland's right under international law to make such a reservation and on the compatibility of the reservation with the object and purpose of the Convention<sup>62</sup>, <sup>63</sup>. The Icelandic Government has subsequently issued commercial whaling quotas in 2006 (minke and fin whales) and in 2008 (minke whales).

#### **The issue**

Some Contracting Governments have expressed a desire to prevent countries from opting out of IWC rules either through the objection procedure or through reservations. This would require amendments to the Convention (see Section 11 on Purpose of the Convention).

<sup>60</sup> The text of the reservations are provided in the 'Status of the Convention' document provided by the USA State Department (as depositary Government) – see [http://www.iwcoffice.org/\\_documents/commission/convention\\_status.pdf](http://www.iwcoffice.org/_documents/commission/convention_status.pdf)

<sup>61</sup> *'Notwithstanding this, the Government of Iceland will not authorise whaling for commercial purposes by Icelandic vessels before 2006 and, thereafter, will not authorise such whaling while progress is being made in negotiations within the IWC on the RMS. This does not apply, however, in case of the so-called moratorium on whaling for commercial purposes, contained in paragraph 10(e) of the Schedule not being lifted within a reasonable time after the completion of the RMS. Under no circumstances will whaling for commercial purposes be authorised without a sound scientific basis and an effective management and enforcement scheme.'*

<sup>62</sup> A summary of Iceland's re-adherence is provided on IWC's website at: [http://www.iwcoffice.org/\\_documents/iceland.htm](http://www.iwcoffice.org/_documents/iceland.htm). See also the following Chair's Reports: *Ann. Rep. int. Whaling Comm. 2001: 5-8, Ann. Rep. int. Whaling Comm. 2002: 5-7, and Ann. Rep. int. Whaling Comm. 2003: 139-142.*

<sup>63</sup> The following countries subsequently formally objected to Iceland's reservation by notifying the depositary government (USA): Argentina, Australia, Brazil, Chile, Finland, France, Germany, Monaco, Netherlands, Peru, Portugal, San Marino, Spain, Sweden, UK, USA. Italy, Mexico and New Zealand also objected to the reservation and noted that they do not consider the Convention as being in force between their countries and Iceland.

## 22. Procedural issues – improvements to

During discussions at the March 2008 Intersessional Meeting on the Future of the IWC, there was general agreement that the Commission needs to improve the way it conducts its business<sup>64</sup>. A variety of suggestions were made including: (1) striving to reach decisions by consensus wherever possible; (2) ensuring that adequate notice is given of matters to be considered by the Commission so as to reduce surprises and allow time for proper consultation; (3) recognising the diversity of interests among Commission members and the need for mutual respect and equal treatment of all Contracting Governments; (4) improving the negotiation process, for which a variety of mechanisms were proposed including the use of open and closed sessions, smaller groups and ‘cooling off’ periods, using outside experts/mediators, involving ministers, involving civil society; (5) reviewing the composition and function of the Scientific Committee; (6) improving participation, through, for example, a financial contribution scheme that better-reflects countries’ capacity to pay and the introduction of other working languages; (7) reviewing the role of the media; and (8) improving relationships with other intergovernmental organisations. Professor Juma’s report issued after the March 2008 meeting<sup>65</sup> identified three further procedurally-related issues not discussed during the meeting itself, i.e. establishing a Bureau of the Commission, frequency of meetings, and the role of the Secretariat.

It was recognised that while some of these matters can be addressed through changes to the Commission’s Rules of Procedure, others are more dependent on goodwill, understanding and a constructive attitude being shown by Commissioners and Contracting Governments. At the Chair’s request, the Secretariat developed a document for IWC/60 in Santiago that presented options on how these matters might be approached for discussion and possible action<sup>66</sup>.

At IWC/60, the Commission agreed to institute a number of improvements<sup>67</sup> related to items (1), (2), (6) and (7) above as summarised below.

### **Reaching decisions by consensus (item (1))**

The Commission agreed that it would make every effort to reach consensus on all matters of substance and that voting should be a last resort. It agreed to formalise this through an amendment to Rule of Procedure E on Decision-making. This amendment will take effect at IWC/61 next year.

The Commission agreed to amend its Rules of Debate by including a new rule (C.3) that will allow the Chair to suspend a meeting for a brief period at any time to allow informal discussions aimed at reaching consensus consistent with Rule E of the Rules of Procedure. This new rule will take effect at IWC/61 next year.

The Commission also recognised that increased dialogue between Contracting Governments and greater use of informal meetings would improve the prospects of achieving consensus. It agreed that its work should be organised to provide sufficient opportunities for all proposals to be discussed informally between Contracting Governments before action was taken by the Commission. The Commission also recognised the importance of ensuring that its proceedings take place in an environment of mutual respect, notwithstanding the differing views and perspectives among Contracting Governments.

### **Ensuring adequate notice of matters to be considered and reducing surprises (item (2))**

To maximise the prospects of reaching decisions by consensus, the Commission also agreed that all proposals for action by the Commission should be circulated to Contracting Governments well in advance of the annual meeting. It therefore decided to amend Rule of Procedure J.1 such that no item of business which involves amendment of the Schedule to the Convention, recommendations under Article VI or Resolutions of the Commission shall be the subject of decisive action by the Commission unless the full draft text has been circulated to Commissioners at least 60 days in advance of the meeting at which the matter is to be discussed. However, it also decided to create a new rule (J.2) that would allow the Commission to decide to consider urgent draft Resolutions arising after the 60-day deadline at the recommendation of the Chair in consultation with the Advisory Committee. The amended and new rules will take effect at IWC/61 next year.

<sup>64</sup> See IWC/60/7: Chair’s Report of the Intersessional Meeting on the Future of IWC, Renaissance London Heathrow Hotel, UK 6-8 March 2008.

<sup>65</sup> See IWC/60/12rev: The Future of the International Whaling Commission: Strengthening Ocean Diplomacy

<sup>66</sup> IWC/60/18: Possible improvements to procedural issues identified at the March 2008 Intersessional Meeting on the Future of IWC.

<sup>67</sup> See IWC/60/24: Chair’s summary of the outcome of discussions on the future of the International Whaling Commission, Annex A: Reforming the working procedures of the IWC.

The Commission further agreed that reducing the uncertainty over the voting intentions of new Contracting Governments would improve the predictability of the Commission's annual meetings and decided to amend Rule of Procedure E.2.(b) such that the Commissioner of a new Contracting Government shall not exercise the right to vote until 30 days after its date of adherence (although they may participate fully in Commission discussions).

**Introducing other working languages (item (6))**

Recognising that French and Spanish are the primary languages of many Contracting Governments, the Commission emphasised the importance of enabling effective participation in its affairs and widely disseminating information to the public through the use of French and Spanish as working languages of the Commission. It agreed to revise Rule of Procedure N.1 accordingly. This amended rule took effect at IWC/60 since the required 60-days notice had been provided.

Through a recommendation from the F&A Committee, the Commission also agreed to making part of the IWC website available in French and Spanish<sup>68</sup>.

**Interaction with the media (item (7))**

The Commission recognised the importance of ensuring accurate and timely information on the Commission's work is provided to the media. It therefore encouraged the Chair, Secretary and Head of Science to provide regular briefings to the media at Commission meetings. This was put into effect at IWC/60.

With respect improving the negotiation process (item (4)), the process agreed by the Commission at IWC/60 for continuing discussions on the future of the organisation (that includes the continued use of outside experts) and the agreed amendments to Rules of Procedure take into account a number of the recommendations made at the March 2008 intersessional meeting. With respect to involvement of NGOs, at IWC/60 the Commission agreed, on a trial basis, to have a 30 minute session during which it allowed 6 NGOs broadly representing the range of views to address the meeting (see section 5).

With respect to item (5), reviewing the composition and function of the Scientific Committee, the Commission agreed to establish an Intersessional Correspondence Group on Issues Related to the Scientific Committee – see section 28 of this document.

No further discussions were held during IWC/60 in relation to items (3) or (8). Furthermore, no further discussions were held in relation to improving participation, through a financial contribution scheme that better-reflects countries' capacity to pay (i.e. part of item (6)), although the contribution scheme is one of the issues identified as being of importance and is addressed in section 18 of this document.

With respect to the procedurally-related issues identified by Professor Juma, these are addressed in sections 1, 19 and 29 of this document.

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<sup>68</sup> See IWC/60/Rep 2: Report of the Finance and Administration Committee

## 23. Research under special permit

A major area of discussion in recent years has been the issuing of permits by member states for the killing of whales for scientific purposes. The use of such permits is not new. The right to issue them is enshrined in Article VIII of the 1946 Convention. Whilst member nations must submit proposals for review by the Scientific Committee, in accordance with the Convention it is the member nation that ultimately decides whether or not to issue a permit, and this right overrides any other Commission regulations including the moratorium and sanctuaries. Article VIII also requires that the animals be utilised once the scientific data have been collected.

Prior to 1982, when it was agreed that a moratorium would come into effect in 1986, over 100 permits were issued by a number of governments including Canada, USA, USSR, South Africa and Japan.

Since the 'moratorium' came into effect after 1986, Japan, Norway and Iceland have issued scientific permits as part of their research programmes; the scale of these both in numbers of animals and time periods of the programmes is considerably larger than for earlier permits. In recent years, only Japan and Iceland have issued permits. Recent discussions have centred on accusations that such permits have been issued merely as a way around the moratorium decision; these have been countered by claims that the catches are essential to obtain information necessary for rational management and other important research needs. All proposed permits have to be submitted for review by the Scientific Committee following Guidelines issued by the Commission (although a new process has been agreed this year – see below) but the ultimate responsibility for their issuance lies with the member nation. The Scientific Committee's review concentrates on the following issues:

- (1) whether the permit adequately specifies its aims, methodology and the samples to be taken;
- (2) whether the research is essential for rational management, the work of the Scientific Committee or other critically important research needs;
- (3) whether the methodology and sample size are likely to provide reliable answers to the questions being asked;
- (4) whether the questions can be answered using non-lethal research methods;
- (5) whether the catches will have an adverse effect on the stock;
- (6) whether there is the potential for scientists from other nations to join the research programme.

The Scientific Committee comprises scientists nominated by member governments and others invited especially by the Committee itself. The Committee inevitably includes the scientists who are proposing the permit and the usual way that the review is carried out is that the comments of the proposers and the rest of the Committee are identified. As one might expect in such a large group of scientists, the review of any permits rarely results in unanimity either in favour or against the scientific merit of the proposal. The published reports of the Scientific Committee reflect the agreements and disagreements of the review process, for both new and continuing permits (e.g. see (International Whaling, 2001; IWC, 2008).

