

Report of the Revised Management Scheme Expert Drafting Group

This report presents the outcome of the meetings of the Expert Drafting Group held in Cambridge, UK from 29 October to 1 November 2001, and in Auckland, New Zealand from 26 February to 1 March 2002

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1. INTRODUCTORY ITEMS

1.1 Terms of Reference

At its 53rd Annual Meeting, the Commission agreed to establish a small Expert Drafting Group (EDG) to progress the revision of Schedule Chapters V (Supervision and Control) and VI (Information Required). The Group's Terms of Reference are given below.

- (1) The EDG shall prepare a consolidated draft for the replacement of Chapters V and VI of the current Schedule. The consolidated draft shall be based on the current draft for Chapter V in document IWC/53/RMS2 and the draft for Chapter VI (Information Required) in Appendix 4 of IWC/53/9, and shall take into consideration further comments and explanations received at the present meeting of the RMS Working Group, including the UK's proposal for the collection of welfare data. Relevant Scientific Committee recommendations from recent years should also be taken into account.
- (2) The consolidated draft shall contain as few square brackets as possible. In the case of disagreements on minor items, the EDG shall develop compromise text. In the case of disagreement as to whether a major item should be included, the EDG should nevertheless prepare detailed text for the item, but include the entire item in square brackets. The reasons for the inability to agree should be clearly explained in annotations to the consolidated draft.
- (3) The EDG has the authority to rearrange, revise and renumber paragraphs in the current draft texts for Chapters V and VI as appropriate, but should not attempt to merge them with other parts of the Schedule.

The consolidated draft shall be completed and circulated to Commissioners and Contracting Governments not later than March 15, 2002, for consideration at the 54th Annual Meeting.

1.2 Composition and meetings

The Commission agreed that the EDG should comprise representatives from Antigua and Barbuda, Denmark, Japan, New Zealand, Norway, Sweden, UK, USA and the Secretariat, and be chaired by Henrik Fischer (Denmark).

The EDG met twice, the first time in Cambridge from 29 October to 1 November 2001; the second time in Auckland, New Zealand from 26 February to 1 March 2002.

The participants at both meetings are given in Appendix 1.

1.3 Agenda, rapporteurs, documents

The agenda for both meetings are given in Appendix 2. Nicky Grandy and Greg Donovan of the Secretariat were appointed as rapporteurs. A list of documents presented to the EDG is given as Appendix 3.

2. REVISIONS TO CHAPTER V, SUPERVISION AND CONTROL

2.1 Statement of principle

After the RMS intersessional meeting in Monaco in February 2001, New Zealand and the UK proposed text to be included at the beginning of Chapter V as a 'statement of principle' to describe the scope, mandate and purpose of any RMS. Both proposals were included in IWC/53/RMS 2 rev and discussed at the RMS Working Group at the 53rd Annual Meeting last year. While some countries supported the idea of including a statement of this kind, others saw no need, and the divergence of views expressed was noted.

The EDG returned to these proposals and although there was no consensus on whether it is necessary to include an introductory paragraph in Chapter V, the following draft text (based on both the New Zealand and UK proposals) was **agreed**.

1. (a). The purpose of this [section][chapter] is to set out the basic requirements for a robust supervision and control scheme to ensure compliance with the provisions of the Convention.
- [(b). No provision of this Chapter V is intended to, nor shall it be deemed or interpreted to be, a restriction on any legitimate trade in any whale product.]

It was suggested that the inclusion of an introductory paragraph would make more sense if the chapter dealing with supervision and control is the last chapter in the Schedule (i.e. reverse the order of current Chapters V and VI).

2.2 Mechanism for developing the detail necessary for the practical implementation of the scheme

The EDG recognised that there needs to be a way to address the provision for certain practical/technical details in the RMS that does not overburden the Schedule with detail. There was agreement to use the following approach:

- (1) The Commission keeps all of the practical details in a single document, not the Schedule itself.
- (2) The Schedule paragraph refers to a **dated** version of these. If the Commission adopts any modifications then it is only the date in the Schedule that needs to be modified. If the changes are non-controversial then it should take only a few minutes or less to agree to change the date in the Schedule. If the changes are

- (3) The words in the Schedule could be something along the lines of:
'The practical details required to implement the supervision and control scheme are given in the version of the document 'Details of the Supervision and Control Scheme of the RMS' dated 17 March 200X.'