There are a number of general interpretational questions stemming from the Guidelines given by the Commission (e.g. What comprises 'essential' for management? What constitutes 'reliable'? What counts as a 'critical' research need?) that apply to most research permit discussions. There is no consensus on the answers to these either within the Commission or the Scientific Committee. Closely linked to these questions is the discussion of lethal versus non-lethal research techniques. Although there has been a great increase in the types of information that can be obtained from non-lethal research methods such as biopsy sampling and photo-identification, at present there are certain data that can only be obtained (at least in the short-term) using lethal methods. These include, for example, the age of an animal (obtained from earplugs) and the reproductive status and history of females (obtained from ovaries). Such information is relevant *inter alia* in consideration of biological parameters (e.g. mortality and reproductive rates) and interpretation of pollutant levels. Another area relates to stomach contents in conjunction with biological parameter information in the context of ecosystem modelling and management (and see Section 15 – Ecosystem approach to management). The difficult question then becomes one of whether the answers one obtains using such data are 'essential', 'reliable enough' or 'critical' – and whether they justify the killing of animals? This often calls for more than purely scientific judgement and there is no universally accepted process to address the more philosophical questions regarding justification.

The Scientific Committee has in recent years accepted that its methods for reviewing special permit whaling proposals and resultant research results have not been satisfactory (IWC, 2006) and after considerable work, at the 2008 Annual Meeting it unanimously agreed a rigorous new process for such reviews that *inter alia* involves the use of outside experts and limits the role of the proponents of the permits (IWC/60/Rep1 Annex P – attached).

While the Commission cannot interfere with the right of a member nation to issue a permit, it can comment on the permit, after receiving the report of the Scientific Committee. In recent years, the Commission has passed a number of Resolutions asking governments to refrain from issuing specific permits. These discussions are usually contentious and the Resolutions passed by relatively small majorities (e.g. (IWC, 1995;1996;2001a;2001b;2004). An additional component that has arisen in Commission discussions is that the Japanese Antarctic Research Programmes (JARPA and JARPA II) occur within the Southern Ocean Sanctuary.

In discussions related to the Revised Management Procedure and to the future of the IWC, the issue of Special Permit whaling has been of major importance for a number of nations (e.g. see (IWC, 2007), including the possibilities of developing a 'Code of Conduct' and of amending the Convention. With respect to the former, the new review process agreed by the Scientific Committee could form an important part of such an approach. For further discussion See section 25-RMS.

## References

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## Annex P

### Process for the Review of Special Permit Proposals and Research Results from Existing and Completed Permits

#### 1. SUBMISSION OF PROPOSALS

New proposals should be submitted to the Chair of the Scientific Committee at least **six months** prior to the Annual Meeting at which they are to be discussed, following a *pro forma* supplied by the Secretariat. Proposers may request that the proposal remains confidential. The proposal shall be structured in the manner given below.

##### (1) Objectives of the study:

The objectives should:

- (a) be quantified to the extent possible;
- (b) be arranged into two or three categories, if appropriate: 'Primary', 'Secondary' and 'Ancillary';
- (c) include a statement for each primary proposal as to whether it requires lethal sampling, non-lethal methods or a combination of both;
- (d) include a brief statement of the value of at least each primary objective in the context of the three following broad categories objectives -
  - (i) improve the conservation and management of whale stocks,
  - (ii) improve the conservation and management of other living marine resources or the ecosystem of which the whale stocks are an integral part and/or,
  - (iii) test hypotheses not directly related to the management of living marine resources;

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

- (i) past recommendations of the Scientific Committee,
- (ii) completion of the Comprehensive Assessment or in-depth assessments in progress or expected to occur in the future,
- (iii) the carrying out of *Implementations* or *Implementation Reviews* of the RMP or AWMP,
- (iv) improved understanding of other priority issues as identified in the Scientific Committee Rules of Procedure (IWC, 2006b, p.180),
- (v) recommendations of other intergovernmental organisations.

**(2) Methods<sup>i</sup> to address objectives:**

(a) field methods, including:

- (i) species, number (and see (c) below), time-frame, area;
- (ii) sampling protocol for lethal aspects of the proposal; and
- (iii) an assessment of why non-lethal methods, methods associated with any ongoing commercial whaling, or analyses of past data have been considered to be insufficient;

(b) laboratory methods;

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

(d) time frame with intermediary targets.

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

(a) a summary of what is known concerning stock structure in the area concerned;

(b) the estimated abundance of the species or species, including methods used and an assessment of uncertainty, with a note as to whether the estimates have previously been considered by the Scientific Committee;

(c) provision of the results of a simulation study on the effects of the permit takes on the stock that takes into account uncertainty and projects (1) for the expected life of the permit (i.e.  $n$  years); (2) for situations where the proposal is assumed to continue for (a) a further  $n$  years, (b) a further  $2n$  years; and (c) some longer period of years since the start of the proposal.

**(4) A note on the provisions for co-operative research:**

(a) Field studies;

(b) analytical studies.

**(5) A list of the scientists they propose to send to the intersessional review workshop.**

## 2. THE REVIEW PROCESS

### Intersessional specialist workshop

The initial review of a new proposal, or interim and final reviews, shall take place at a small specialist workshop with a limited but adequate number of invited experts (who may or may not be present members of the Scientific Committee). A limited number of scientists associated with the proposal should attend the workshop in an advisory role, primarily to present the proposal and answer points of clarification. It is important that the composition of the specialist group is considered balanced and fair. The choice of experts shall be made by the Chair, Vice-Chair and Head of Science in conjunction with a Standing Steering Group (SSG) established by the Chair at an Annual Meeting, with special emphasis on the field and analytical methods provided in the proposal and estimation of the effect of catches on the stocks(s). The SSG shall be selected by the Chair, Vice-Chair and Head of Science, such that it represents an appropriate range of experience and expertise within the Scientific Committee. The selection process for the specialist group shall occur in the manner described below. A schedule of events for the review process is shown in Table 1.

### Procedure for review of new proposals

The Chair shall circulate the proposal to the Vice-Chair, Head of Science and SSG, normally within **1 week** of receipt.

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

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

(3) The SSG will send final comments within **1 week**.

(4) The Chair, Vice-Chair and Head of Science will agree a final list (with reserves); the proposal (with a note concerning any restrictions) will be sent to the selected experts and reserves - the process thus far will have taken about 6 weeks since the proposal has been received.

The Workshop will take place at least **100 days** before the Annual Meeting. In addition to the selected experts it will include at least one of the Chair, Vice-Chair and Head of Science, one of whom shall chair the workshop.

#### **Terms of reference of the specialist workshop for review of new proposals**

The primary objective of the specialist workshop will be to review the proposal in the light of the stated objectives following the guidelines in the *pro forma* provided by the Secretariat. In particular, the Workshop shall:

- (1) comment briefly on the perceived importance of the stated primary objectives from a scientific perspective and for the purposes of conservation and management, noting particularly its relevance to the work of the Scientific Committee;
- (2) provide advice and suggestions on components of the programme that might be achieved using non-lethal methods, including, where appropriate, power analyses and time-frames;
- (3) determine whether the proposed field and analytical methods are likely to achieve the stated quantified objectives within the proposed time-frame, where appropriate, commenting on sample size and time-frame considerations;
- (4) provide advice on the likely effects of the catches on the stock or stocks involved under various scenarios of length of the programme – this will include *inter alia* examination of abundance estimates provided and may involve a different analysis to that provided in the original proposal, including assumptions that short permit proposals may be projected further into the future;
- (5) review the proposed intermediary targets and suggest when an intermediate review or reviews should take place.

#### **Procedure for periodic and final reviews**

For ongoing research without a defined final year, a periodic review shall take place in accordance with either the advice provided under Item (5) of the workshop to review new proposals or on the advice of a periodical review workshop<sup>69</sup> and taking into account the availability of the proponents. The final review shall take place no later than three years after the final take under Special Permits. The periodic and final reviews shall be based on documents provided by the proposers and other members of the Scientific Committee **six months** before the Annual Meeting at which the Workshop report is to be presented. Information on the analytical methods likely to be used in documents presented to the Workshop that might assist with the selection of appropriate experts shall be circulated **nine months** before the Annual Meeting.

The Chair shall circulate the information on the analytical methods to the Vice-Chair, Head of Science and SSG, normally within **1 week** of receipt.

(1) The SSG shall examine the information available on the field and analytical methods and, normally within **2 weeks**, suggest names for consideration for the Specialist Workshop (if these experts are not members of the Committee they shall include a rationale for their choice) and the suggestions will be available to all SSG members.

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

(3) The SSG will send final comments within **1 week**.

(4) The Chair, Vice-Chair and Head of Science will agree a final list (with reserves); the proposal (with a note concerning any restrictions) will be sent to the selected experts and reserves - the process thus far will have taken about 6 weeks since the information on analytical methods has been received.

(5) The full documents shall be circulated no later than 6 months before the Annual Meeting.

(6) Responses to those documents shall be submitted no later than 1 month before the Workshop.

The Workshop will take place at least **100 days** before the Annual Meeting. In addition to the selected experts it will include at least one of the Chair, Vice-Chair and Head of Science, one of whom shall chair the workshop.

<sup>69</sup> There are two existing ongoing permits. For JARPN II the review will take place in 2009. JARPA II started in 2005/06 and the first six-year period will be finished in 2011/12. The periodic review will take place shortly after, for example within 1-2 years.

### **Availability of data relevant to the periodic or final review**

Applications for the access to data for the purpose of periodic or final review, should follow the recommended approach of Procedure B of the IWC SC Data Availability Agreement (*J. Cetacean Res. Manage* 6, Suppl. Pp 406-08). For data provided under the DAA, the conditions for data recipients are outlined in the agreement. Applications made by members of the Scientific Committee and other participants at the Specialist Workshop should be considered promptly and normally accepted within two weeks of the application.

### **Terms of reference of the Specialist Workshop for periodic and final reviews**

The primary objective of the specialist workshop will be to review the scientific aspects of the research under Special Permits in the light of the stated objectives following the guidelines in the *pro forma* provided by the Secretariat. In particular, the Specialist Workshop shall evaluate:

- (1) how well the initial, or revised, objectives of the research have been met;
- (2) other contributions to important research needs;
- (3) the relationship of the research to relevant IWC resolutions and discussions, including those dealing with the respective marine ecosystem, environmental changes and their impact on cetaceans and Committee reviews of special permit research;
- (4) the utility of the lethal techniques used by the Special Permit Programme compared to non-lethal techniques; and
- (5) in case of periodic review, provide advice on:
  - (i) practical and analytical methods, including non lethal methods, that can improve research relative to stated objectives;
  - (ii) appropriate sample sizes to meet the stated objectives, especially if new methods are suggested under item (i);
  - (iii) effects on stocks in light of new knowledge on status of stocks;
  - (iv) when, in the case of ongoing programmes, a further review should occur.

### **Reports of Workshops (applies to new proposals, periodic reviews and final reviews)**

The Chair is responsible for the level and nature of participation of the scientists involved in the proposal, which should be limited to (1) providing information to the invited experts in addition to that contained in the proposal or research results and (2) answering questions posed by the invited experts. The specialist group should attempt to reach consensus on the individual issues referred to above, but where this is not possible, the rationale behind the disagreement should be clearly stated in the Workshop report. The final report of the Workshop shall be completed at least 80 days prior to the Annual Meeting and will be made available to the proponents.

### ***Circulation to the Scientific Committee***

The original special permit proposal, *or* the original result documents from ongoing or completed special permit research, the report of the specialist workshop, and any revised permit proposal (following the agreed protocol), *or* any revised results, from the Contracting Government shall be submitted to Scientific Committee members no later than **40 days** before the Annual Meeting. The revised proposal, *or* revised results, will also be submitted to the members of the specialist group and they will be invited to submit joint or individual comments on that revision to the Annual Meeting.

### **Discussion at the Scientific Committee**

The report of the specialist workshop will be discussed but not amended by the Scientific Committee. The comments of the Scientific Committee will be included in the Scientific Committee report. The original proposal and any revised proposal, the specialist workshop report (and subsequent comments on any revised proposal), and the Scientific Committee report will then be submitted to the Commission and become publicly available at the opening of the IWC Annual Meeting.

### **REFERENCES**

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Table 1. Schematic schedule of events in the Scientific Committees process of (a) reviewing Special Permit proposals and (b) periodic reviews of results from ongoing Special Permit research and final results from completed Special Permit research. The dates shown in the tables are for illustrative purposes only assuming an Annual Meeting beginning on 1 June.

(a)

<b>Review of Special Permit proposals</b>	<b>Schedule of events</b>
Receipt of Special Permit proposal	>6 months prior to Annual Meeting (1 Dec)
Distribute proposal to Vice Chair, HoS and SSG	1 week
SSG suggest names for the Specialist Workshop	2 weeks
Chair, Vice Chair & HoS develop list of Specialists and reserves	2 weeks
Final comments from SSG	1 week
Invitation and documents to Specialists	1 week
Hold Workshop	>100 days prior to Annual Meeting (23 Feb)
Final Workshop Report made available to Proponents	> 80 days prior to Annual Meeting
Distribution of the Proposal, Workshop Report and comments from Proponents to the Committee	> 40 days prior to Annual Meeting
Discussion and submission of documents to the Commission	Annual Meeting (1 June)

(b)

<b>Periodic and final reviews</b>	<b>Schedule of events</b>
Information on likely analytical methods to be used in the documents to the Workshop	9 months prior to Annual Meeting (1 Sept)
Distribute documents to Vice Chair, HoS and SSG	1 week
SSG suggest names for the Specialist Workshop	2 weeks
Chair, Vice Chair & HoS develop list of Specialists and reserves	2 weeks
Final comments from SSG	1 week
Invitation and documents to Specialists	1 week
Receipt and circulation of results/review documents from Special Permit research	>6 months prior to Annual Meeting (1 Dec)
Hold Workshop	>100 days prior to Annual Meeting (23 Feb)
Final Workshop Report made available to Proponents	> 80 days prior to Annual Meeting
Distribution of result documents, Workshop Report and comments from Proponents to the Scientific Committee	> 40 days prior to Annual Meeting
Discussion and submission of documents to the Commission	Annual Meeting (1 June)

## 24. Revised Management Procedure (RMP)

At the outset of its discussions on future management of commercial whaling, following the moratorium (effective from 1985/86), the Scientific Committee recognised the need to develop management objectives and procedures that learnt from its previous difficulties and in particular recognised the limitations of both the data it had and the data it was likely to obtain. To put it simply, there was no point in developing a management procedure that required estimates of current population size accurate to the nearest whale when, for example, the best that might be expected was an estimate that the population lay somewhere between 10,000 to 20,000.

### Computer simulation testing

Clearly it is not acceptable to try out experimental management procedures in the wild. Apart from the serious consequences of 'getting it wrong', in long-lived species such as whales it would take a long time before one would find out whether or not it really worked. So the Scientific Committee developed an approach using computer whales and simulated population behaviour over a long period (100 years).

### Management objectives

The development process could only take place in the light of management objectives. These were set by the Commission (IWC, 1990) and can be summarised as:

- (1) catch limits should be as stable as possible;
- (2) catches should not be allowed on stocks below 54% of the estimated carrying capacity;
- (3) the highest possible continuing yield should be obtained from the stock.

The Commission decided that greater priority should be given to objective 2.

### Taking uncertainty into account

After several years of intense work, the Committee developed a procedure for determining safe catch limits that required knowledge of two essential parameters: estimates of current abundance taken at regular intervals; and knowledge of past and present catches. The Committee during this period carried out intensive testing of the procedure to numerous assumptions and problems. Some of these are summarised below:

- (a) Several different population models and associated assumptions;
- (b) Different starting population levels, ranging from 5% to 99% of the 'initial' population size;
- (c) Different MSY levels, ranging from 40% to 80%;
- (d) Different MSY rates, ranging from 1% to 7% (including changes over time);
- (e) Various levels of uncertainty and biases in population size;
- (f) Changes in carrying capacity (including reduction by half);
- (g) Errors in historic catch records (including underestimation by half);
- (h) Catastrophes (irregular episodic events when the population is halved);
- (i) Various frequencies of surveys.

### How are catch limits set?

A major component of the RMP is the *CLA* or *Catch Limit Algorithm* - this specifies the way in which safe anthropogenic removal levels are calculated from the required information.

Very simply, the *CLA* recognises that initially the 'true' situation of the stock is poorly known i.e. that there is a wide range of possible values for the level of depletion of the stock and its productivity. Similarly it recognises the two kinds of uncertainty in the estimate of current population size: that the methodology used to estimate abundance, although it produces a 'best' estimate can actually only give a range within which the population size probably lies; and secondly that the estimate may be biased.

The *CLA* is a 'feedback' procedure - as more information accumulates from sighting surveys (and catches if taken), then the estimates of necessary parameters are refined. In this way the procedure constantly monitors itself.

Advice on safe levels is provided for periods of five years. This is one of the ways in which the objective of stability of catches is met. Catches are also phased out if new sightings estimates are not obtained at the requisite intervals. As more information accumulates from new surveys, the *CLA* improves its estimates of parameter values. This in turn will narrow the range of possible catch limits.

### Testing for specific scenarios

The *CLA* was initially tested on the assumption that it is applied to known biological stocks. Uncertainties with respect to stock structure must clearly be taken into account and this forms a key component of the

*Implementation Process* undertaken by the Scientific Committee before it can provide advice. This process has now been formalised with strict timelines and data requirements ((IWC, 2005a). The Committee only undertakes the *Implementation* process for a specific species/region if the Commission agrees; *Implementation Reviews* are held every 5 years. Completion of an *Implementation* would allow the Scientific Committee to provide advice on safe levels of anthropogenic removals should the Commission ask for such advice (to date it has not done so).

The present situation with respect to *Implementations* and *Implementation Reviews* is as follows: North Atlantic common minke whales - second *Implementation Review* expected to be completed at the 2009 Annual Meeting; North Pacific common minke whales - *Implementation* completed in 2003 but although an *Implementation Review* is due in 2008, the Scientific Committee has agreed that this is not yet practical; North Pacific Bryde's whales – *Implementation* completed in 2008; North Atlantic fin whales – *Implementation* expected to be completed at the 2009 Annual Meeting; Antarctic minke whales – not considered since 1994 when the Southern Ocean Sanctuary was established. Without such '*Implementation Simulation Trials*', catch limits will be zero under the RMP (it is also possible that an *Implementation* or *Implementation Review* may result in advice that anthropogenic removals should be zero). Even without trials, it is clear that for very many species, such as blue whales in the Southern Hemisphere, it will be a very long time before catches would be allowed under the RMP.

### **The full RMP**

The *CLA* plus the rules about, amongst other things, details of stock boundaries, allocation of catches to small areas, what to do if many more of one or other sex are caught, and when complete reviews of all available information should be carried out, form the RMP.

In addition, the Scientific Committee has developed guidelines and rules for how sighting surveys should be conducted and how the data are to be analysed if the resultant estimates are to be considered to be of sufficient quality to be used in the *CLA* (IWC, 2005b). Similar guidelines and rules have been developed with respect to data requirements, quality and analysis (IWC, 1995b;1997).

In summary, the culmination of eight years' work by the Scientific Committee was the most rigorously tested management procedure for a natural resource yet developed. It sets a standard for the management of all marine and other living resources.

The procedure is very conservative and certainly more conservative than anything that has gone before. In some ways this is intuitively obvious. Any procedure that explicitly takes into account large levels of uncertainty, and can cope with the wide range of scenarios tested will have to be conservative. In general terms this is illustrated by the fact that typically, annual catches after only one survey has been completed will be less than half a percent of the estimated population size e.g. if the population is thought to number 10,000 animals, the annual catch will be less than 50.

The level of conservatism is a reflection of the relative priorities assigned to the objectives, the level of uncertainty in the information on abundance, productivity and stock identity of whale stocks, and the fact that many years are required before the *CLA* refines its estimates of the required parameters.

The Scientific Committee did not intend that fundamental changes to the RMP would be made frequently and developed a rigorous approach to evaluating any such proposals ((IWC, 1994). In the light of a recent Norwegian proposal to amend the RMP, the Committee has been reviewing the details of evaluating such proposals (e.g. with respect to appropriate ranges of productivity and incorporating environmental change) and this work is continuing e.g. (IWC, 2008).

### **The Commission and the RMP**

The Scientific Committee unanimously recommended the RMP to the Commission, noting that all the scientific aspects of the work had been completed and these scientific aspects were adopted by the Commission in 1994 (IWC, 1995a). Subsequent refinements (e.g. to with respect to requirements and guidelines for surveys and for the *Implementation* process have also been proposed unanimously by the Scientific Committee and accepted by the Commission – see above). The last major discussion of the RMP within the Commission occurred in 2005 after a presentation by the Scientific Committee (IWC, 2006). In that, it was stressed that the Scientific Committee uses the RMP to provide advice on safe levels of anthropogenic removals – it is the Commission that would set catch limits based on the scientific advice provided.

The Commission has in the past stated that it will not set catch limits for commercial whaling until it has agreed and adopted a complete Revised Management Scheme (RMS). Any RMS will not only include the scientific aspects such as the RMP, but a number of non-scientific issues. This is discussed more fully under Section 25 - RMS.

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## 25. Revised Management Scheme (RMS)

Following the adoption of the commercial whaling moratorium (see section 7), the Scientific Committee spent over eight years developing the Revised Management Procedure (RMP), a conservative scientific method for determining safe catch limits that explicitly takes scientific uncertainty into account (see section 24). Given this scientific advance which was adopted by the Commission in 1994, there has been pressure from some countries to remove the moratorium for certain stocks of whales, particularly minke whales. However, before the RMP is implemented and the moratorium on commercial whaling lifted, the Commission agreed that an inspection and observation scheme must be in place to ensure that agreed catch limits are not exceeded. It is this combination of scientific and non-scientific factors that comprises the Revised Management Scheme.

Initially RMS discussions centred on elements that would be required in a monitoring, control and surveillance scheme itself - primarily an updated and revised national inspection and international observer scheme. Subsequently, discussions were broadened, first to include animal welfare considerations and additional catch verification mechanisms (catch documentation and DNA registers) and then to include issues not having a function as part of the RMS itself but which were considered by some countries as important components to any agreement on an RMS.

### THE ROAD TO AN RMS:

#### 1994

The RMS Working Group was established in 1994 to complete work on: an effective inspection and observation scheme; arrangements to ensure that total catches over time are within the limits set under the RMS; and incorporation into the Schedule of the specification of the RMP and all other elements of the RMS.

#### IWC/52, Adelaide, 2000

Progress on this difficult issue proceeded slowly and in July 2000, the International Whaling Commission adopted Resolution 2000-3 on the Revised Management Scheme<sup>70</sup>. This Resolution recognised that it was important for the future of the Commission that the process to complete the RMS proceeded expeditiously. It *inter alia* requested the Secretary to prepare a draft for a Schedule amendment that would incorporate the structure and elements of the RMS, including the RMP, into the Schedule and agreed to hold an intersessional meeting of the RMS Working Group prior to the 2001 Annual Meeting.

#### Monaco, February 2001

A meeting was held in Monaco from 6 – 8 February 2001 and some progress was made on: revising the section of the Schedule (Chapter V) that deals with supervision and control; and developing a text to incorporate the structure and elements of the RMS, including the RMP, into the Schedule<sup>71</sup>.

The focus of discussions at the meeting was on the development of an effective inspection and observation scheme. Among the issues still to be resolved were: the level of international observer coverage required; the type and level of tracking of whaling vessels required; the timing (e.g. daily, weekly) of reporting of whales hunted, struck and killed; maintenance and availability of a register of DNA profiles of all whales killed; procedures to monitor the origins of whale products on the market; and the funding of the scheme.

The Secretariat was asked to develop a revised draft Schedule that incorporated both comments made at the RMS intersessional meeting and later in writing to form the basis for discussions at the RMS Working Group meeting at IWC/53. It was agreed that in producing a revised text, the Secretariat should streamline the current Schedule text to remove redundancies that had crept in over the years. It is this text<sup>72</sup> that has been used subsequently as the basis for a future re-organised Schedule<sup>73</sup>.

#### IWC/53, London, 2001

The report of the Monaco meeting was discussed at IWC/53 in London in 2001. Although progress was made in a number of areas, agreement was not reached on all and the Commission agreed to establish an Expert Drafting

<sup>70</sup> *Ann. Rep. int. Whaling Comm. 2000*: 55-56

<sup>71</sup> See IWC/53/RMS 5: Report of the Intersessional Meeting of the Revised Management Scheme Working Group, Monaco, 6-8 February 2001.

<sup>72</sup> IWC/53/RMS 4: Proposed revisions to and re-organisation of the Schedule to the International Convention for the Regulation of Whaling

<sup>73</sup> This document was updated as discussions progressed with the last version being prepared for the first meeting of the RMS Small Drafting Group in Borgholm in December 2004, i.e. IWC/D04/RMS SDG 4)

Group (EDG) to develop a consolidated draft of two chapters of the Schedule, i.e. those relating to Supervision and Control (Chapter V), and those relating to Information Required (Chapter VI)<sup>74</sup>.

### **Expert Drafting Group (EDG)**

For several years leading up to and including the meeting of the RMS Working Group at IWC/53 in London, discussions on the RMS had focused on trying to make progress largely through revisions to draft Schedule language (i.e. a 'square bracket exercise'). This meant that Schedule language was debated in isolation rather than within a framework looking at the RMS as a 'whole'. This approach changed with the establishment of the EDG when a framework was developed that established objectives for an RMS. This framework has provided an objective way to develop and evaluate proposals.

#### *The EDG framework:*

The EDG agreed that the primary objectives of any IOS scheme are to:

- (1) ensure that the rules and regulations of the Commission are obeyed;
- (2) ensure that the rules and regulations of the Commission are seen to be obeyed;
- (3) report to the Contracting Government any infractions of those rules and regulations;
- (4) report to the Commission any infractions of those rules and regulations.

In developing a scheme to meet these objectives, account must be taken of:

- (1) certain desired features of any credible combined scheme, including that it be to the extent possible robust, independent, transparent and based on best practice;
- (2) the need for the scheme to be as simple, practical and cost-effective as possible, concomitant with meeting its objectives; and
- (3) the nature of likely future operations (whilst noting that any scheme must be sufficiently generic to be able to incorporate new vessels, etc without modification).

The following progression was used to structure its discussions:

- (1) identify the nature of the regulation or information required;
- (2) determine appropriate method(s) to monitor the regulation;
- (3) assess efficiency and practicality of method(s);
- (4) select most appropriate;
- (5) determine whose responsibility to ensure method is used and who uses it;
- (6) determine reporting hierarchy;
- (7) determine who pays.

Using this approach, the intention was that the drafting of Schedule text is left until considerable agreement has been reached on a particular issue or indeed on the whole RMS 'package'.

The EDG met in Cambridge, UK in October/November 2001 and again in Auckland, New Zealand in February/March 2002. Good progress was made in some areas, particularly regarding the development of a International Observer Scheme, but fundamental differences remained in others including the need for additional catch verification and the collection of animal welfare data.

### **IWC/54, Shimonoseki, 2002**

At IWC/54, the Commission reviewed the report of the EDG<sup>75</sup>. Two proposed Schedule amendments for incorporating the RMS into the Schedule (one from Japan, the other from Sweden and a number of co-sponsors) failed to be adopted. The Commission agreed to hold a special meeting of Commissioners to examine the outstanding issues required to finalise the RMS for commercial whaling and to specify the future work needed to expedite its completion.

### **Special meeting of Commissioners, Cambridge, UK, October 2002**

This meeting was chaired by Henrik Fischer (Denmark), the Vice-Chair of the Commission<sup>76</sup>. At that meeting there was a valuable exchange of views and ideas on a number of difficult issues surrounding the completion of an RMS, including catch verification schemes, compliance reviews, costs, area restrictions, animal welfare data and other related issues. Progress was made in several areas where fundamental differences had been expressed in the past and a mechanism to build on this progress was established, including the establishment of three

<sup>74</sup> *Ann. Rep. int. Whaling Comm. 2001*: 25-28

<sup>75</sup> See IWC/54/RMS 1: Report of the Revised Management Scheme Expert Drafting Group

<sup>76</sup> IWC/55 /COMMS 2: Commissioners' meeting on the RMS (October 2002) – Chair's Confidential Aide Memoire

special working groups (on costs, catch verification and compliance). It was also agreed that a second special Commissioners' meeting should take place prior to the next Annual Meeting of the Commission in Berlin in June 2003.

### **Special Working Groups, 2002/2003**

The working groups on catch verification and costs met in Antigua from 28-30 April and 1-3 May 2003 respectively.

The working group on catch verification followed the previous approach by the EDG in identifying what needed to be verified, why, and how this can best be achieved (e.g. DNA registers/market sampling, Catch Document Schemes or both) in light of the objectives of the RMS and its guiding principles. Although no final consensus recommendation was reached, considerable progress was made in a number of areas and three catch verification options were put forward for consideration by the Commissioners' meeting.

The working group on costs was charged with: identifying and estimating costs of possible components of an RMS; considering how costs might be apportioned among Contracting Governments; and presenting to the Commission one or more options on how RMS costs could be factored into the financial contributions scheme currently under review. The group agreed that there were four main elements to the costs of an RMS: national inspectors; international observers; vessel monitoring systems; catch verification. Cost estimates were developed for each element, although in relation to catch verification, estimates could only be developed for DNA registers/market sampling since no definite proposal for a Catch Document Scheme had been developed. The group believed it had achieved as much as it could given the uncertainties involved.

The working group on compliance worked initially via email correspondence but did meet briefly at IWC/55 in Berlin. It made progress in resolving areas on which there had previously been no agreement and was able to put forward recommendations to the private Commissioners' meeting.

### **IWC/55, Berlin, 2003**

The second special Commissioners' meeting took place on 12-13 June 2003 in Berlin, chaired by Henrik Fischer. The meeting received the reports from the three working groups<sup>77</sup> as well as: information from the Workshop on Whaling Killing Methods and Associated Issues regarding the usefulness of data proposed by the UK in assessing whale killing methods; and a report from the Scientific Committee particularly in relation to the management implications in terms of risk and yield of restricting whaling to within EEZs or 200 miles of the coast - a question posed by the Commission in 2002<sup>78</sup>. The Committee had drawn attention to the risk-averse nature of the RMP, noting that any advice it would provide would have been judged to satisfactory with respect first to risk and then to yield. The Committee therefore advised that under the RMP, the restriction of whaling to waters within 200 miles of the coast will have no effect on catches permitted in *Small Areas* that fall entirely or partly within 200 miles of the coast. However, because no catches would be taken in *Small Areas* entirely outside 200 miles of the coast, this additional management measure would reduce risk (to beyond that incorporated in the RMP) and reduce yield.

The Commissioners' meeting also gave some consideration to what a final RMS 'package' might constitute. Although some progress had been made intersessionally, there was no consensus on whether progress to date had been sufficient. The Commission was not able to agree on possible components for an RMS or on how to take the RMS process further but did agree to establish an intersessional group of Commissioners' under the new Chair (Henrik Fischer) to explore ways to take the RMS forwards<sup>79</sup>.

### **Chair's Small Group and the Chair's proposal for an RMS 'package'**

The Chair's group comprised Denmark, Iceland, Japan, the Netherlands, Spain, Sweden and the USA. Ireland had been invited but was not able to take part due to commitments in relation to its presidency of the EU starting in January 2004. The group met at the Secretariat's offices in December 2003 and again in March 2004. Based on these discussions, the Henrik Fischer developed his proposals for a way forward on the RMS. These would have involved the use of both Schedule amendments and voluntary measures such as Resolutions and codes of conduct. Chairman Fischer's proposed RMS 'package' is summarised below (issues requiring Schedule text are shown with an asterisk). In the preface to his proposal, Chairman Fischer stated the following: *It is a fact that whales are being caught by some IWC members. While recognising and respecting the different views on whaling held by member nations, from the point of view of conservation and wise management, it is best that*

<sup>77</sup> IWC/55/COMMS 3: Report of the RMS Working Group on Catch Verification; IWC/55/COMMS 4: Report of the RMS Working Group on Costs; IWC/55/COMMS 9: Second Commissioners' meeting on the RMS - Chair's Confidential Aide Memoire, 12-13 June 2003, Berlin, Germany

<sup>78</sup> *J. Cetacean Res. Manage.* 6. (Suppl.): 7-8 and IWC/55/COMMS 9: Second Commissioners' meeting on the RMS - Chair's Confidential Aide Memoire

<sup>79</sup> *Ann. Rep. int. Whaling Comm.* 2003: 22-23

*whaling is managed using a scientific, consistent and fair approach. The highly migratory behaviour of the large whales makes international co-operation on management essential and the IWC is best placed to fulfil this management role. However, at present our organisation is not generally seen to be working effectively and indeed the present polarised views and actions are, I believe, detrimental to conservation..... I strongly believe that if the IWC is to fulfil its role in the conservation and management of whale stocks and to avoid past errors, real effort must be made to complete the RMS expeditiously. To do this parties must respect the views of others, and in that light, develop a package of measures that is as broadly acceptable as possible whilst meeting the agreed objectives in the most practical and cost effective manner....'*

**The proposal:**

1. **RMP\***: as agreed by the Scientific Committee and endorsed by the Commission.
2. **A phased-in approach to the resumption of commercial whaling\***: for an initial period (e.g. 5 years after the lifting of the moratorium), commercial whaling would only be allowed in waters under national jurisdiction. This proposal was not meant to imply that the RMP is not safe but rather was included as a mechanism to build public confidence in IWC's ability to manage whaling and conserve whale stocks.
3. **National inspection and observation scheme\***: as proposed by the EDG (generally, observers and inspectors on all boats where practical) with VMS on very small vessels with <24hr trips and one observer per catcher attached to a factory ship.
4. **Additional catch verification to combat IUU whaling and/or unreported bycatches (NOT to monitor trade)**:
  - National diagnostic DNA registers and market sampling to agreed standards (with outside review) and a procedure to allow checking of samples against the registers\*. Under such a system, only whales taken legally would be on the registers thus allowing meat from illegally taken whales to be identified.
  - Resolution urging countries to institute national legislation prohibiting the import of whale products from non-IWC countries as well as from IWC countries that are non-whaling.
  - Documentation up to port of entry if importation from IWC member \*. Whale products not accompanied by such a document would not be allowed to be imported.
5. **Compliance\***: Compliance Review Committee with duties as developed by the RMS Expert Drafting Group and agreed by the Commission, and inclusion of Schedule text as proposed at IWC/55 in Berlin: *'The Compliance Review Committee reports on infringements and the seriousness of these infringements to the Commission and advises the Commission what actions, if any, to be taken'*. See also section 8.
6. **Mechanism to apportion RMS costs among Contracting Governments\***: Costs for national activities should be borne by relevant national governments, while international costs for securing transparency could be allocated in the context of the overall financial contributions scheme.
7. **Measures for the lifting of Paragraph 10(e)\***: modify paragraph 10(e) such that it becomes invalid on a specific day whilst ensuring that any whaling operations are undertaken under the full RMS package (N.B. catches other than zero can only be set for species/areas the Scientific Committee provides advice for under the RMP – currently very few). See section 7.
8. **Whaling under Special Permit**: recognise that it is a Sovereign right under the Convention but develop a Code of Conduct (see section 23).
9. **Animal welfare considerations** (see also section 2):
  - Explicit recognition of the issue in the Schedule\*: *'The 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.'*

The principle that whaling should not inflict any unnecessary suffering had been agreed in RMS Working Group discussions at IWC/54.

- Resolution focussing on improving techniques, voluntary provision of data to regular scientific workshops and possible co-operative research programmes.



This 'package' of measures included, in some way, all but two of the elements that had been discussed up to that point in the context of the RMS. The exceptions were blanket trade restrictions and sanctuaries. While the Chair considered that some form of trade restriction might be appropriate in deterring IUU whaling, he considered that a blanket ban on international trade in whale products would be discriminatory against some countries, against principles of free trade, and outside the competence of IWC (see section 32). With respect to sanctuaries, the Chair considered that each should be reviewed on its own conservation and management merits and would therefore be difficult to build into any RMS 'package'.

The Chair's proposals were circulated to Contracting Governments prior to IWC/56 in Sorrento, Italy, July 2004. In circulating them, the Chair stressed that the proposals were of course open to discussion.

#### **IWC/56, Sorrento, 2004**

The Chair's proposal for an RMS 'package'<sup>80</sup> was presented and discussed<sup>81</sup> at the 2004 Annual Meeting. While some governments believed it provided a good basis for further work, others did not consider that it formed the basis for an agreement. Concerns expressed in relation to the Chair's proposal included: (1) the link between adoption of an RMS and the lifting of the commercial whaling moratorium (see section 7); (2) the inadequacy of the measures proposed for catch verification, animal welfare, compliance and whaling under special permit; (3) the proposal for how costs could be shared among Contracting Governments; and (4) the absence of a consideration of sanctuaries.

After considerable discussion the Commission adopted Resolution 2004-6 on 'Completion of the Revised Management Scheme' by consensus<sup>82</sup>. This Resolution revived formally the RMS Working Group with the following Terms of Reference: (1) to complete work on the RMS package, with the goal of having a finalized RMS text ready for consideration, including for possible adoption, at IWC 57, and/or to identify any outstanding policy and technical issues; (2) take account of delegates' comments at IWC 56, as well as written submissions from delegates; and (3) provide guidance to and to review the work of, the Small Drafting Group [established under the RMS Working Group].

Resolution 2004-6 anticipated two meetings of the RMS Working Group and the Small Drafting Group (SDG) intersessionally between IWC/56 and IWC/57, with a third meeting of the RMS Working Group scheduled to take place during IWC/57.

#### **Intersessional meetings of the RMS Working Group and SDG, 2004/05**

The first meeting of the RMS Working Group took place in Borgholm, Sweden from 29 November to 1 December 2004. This was followed immediately by a 2-day meeting of the SDG. The second RMS Working Group meeting took place in Copenhagen, Denmark from 30 March to 1 April 2005. This was again followed by a 2-day meeting of the SDG.

At its Borgholm meeting, the RMS Working Group devoted most time to a discussion of what elements might comprise a final RMS package. It took as its starting point Chairman Fischer's proposal and reviewed each element of that in the light of written comments from member governments and comments from the floor. For all of these elements, views were expressed by at least some countries that did not support the Chair's proposal. It was agreed that rather than trying to reach compromises on these it was preferable to develop further options for consideration by the SDG. The floor was also open for additional issues or elements to be raised. These included discussion of the inclusion of a 'statement of principle' and an explicit consideration of sanctuaries. The meeting agreed to establish four technical specialist groups to consider in greater depth: VMS; DNA/market sampling; code of conduct for scientific permit whaling; and animal welfare issues.

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

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

<sup>80</sup> *Ann. Rep. int. Whaling Comm. 2004*: 82-92

<sup>81</sup> *Ann. Rep. int. Whaling Comm. 2004*: 21-28

<sup>82</sup> *Ann. Rep. int. Whaling Comm. 2004*: 69

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

#### **IWC/57, Ulsan, Korea, 2005**

The RMS Working Group met during IWC/57 to review and comment on the reports from the intersessional meetings<sup>83</sup>, to review progress with further technical work, and to assess overall progress in relation to Resolution 2004-6. With respect to the latter, the RMS Working Group Chair concluded that the Working Group was not in a position to put forward a 'finalised RMS text ready for consideration, including for possible adoption' at the plenary session. The Working Group therefore agreed to refer to the plenary its discussions of outstanding policy and technical issues<sup>84</sup>.

In the Commission<sup>85</sup>, different views remained regarding the elements that should be included in an RMS 'package' and on whether adoption of an RMS should be linked in any way to the lifting of the commercial whaling moratorium. Japan put forward a proposed Schedule amendment for an RMS that *inter alia* would have lifted the moratorium. The proposal did not attract the required three-quarter majority to be adopted (23 votes in favour, 29 against and 5 abstentions).

Discussions subsequently focused on how to continue work to develop an RMS and through the adoption of Resolution 2005-4<sup>86</sup>, the Commission agreed to: (1) hold an intersessional meeting to advance the work of the Working Group on the Revised Management Scheme (RMS) and that of the Small Drafting Group, as established by Resolution 2004-6, with particular emphasis on any outstanding issues and taking as a starting point the Group's report to this Commission (IWC/57/RMS 3); (2) hold a meeting of the RMS Working Group in connection with IWC/58 to discuss the remaining issues that must be resolved before adoption of the RMS can be considered; and (3) consider, if appropriate, ministerial, diplomatic, or other high-level possibilities to resolve these issues among the Contracting Governments to the Convention.

The Commission also agreed terms of reference for a compliance working group, i.e. (1) to explore ways to strengthen compliance by analysing the range of possible legal, technical, and administrative measures available to the Commission which are consistent within the ICRW; and (2) to explore possible mechanisms to monitor and possibly address non-compliance of Contracting Governments consistent with the ICRW and international law.

#### **2006 Intersessional meeting of the RMS Working Group**

The meeting took place in Cambridge, UK from 28 February to 2 March 2006 to address the issues identified in Resolution 2005-4 and review the progress with work on compliance.

Some progress was made in some areas and further intersessional work was identified in relation to: (1) further development of a draft code of conduct for whaling under special permit; and (2) compliance. A better understanding of different governments' perspectives was also achieved. There was no consensus on the usefulness of holding a high level meeting.

Given the nature of the discussions, the RMS Working Group agreed that further collective work should be postponed for the time being but with individual governments or groups of governments free to work together if they so chose.

#### **IWC/58 St. Kitts and Nevis, 2006**

The RMS Working Group met during IWC/58 to: (1) review the intersessional work agreed on the draft code of conduct and on compliance and to assess whether further progress could be made in these areas and if so, how; (2) consider any other intersessional activities that may have occurred; (3) consider whether there was anything further that could be done to make progress on an RMS or whether discussions remain at an impasse; and (4) develop recommendations as appropriate to the Commission.

With respect to a code of conduct for 'scientific whaling', some countries re-iterated that such a code is an essential part of the RMS process and must be binding. A number of countries stated that they believe it is

<sup>83</sup> IWC/57/RMS 3: Chairs' Reports of the RMS Working Group Meetings (Borgholm 2004 and Copenhagen 2005); IWC/57/RMS 4: Chairs' Reports of the meetings of the RMS Small Drafting Group (Borgholm 2004 and Copenhagen 2005)

<sup>84</sup> *Ann. Rep. int. Whaling Comm. 2005*: 75-92

<sup>85</sup> *Ann. Rep. int. Whaling Comm. 2005*: 21-29

<sup>86</sup> *Ann. Rep. int. Whaling Comm. 2005*: 67

premature to consider the issue of a Code of Conduct before the Scientific Committee has completed its discussions on how their procedures for reviewing special permit proposals and results can be improved. [Such a process has now been agreed by the Scientific Committee (see section 23).] Several of these also re-iterated their view that a Code of Conduct is not acceptable to them and that the only acceptable approach is to amend the Convention and phase-out special permit catches altogether. With respect to compliance, the RMS Working Group noted a paper on options for compliance mechanisms, including enforcement, under the RMS but there was no discussion (see section 8).

The RMS Working Group was unable to recommend any further collective work to develop an RMS and confirmed that discussions remained at an impasse. The Commission noted the Working Group's report and did not identify any further formal activity on the RMS.

#### **IWC/59 Anchorage, Alaska, 2007 and IWC/60 Santiago, Chile, 2008**

The RMS was retained on the agenda for the 2007 and 2008 Annual Meetings to provide an opportunity for governments to report on any intersessional activities and/or to propose further work. No such reports were received and no further work on the RMS was identified.

#### **In summary**

Over 14 years, more than 54 meetings have been held to try to negotiate an RMS. While progress in some areas has been made, fundamental differences remain in others and discussions have arrived at an impasse.

On a number of occasions, it has been noted that much of the difficulty the Commission faces over the RMS is due to a fundamental lack of trust between members and a fundamental disagreement over the objectives of the Convention and the principle of sustainable use. This has been reflected in the views frequently expressed that whoever was perceived as on the 'other side' was not negotiating in good faith or making meaningful compromises. Countries supporting the resumption of commercial whaling have suggested that the insistence of 'anti-whaling' countries' on the inclusion of unnecessary and duplicative measures would make an RMS prohibitively expensive and has stalled discussions. This has been countered by the accusation that 'pro-whaling' countries are unwilling to institute best monitoring, control and surveillance practices used by other bodies in the management of marine living resources. Differences over members views on whether or not there should be a link between completion of an RMS and the lifting of the moratorium have also contributed to difficulties in reaching agreement on an RMS (see section 7).

#### Further reading

As shown by the large number of references made in this section, there are many documents that can be referred to for more detailed background to work on the RMS. To get an understanding of the current status of discussions, the following documents and references are perhaps the most useful:

- Chair's Proposals for a Way Forward on the RMS: *Ann. Rep. int. Whaling Comm. 2004*: 82-91 (i.e. Annex E of the Chair's Report of the 56<sup>th</sup> Annual Meeting – also available as Document IWC/56/26);
- IWC/57/RMS 3: Chairs' Reports of the RMS Working Group Meetings (Borgholm 2004 and Copenhagen 2005);
- IWC/57/RMS 4: Chairs' Reports of the meetings of the RMS Small Drafting Group (Borgholm 2004 and Copenhagen 2005)
- IWC/58/RMS 3: Chair's Report of the RMS Working Group Meeting, University Arms Hotel, Cambridge, 28 February to 2 March 2006
- Report of the Revised Management Scheme Working Group, 10 June, St. Kitts and Nevis, *Ann. Rep. int. Whaling Comm. 2006*: 97-109 (also available as IWC/58/Rep 2);
- Chair's Report of the 58<sup>th</sup> Annual Meeting, Section 8.2 (*Ann. Rep. int. Whaling Comm. 2006*: 23-25).

## 26. Sanctions (See section 8 above)

.....

## 27. Sanctuaries

The ability to establish sanctuaries is included as part of Article VI of the Convention ('The Commission may amend from time to time the provisions of the Schedule by adopting regulations with respect to the conservation and utilization of whale resources, fixing ... (c) open and closed waters, including the designation of sanctuary areas...').

The first IWC sanctuary (these are areas in which commercial whaling is prohibited) was in fact the continuation of a Sanctuary established prior to the formation of the IWC in the Antarctic in 1938, south of 40°S between 70°W and 160°W. The rationale for this was that in this sector commercial whaling had not taken place in that region and it was thought desirable that the immunity which whales in this area had enjoyed should be maintained. However, in 1955, the area was opened (initially for three years) as a means of reducing the pressure of catches on the rest of the Antarctic whaling grounds.

An Indian Ocean Sanctuary was established in 1979, covering the Indian Ocean down to 55°S (IWC, 1980); different views had been expressed in the Scientific Committee over its establishment. The Indian Ocean Sanctuary was initially established for 10 years.

After considerable discussion beginning in 1992 (IWC, 1993), in 1994, the Commission adopted the Southern Ocean Sanctuary; the northern boundary followed the 40°S parallel of latitude except in the Indian Ocean sector where it joined the southern boundary of that sanctuary at 55°S, and around South America and into the South Pacific where the boundary was at 60°S. The Scientific Committee had been unable to reach consensus of the value of a Southern Ocean Sanctuary when considering the earlier 1992 proposal as it had been instructed to do by a Commission Resolution (IWC, 1994); it had not reviewed the finally adopted proposal which was developed at the 1994 meeting. The Schedule amendment had called for a review of the Sanctuary in 2004.

Subsequently, the Commission has received proposals for Sanctuaries in the South Pacific (initially in 1999) and South Atlantic (initially in 2001). These proposals or modifications of them have been submitted on a number of occasions since then up to the present e.g. see (IWC, 2005a).

In 2002, the Scientific Committee established a Working Group to review existing IWC sanctuaries and sanctuary proposals as well as to carry out a review of the Indian Ocean Sanctuary (IWC, 2003b). The Committee used as the basis for its work instructions for reviewing sanctuaries and sanctuary proposals agreed by the Commission in 2001 (IWC, 2002). The Committee was unable to reach a consensus view in its review of the Indian Ocean Sanctuary, noting that its review was not helped by the fact that the scientific objectives of the sanctuary were not clearly spelled out. The Commission agreed to retain this Sanctuary and did not set a date for it to be reviewed (IWC, 2003a).

In 2004, the Scientific Committee carried out a major review of the Southern Ocean Sanctuary (IWC, 2004;2005c). As part of that review process, the Committee commissioned a review by a group of outside experts (Zacharias *et al.*, 2006). The Scientific Committee had noted that it had been unable to fully review the Sanctuary because the scientific objectives of the Sanctuary were not clear and were not associated with quantifiable performance measures. It made a number of recommendations to facilitate future reviews (IWC, 2005b). One of these involved the incorporation of Marine Protected Area concepts into IWC sanctuaries – see Section 20 - MPAs.

Within the Commission, no consensus has been reached over the general value of sanctuaries or the value of specific sanctuaries – as one example, some countries see sanctuaries as an essential safeguard should commercial whaling be re-established whilst others see sanctuaries as a way to prevent commercial whaling even if an RMS is established. On a number of occasions, Schedule amendments to abolish the Southern Ocean Sanctuary have been proposed (but not passed), primarily based on the proposers view that it contravenes Article V2 of the Convention (specifically that the sanctuary was not 'based on scientific findings' nor took 'into consideration the interests of the consumers of whale products and the whaling industry') and that it is unnecessary given the moratorium. The issue of sanctuaries has been raised in the context of RMS discussions (see Section 25 – RMS).

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## 28. Science – role of science and functioning of Scientific Committee

At the March 2008 intersessional meeting there was agreement that the provision of sound scientific advice is essential to the functioning of the IWC and that one of the more positive features of the organisation is its strong scientific element. The work of the IWC Scientific Committee is internationally recognised as providing the best available knowledge on conservation and management for cetaceans. It has a good record in achieving consensus on nearly all of its recommendations to the Commission.

Nevertheless, comments were made by some participants at the March 2008 intersessional meeting that the current workload of the Scientific Committee is too high, difficult to prioritise and, mainly because of its timing in conjunction with the Commission, not adequately integrated into the policy work of the Commission. The need to review the composition and function of the Scientific Committee was also suggested (e.g. improving the involvement of scientists from developing countries and the procedures for inviting scientists to the Committee).

In his document<sup>87</sup>, Professor Juma also recognised the critical role that the Scientific Committee plays in the functioning of IWC and stressed that the current difficulties facing the Commission do not result from an inability to provide scientific advice. However, he suggested that there are ways in which its effectiveness could be strengthened by (1) separating meetings of the Scientific Committee from those of the Commission so as to allow more time to consider its report; (2) facilitating participation of scientists from developing countries to better-reflect the membership of the Commission; and (3) improving co-ordination and co-operation with other relevant scientific organisations *in addition* to those for which extensive co-operation exists.

At IWC/60, the Commission agreed<sup>88</sup> to establish an Intersessional Correspondence Group (ICG) on Issues Related to the Scientific Committee with the following Terms of Reference:

The objective of the correspondence group is to develop a discussion document (and if it deems appropriate, recommendations) on the issues listed below, recognising the inter-relationship of a number of aspects of the issues. The discussion document produced will be forwarded to the small working group on the future of the IWC at a time to be determined.

(1) Consideration of the advantages and disadvantages of separating the annual meeting of the Scientific Committee from that of the Commission; this will include *inter alia*:

- (a) logistical and financial aspects;
- (b) scientific aspects;
- (c) communication with the Commission<sup>89</sup>;
- (d) confidentiality aspects;
- (e) consideration of the applicability of other 'models' such as that of the IPCC.

(2) Consideration of ways to increase participation in the Scientific Committee of scientists from developing countries in the work of the Scientific Committee; this will include *inter alia*:

- (a) selection process and preparation for meeting;
- (b) financial aspects;
- (c) relationship with the overall invited participant process (see 4 below).

(3) Consideration of ways in which the Scientific Committee can assist in improving the knowledge and technical capability of scientists from countries where cetacean research is in its infancy so that they can better contribute to the work of the Scientific Committee and to conservation and management issues within their region; this will include *inter alia*:

- (a) possibility of regional training workshops (consider collaboration with other organisations, e.g. FAO, UNEP, IUCN);
- (b) provision of materials (e.g. documents);
- (c) financial aspects.

(4) Review of the process for inviting participants to the Scientific Committee; this will include *inter alia*:

- (a) objectives for inviting participants;
- (b) reasons for non-inclusion of IWC-funded participants on national delegations of developed countries;
- (c) selection process and advice;
- (d) financial aspects.

At its organisational meeting on Friday 27 June in Santiago, the SWG agreed that the Terms of Reference for the ICG should be circulated to all Contracting Governments with a request for comments/suggestions on any or all

<sup>87</sup> IWC/60/12rev: The Future of the International Whaling Commission: Strengthening Ocean Diplomacy

<sup>88</sup> IWC/60/24: Chair's summary of the outcome of discussions on the future of the International Whaling Commission, Annex C: Terms of Reference for the Intersessional Correspondence Group on Issues Related to the Scientific Committee

<sup>89</sup> Note that other initiatives to improve the communication with the Commission and others with respect to clarity/content of the plenary report etc are being undertaken by the Scientific Committee itself and the initiative of France.

of the four areas identified in the Terms of Reference to be received by the Secretariat by 15 August 2008. This was done via Circular Communication IWC.CCG.712 of 16 July 2008. In that Circular Communication, it was noted that the Commission and/or various sub-groups had already given some thought to the four areas in the ToR and it was suggested to governments that they may find it helpful to review the following documents when developing the input requested:

- IWC/59/F&A SS 3: Possible options to consider regarding meeting frequency of the Commission and its subsidiary bodies (*N.B. See also section 19 of this document*);
- IWC/60/18: Possible improvements to procedural issues identified at the March 2008 Intersessional Meeting on the Future of IWC
  - 2.3 The role of science
    - 2.3.1 Separating the meeting of the Scientific Committee from the meeting of the Commission
    - 2.3.2 Facilitating/improving the involvement of scientists from developing countries
    - 2.3.3 Invited Participants (IPs) to the Scientific Committee
    - 2.3.4 Co-ordination and co-operation with other relevant scientific organisations

In addition to any specific comments or suggestions, Contracting Governments who are generally pleased with the present working methods of the Scientific Committee were invited to indicate this. The SWG further agreed that the Chair of the Scientific Committee, the IWC Head of Science and a 'core group' of members from the SWG (Argentina, Australia, Brazil, Italy, Korea, Mexico, Netherlands, New Zealand, Norway, Mexico and the USA) will compile an initial draft of the discussion document that will be circulated to all Contracting Governments and SWG and ICG members as far in advance as possible of the September SWG meeting.

As foreseen when developing the Terms of Reference, the SWG agreed that only those governments responding to the call for input would continue to be included in subsequent correspondence (and would therefore comprise the intersessional correspondence group).

## 29. Secretariat – implications for role of/expertise

It is clear that the impact on the Secretariat of any changes to the operation of the Commission will need to be considered and it would seem appropriate that this would best be done once the nature of any changes become better understood and defined.

There has, however, been limited discussion on this matter already in the context of discussions on the future of IWC. In Professor Juma's document<sup>90</sup>, he noted that some of the activities he suggested and those raised elsewhere aimed at improving the work of the Commission may have implications for the work and expertise within the Secretariat. In particular he suggested that the proposed intersessional work is likely to require an increase in staffing and that issues such as co-operation with other international bodies as well as tracking of international negotiations in other regimes may require greater investment in legal expertise within the Secretariat (e.g. through the engagement of a full time staff member with expertise on international law and procedural matters to complement the scientific expertise already available).

With respect to legal expertise/advice, the Secretariat noted at IWC/60 that this issue has been on the Commission's agenda since the 5th Special Meeting of the Commission in Cambridge in October 2002<sup>91</sup>. The Secretariat reported that although a number of countries have considered this to be an important issue, the Commission has to date considered that it is not in a position at present to advance the issue. During brief discussions on this matter at IWC/60, one Contracting Government indicated that it is not convinced of the need for legal expertise in the Secretariat since many of the issues dealt with by the Commission are not legal in nature. It considered that it may be more important to have someone with media/communication expertise within the Secretariat. Another Contracting Government did believe that it would be useful if the Secretariat had a legal office and this would help to raise standards of debates and decisions taken.

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<sup>90</sup> IWC/60/12rev: The Future of the International Whaling Commission: Strengthening Ocean Diplomacy

<sup>91</sup> See for example *Ann Rep. int. Whaling Comm.* 2003: 145-146; 2004: 51-52; 2005: 54-55.



### 30. Small cetaceans

The 1946 Convention does not define a 'whale', although a list of names in a number of languages of a number of whales was annexed to the Final Act of the Convention. Some governments take the view that the IWC has the legal competence to regulate catches only of these named great whales. Others believe that all cetaceans, including the smaller dolphins and porpoises, also fall within IWC jurisdiction. Such disagreements have been common since the Scientific Committee first began to consider small cetacean species in the mid-1970s, when a standing sub-committee on small cetaceans was established; the question of management was referred to a working group concerned with redrafting the Convention but this work was never completed (IWC, 1977). In 1980, the Commission adopted a resolution on small cetaceans that in effect noted that there were differences of opinion over management competence but that the Scientific Committee should continue to provide advice and that relevant governments should consider that advice (IWC, 1981); there was no agreement that the IWC could include management regulations in the Schedule. Despite this, the question of competence frequently has frequently arisen at Commission meetings. In the mid-1990s, a working group was established to 'consider a mechanism to address small cetaceans in the Commission' (IWC, 1993). The working group did not solve the question of competence but recognised the different views and particularly the sensitivity of issues related to the sovereign rights of coastal states. As a result of this work, the Commission passed a Resolution in 1994 (IWC, 1995) that *inter alia* commended the work of the Scientific Committee, agreed that the Commission and non-member coastal states should be involved in the selection of priority topics and established a voluntary fund to enhance the participation of developing countries in small cetacean work.

Subsequently, the discussions on the competence of the IWC to manage small cetaceans have consistently arisen within the Commission. The Scientific Committee continues to address issues related to small cetaceans but not all member governments participate in that sub-committee and the Commission remains divided over the issue.

#### References

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### 31. Socio-economic implications (of a moratorium on commercial whaling)

In discussions prior to the adoption of the moratorium on commercial whaling (see section 7), it was agreed that questions related to the implementation of such a ban should be considered and that data on the social and economic trends in the whaling industry should be collected.

#### IWC/32, 1980

A Technical Committee Working Group addressed these issues at IWC/32 in 1980<sup>92</sup>. It reviewed the economic and social importance of whaling to member countries and noted a statement by Japan that whales are a traditional food, that whaling is a traditional way of life and culturally important for the Japanese and that some local communities were heavily dependent on whaling for their entire economy and employment. The Working Group found these factors to also be significant to varying degrees in other whaling countries. The Group attempted to evaluate the social and economic effects of a ban on whaling and estimated that there would be a loss of employment for some people directly and perhaps also those indirectly employed in commercial whaling.

The Commission appears not to have discussed this matter in any depth until 1986.

#### IWC/38, 1986

A new Working Group on the Socio-Economic Implications of a Zero Catch Limit was established at IWC/38 in 1986<sup>93</sup> to examine: (1) economic input factors and trends over the previous 5 years (e.g. investment in commercial whaling operations and equipment; costs of fuel, maintenance and replacement; nature and level of any direct or indirect government subsidies; wage structure of those involved in whaling operations); (2) economic output factors and trends over the previous 5 years (e.g. production, consumption, international trade, direct and indirect tax revenues, comparative market values of alternatives to whale products, and levels of financial return from whaling); (3) employment and trends over the previous 5 years, including direct and indirect employment, alternative employment availability and whether employment had been seasonal or part-time; (4) other direct and indirect socio-economic implications where applicable; and (5) the implications of (1) to (4) from both national and local perspectives.

#### IWC/39 in 1987

At IWC/39, discussions relevant to the socio-economic implications of the moratorium took place both in the Working Group established the previous year, and under the chapeau of small-type whaling during discussions relating to aboriginal subsistence whaling.

#### Working Group on the Socio-Economic Implications of a Zero Catch Limit

Only limited information had been submitted to the Working Group<sup>94</sup>. This included a paper from Australia in which it was reported that while the 1978 closure of the whaling station in Western Australia had had initial economic and employment implications, these had dissipated over a short period. It also reported that a whaling museum had been established and a whalewatching industry had evolved elsewhere. The Working Group felt that governments may need more time to collect and evaluate the appropriate information and recommended that the Working Group should reconvene in two years' time (i.e. at IWC/41 in 1989) to prepare a preliminary report in time for full consideration at the 1990 Commission meeting.

#### Small-type whaling<sup>95</sup>

The Aboriginal Subsistence Whaling Sub-committee had received information from Japan (to supplement information provided the previous year) explaining its view that its small-type minke whaling was similar to whaling operations recognised as aboriginal subsistence. Subsequently in the Technical Committee, Japan had reviewed the history of this type of whaling from the medieval net fishery to modern harpoon whaling. It had emphasised the dietary and sociological importance of its small-type coastal whaling, drew similarities to the subsistence whaling in Greenland and Soviet Bering Sea whaling and proposed an amendment to paragraph 13(b) of the Schedule dealing with aboriginal subsistence whaling, i.e. *'The taking by native whalers of minke whales from the Okhotsk Sea-West pacific stock is permitted, but only when the meat and products are to be used exclusively for local consumption....'* It sought a catch limit of 210 whales for the 1988 coastal season.

In view of concerns expressed over the introduction of commercial aspects into the aboriginal subsistence whaling category, it was agreed to establish an *ad hoc* Definitions Working Group to examine the terms and

<sup>92</sup> Rep. int. Whal. Commn 31, 1981: 18.

<sup>93</sup> Rep. int. Whal. Commn 37, 1987: 11, 24.

<sup>94</sup> Rep. int. Whal. Commn 38, 1988: 11

<sup>95</sup> Rep. int. Whal. Commn 38, 1988: 21-22

definitions of whaling for commercial purposes, aboriginal purposes, and other categories and to report to IWC/40 the following year. Japan's request for a catch limit for its small-type whaling was referred to the Aboriginal Subsistence Whaling Sub-committee for consideration after the Definitions Working Group had reported.

#### **IWC/40 in 1988**

##### Working Group on the Socio-Economic Implications of a Zero Catch Limit

The Commission noted that as foreseen, the Working Group on the Socio-Economic Implications of a Zero Catch Limit would meet immediately prior to IWC/41.

##### Definitions Working Group<sup>96</sup>

The *ad hoc* Working Group made three recommendations: (1) that there be no change to the definitions of Aboriginal Subsistence Whaling, Local Aboriginal Consumption and Subsistence Catches as was being applied; (2) that no additions be made at that time to the category of Aboriginal Subsistence Whaling; and (3) that the Commission give consideration to the situation of small-type whaling. These recommendations were endorsed by the Technical Committee, although Japan did indicate its belief that a new category of whaling could be established because differences exist in the kinds of whaling being considered at that time as aboriginal subsistence. It stressed that while its small-type whaling activity shared some features of both commercial and aboriginal subsistence whaling, it considered that the activity is not characterised properly by the description of either. It noted that in the course of a natural progression from aboriginal subsistence whaling to small-type whaling, local communities exist even in developed nations for whom it is considered that they have the right to continue a traditional way of life. Japan believed its small-type whaling communities should be allowed the same rights.

##### Consideration of the situation of various kinds of small-type whaling<sup>97</sup>

The Technical Committee *inter alia* recommended the establishment of a Working Group to consider this issue and to report back the following year.

Japan asked for an interim relief allocation for the balance of the whaling season (1 June – 30 September 1988) of 210 minke whales from the Okhotsk Sea-West Pacific stock to be taken off the coast of Japan and within its 200-mile zone. It further requested that, if the Working Group to consider the situation of various kinds of non-aboriginal small-type whaling did not meet or no decision of the Commission on the matter was made before the next whaling season (1 April 1989), a further interim allocation of 160 whales in the period 1 April – 30 June 1989 should be made. Japan based its request on the fact that: (1) its coastal whaling communities were already experiencing hardship since the cessation of their whaling activities on 1 April 1988; (2) that special provisions had been made to accommodate the needs of certain aboriginal peoples; and (3) that Norway was able to meet the needs of its specialised communities through continued whaling under objection. While some sympathy was expressed for Japan's request, no interim relief allocation was granted by the Commission (Japan did not push for a vote) although it was agreed that Japan's position would be a matter of priority for the Working Group established to consider various kinds of small-type whaling the following year.

#### **IWC/41, 1989**

##### Working Group on the Socio-Economic Implications of a Zero Catch Limit

At IWC/41, the Working Group received reports from Japan, Iceland and Spain<sup>98</sup>. Japan reported that the moratorium affected the spiritual, psychological, physical and cultural well-being of people who depended upon whaling. Socio-economic dislocations were characterised at four levels: the individual, the family, the community and at general (national) levels. Japan noted that while pelagic and large-type coastal whaling had stopped in 1987, its small-type whaling had continued until 1988 when it implemented a zero-catch limit for minke whales. It indicated that because of the nature of small-type whaling, the moratorium was affecting individuals in small villages much more than in the industrial centres. In a preliminary report, Iceland noted that the impact of the moratorium was divided into two categories: (1) the impact associated with the large whale fishery; and (2) the impact on small-type whaling. It noted that the effects of the elimination of the large whale fishery had been primarily economic with the shift in employment being absorbed in the general economy and into fishing, with some of the impact being deferred due to the special permit catches. Like Japan, it noted that the impacts on small-type whaling were greater, resulting in unemployment. Spain reported that the major impacts in its country were associated with retraining older workers, unemployment in depressed areas and the cessation of unemployment benefits for older workers.

<sup>96</sup> *Rep. int. Whal. Commn 39, 1989: 19-20*

<sup>97</sup> *Rep. int. Whal. Commn 39, 1989: 22-24*

<sup>98</sup> *Rep. int. Whal. Commn 40, 1990: 12-13*

The Working Group noted that the moratorium was having socio-economic impacts at several levels. It recognised that some were serious but that governments at times have to take painful actions that affect their citizens. It was also recognised that the impacts of the moratorium were greater in sociological terms in rural areas where local economies and traditions are linked to the natural resources, than in larger and more industrialised economies.

#### Consideration of the situation of various kinds of small-type whaling<sup>99</sup>

The Working Group considered descriptions from Japan, Iceland and Norway of their small-type whaling operations and discussed whether a category of small-type whaling that was neither commercial whaling or aboriginal subsistence whaling could be defined. Extensive debate led to the conclusion that the Working Group could not reach consensus on: (1) descriptions or definitions of small-type whaling; (2) whether there was a need to define this term; or (3) whether commercial whaling should also be defined.

Japan re-iterated its request for an interim relief allocation of minke whales for its coastal whaling communities (i.e. 320 minke whales for one year from 1 July 1989). Again, while sympathy was expressed, several members noted that zero catch limits had been set as a drastic measure until a safer and more efficient basis for management was in place and that therefore the moratorium should not be compromised. Japan did not request a vote, regretted that no solution had been found and appealed for a more constructive approach the following year.

The Commission decided to combine its consideration of the socio-economic impacts of the moratorium with its considerations on small-type whaling and established a Technical Committee Working Group on Socio-Economic Implications and Small-type Whaling<sup>100</sup>.

#### **IWC/42, 1990 onwards**

The Working Group on Socio-Economic Implications and Small-type Whaling continued to meet until IWC/47 in 1995 after which point discussions continued directly in the Technical Committee and then in the Commission. Discussions have continued in a similar vein.

At IWC/42, Japan requested, and for the first time put to the vote, a proposed Schedule amendment for interim relief allocation of 50 minke whales to alleviate the hardship of its four community-based whaling communities (Taiji, Abashiri, Ayukawa and Wada) through the addition of a new sub-paragraph (f) to paragraph 10 of the Schedule (i.e. as an exception to paragraph 10(e) – the moratorium). Between IWC/43 in 1991 and IWC/54 in 2002, Japan continued to request the same interim relief allocation of 50 minke whales but without success. At IWC/55 in 2003, Japan increased its request to 150 minke whales and at IWC/56 in 2004 added a request for 150 Bryde's whales per year for 5 years from the Western Stock of the North Pacific. It continued to put forward similar requests up to IWC/58 in 2006 but did not always put them to a vote. At IWC/59 in 2007, Japan restricted its request to minke whales and at IWC/60, did not make a request given the ongoing discussions on the future of the organisation and in a spirit of co-operation. In making these requests, Japan has stressed that it was not asking for the commercial whaling moratorium to be lifted but rather that an exemption to this be granted.

Although the Commission has recognised the economic, social and cultural hardships on the communities resulting from the moratorium and has agreed, through six Resolutions adopted between 1993 and 2004, to work expeditiously to alleviate their distress, it has not yet granted any of Japan's requests. Reasons given by those voting against Japan's requests include: (1) that such an action would undermine the commercial whaling moratorium; (2) that the Revised Management Scheme (see section 25) should be completed first; (3) that the need, in terms of tonnes of meat, is already fulfilled through bycaught animals and from whales taken under scientific permit; (4) concern over the status of the stock of minke whales to be targeted and whether takes on this stock could be sustainable; (5) doubts as to whether resumption of coastal whaling would actually provide economic relief, given the reported stock piles; (6) that requests (until the 2007 Annual Meeting) had bypassed the Scientific Committee and used a number of incorrect assumptions.

It is clear that for Japan, small-type coastal whaling is one of the most important issues dealt with by the Commission. It has provided the IWC with over 30 academic papers documenting the social, cultural, dietary, religious and economic importance of whale catching, processing and distribution to its small-type coastal whaling communities and has often made the case that its small-type whaling has many similarities to whaling for which quotas are provided under the IWC's aboriginal subsistence whaling scheme. Continuing rejection of Japan's requests for a quota for its small-type whaling communities have caused Japan to refer to this as a

<sup>99</sup> *Rep. int. Whal. Commn 40, 1990: 26-28*

<sup>100</sup> *Rep. int. Whal. Commn 40, 1990: 28, 37*

"double standard"<sup>101</sup> and a "history of broken promises"<sup>102</sup>. Together with other issues, the rejection of Japan's quota requests has created political pressure on its government to consider withdrawal from the IWC<sup>103</sup>.

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<sup>101</sup> see for example *Ann. Rep. int. Whaling Comm. 2006*: 30

<sup>102</sup> see for example *Ann. Rep. int. Whaling Comm. 2007*: 33

<sup>103</sup> see for example *Ann. Rep. int. Whaling Comm. 2007*: 34 and 37

## 32. Trade restrictions

Restricting trade in the meat and products of whales taken in commercial whaling to local consumption only (i.e. no international trade to be allowed) was first put forward by the Irish Commission, Michael Canny, at IWC/49 in Monaco in 1997 as part of the so-called ‘Irish Proposal’<sup>104</sup>. The Irish Proposal was an attempt to help break the deadlock that had arisen within the Commission following the adoption of the commercial whaling moratorium (see section 7).

Ireland’s reasons for proposing such trade restrictions were two-fold: (1) that past trade pressures were partly responsible for overexploitation of whale resources; and (2) as part of a ‘confidence-building’ exercise, i.e. building public confidence in IWC’s ability to conserve and manage whale stocks. Although initially proposed as a permanent measure, Ireland later indicated that it could be time-limited.

Although there has been some support for this proposal, strong opposition has also been voiced. Those opposing the proposal believe that such a ban is (a) discriminatory against countries with small populations, (b) against principles of free trade and (c) outside the competence of IWC. They believe that public confidence should be built via other mechanisms.

During discussions of the Chair’s Small Group established after IWC/55 in 2003 to work on a way forward for the Revised Management Scheme, the potential problems with a blanket ban on all international trade were recognised. However, it was noted that under some circumstances, certain trade measures might be appropriate, for example to combat IUU fishing, as is done by some fisheries management bodies such as CCAMLR and ICCAT (see section 25).

### **IWC and CITES and the current situation regarding trade in whale products**

Article XV 2.(b) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora requires *inter alia* that in relation to amendments to Appendices I and II concerning marine species, the CITES Secretariat consult inter-governmental bodies having a function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring co-ordination with any conservation measures enforced by such bodies. The CITES Secretariat therefore consults with IWC regarding listings of cetaceans species of Appendices I and II.

Currently, international trade in whale products for “primarily commercial purposes” from species managed by IWC (except for the West Greenland stock of minke whales) is prohibited because all of these species are listed on CITES Appendix I<sup>105</sup>. The West Greenland stock of minke whales is listed on Appendix II. These listings were made in response to initial bans by IWC on commercial whaling for certain species and stocks of whales and later in response to the establishment of the moratorium on commercial whaling of all large whales.

For proposals to down-list whale species managed by IWC, given that the commercial whaling moratorium remains in force, the CITES Secretariat has to date recommended to its Contracting Parties that co-ordination with IWC’s conservation measures is best ensured by maintaining the current listings.

CITES has adopted a series of Resolutions regarding its relationship with IWC, which have been consolidated in Resolution Conf.11.4 (Rev. CoP12) on the ‘Conservation of cetaceans, trade in cetacean specimens and the relationship with the International Whaling Commission’. IWC has also adopted a series of Resolutions related to trade in whale products and co-operation with CITES including a ‘Resolution to CITES’ from the Special Meeting in 1978, 1994-7, 1995-6, 196-3, 1997-2, 1998-8, 1996-6, and most recently Resolution 2007-4 which *inter alia* requests Contracting Governments to respect the relationship between the IWC and CITES Conventions and not to seek the transfer of cetacean species from CITES Appendix I while the commercial whaling moratorium remains in place. Some IWC Contracting Governments believe that some whale stocks do not meet the listing criteria for CITES Appendix I and that these species have been retained on Appendix I because the IWC has given assurances to CITES on several occasions that the RMS was nearly complete and that any reassessment of listing should wait until this was done. As evidenced by the adoption of Resolution 2007-4, other Contracting Governments continue to support the current listing, noting *inter alia* the pressures on whale stocks have increased rather than decreased and that given the effect that these pressures, such as climate

<sup>104</sup> The ‘Irish Proposal’ included four elements: (1) that commercial whaling quotas be restricted to existing coastal whaling and all other waters should be declared a global sanctuary; (2) that products from commercial whaling be for local consumption only and international trade should be outlawed; (3) lethal scientific permit whaling be phased out; and (4) regulation of the impacts of whalewatching activities. *Rep. Int. Whal. Commn* 48, 1998.

<sup>105</sup> Iceland, Japan and Norway have reservations to the Appendix I listing.

change, may have on cetaceans are poorly understood, merit the continued application of the precautionary principle to the management of whale stocks. They therefore support continuation of the moratorium and believe that any relaxation in trade restrictions would compromise this measure.

The differing views of Contracting Governments regarding the listing of whale stocks in CITES is demonstrated in the Commission's discussions at IWC/59 prior to the adoption of Resolution 2007-4<sup>106</sup>.

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<sup>106</sup> *Ann. Rep. int. Whaling Comm. 2007: 47-49*

### 33. Whalewatching/non-lethal use

The Commission's formal interest in the 'non-consumptive use' of cetaceans began in 1982 when it agreed to co-sponsor (with a nominal US\$1000 and organisational support) a workshop on the topic, although the Chairman and Secretary of the Commission who were present at the workshop did not participate in the formulations of recommendations. The report of that workshop (Whales, 1983) was discussed at the 1983 meeting of the Commission and the recommendations referred to a working group that was also to look at issues of competency (IWC, 1984). Japan and the USSR commented that they believed the topic was not relevant to the primary function of the IWC and beyond its competence. The working group made no recommendations concerning non-consumptive uses of whales and the Commission merely 'noted' the report.

The issue of whalewatching was raised in 1993 and a Commission working group was established whose report made a number of recommendations for future work including asking the Scientific Committee to provide advice on a number of matters including the possible effects of whalewatching on cetaceans (IWC, 1995). Subsequently, the Scientific Committee has established a sub-committee on whalewatching that focuses on scientific aspects of the issue including possible adverse effects on populations, development and review of whalewatching guidelines, etc. In the Commission, discussions have focussed more on economic aspects of whalewatching as well as reviewing the Scientific Committee's work. Within the Commission, the primary issues of contention relate to the questions of competency, for example whether considering issues related to whalewatching is irrelevant to the primary function of the Commission or whether the needs of those countries engaged in non-consumptive use of cetaceans are adequately been acknowledged and taken into account e.g. see the discussions on whalewatching at the 2007 Annual Meeting.

#### References

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- Whales, A. 1983. Report of the global conference on the non-consumptive utilisation of cetacean resources. *Whales Alive* IWC/35/19: 1-49. Meeting held at New England Aquarium, Boston, Massachusetts, USA, 7-11 June 1983.

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<sup>i</sup> Where novel or non-standard methods are proposed, sufficient information must be given to allow these to be properly examined.