2.3 National inspection and international observer schemes

A brief historical background to the Commission's inspection and observations scheme, including the relevant articles of the Convention and present Schedule paragraphs is given in Appendix 4.

Throughout its discussions of this item, the EDG recognised that in accordance with the Convention (Article IX. 1), it is the responsibility of Contracting Governments to take appropriate measures to ensure the application of the provisions of the Convention and the punishment of any infractions against the said provisions.

The EDG **agreed** that the primary objectives of any inspection and observation 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, the EDG **agreed** that 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).

Some members reiterated their view that it was also important to take into account the interests of the whaling industry and the consumers of whale products.

The EDG discussed how best to structure its consideration of the Inspection and Observation scheme and agreed to the following progression outlined in IWC/O1/EDG3:

- (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.

Choice of the most appropriate overall method (i.e. point 4) would require an overall review to determine the most efficient way to ensure the objectives of the Scheme were met and to avoid unnecessary 'over-monitoring' of any particular regulation.

The EDG reviewed IWC/O1/EDG3 and IWC/F2/EDG4 that provided an example of a possible scheme based on items (1) – (4) in the above approach.

The EDG **agreed** that having an international observer onboard a whaling vessel and at the point of landing will clearly meet the objectives of its Inspection and Observation Scheme. However, it recognised that this is not always practical for certain categories of vessels (as is the case for other fishery management bodies). It therefore examined alternative methods for such vessels that will satisfactorily meet the objectives of its inspection and observation scheme given above. In its discussions, it concentrated on those rules/information requirements for which there was consensus.

2.3.1 Coastal whaling

The EDG **agreed** that three categories of coastal whaling vessels should be considered.

- (a) Vessels which operate day trips (<24hours) only, carry out no substantial flensing onboard and can accommodate neither a national inspector nor an international observer (i.e. the legal limit of persons onboard does not exceed the number of crew).

For these vessels, the EDG **agreed** that a combination of VMS data transmitted in real-time to an observer at the point of landing, is acceptable. Japan noted that it would need to investigate legal issues surrounding

the transmission of VMS data in realtime to the international observer. It would present this information before the meetings in Shimonoseki.

- (b) Vessels which are <24m, operate only within waters under the jurisdiction of the Flag State and that can only accommodate one additional person in addition to the crew.

For these vessels, the EDG **agreed** that it would be possible in principle for an individual to act as both an international observer and a national inspector. Clearly such a person would need to meet the selection requirements for both positions¹. The EDG developed an agreed mechanism for the selection process for observers (see Item 2.3.3 below).

- (c) All other vessels.

For these vessels, which are large enough to accommodate both a national inspector and an international observer, the EDG **agreed** that they should have an international observer on board².

An outline of how such a scheme would work, identifying the major regulations and information requirements, is given in Table 1.

Table 1
Outline of Observer allocation for various categories of coastal whaling (see text)

| Vessel category: | (a) | (b) | (c) |
|---|--|---|---|
| Personnel | | | |
| On vessel | VMS | At least combined international observer/ national inspector | At least international observer |
| At port of landing | At least international observer | At least international observer | At least international observer |
| Rule/information | | | |
| A. Number (incl. lost), species, sex., length if length limits (but note length is needed by the Scientific Committee) | Reported by whaling personnel at time of capture (i.e. in real time). Collected at point of landing. Observer has real-time VMS info to track vessel at sea to (1) ensure that vessel only visits authorised point of landing and (2) corroborate log book data. | Collected by international observer/national inspector at sea or at point of landing. | Collected by international observer/national inspector at sea or at point of landing. |
| B. Position to nearest minute of lat. and long. | Reported by whaling personnel by radio and corroborated by observer from real time VMS info. | Collected by international observer/national inspector at sea (using independent GPS) | Collected by international observer at sea (using independent GPS). |
| C. Catch Limits | (1) Preference: each vessel allocated individual catch limit – whatever vessel type (this applies to both situations where only one nation has operations in a <i>Small Area</i> , or more than one country – in the latter case inter-governmental agreement would need to be reached) This must be a decision of a Contracting Government (s) but if taken, it may be possible (either by agreement or by words in the Schedule) for CG(s) to agree to forward the details of the individual vessel catch limits (by <i>Small Area</i>) to the Commission. Under such circumstances the monitoring of the catch is carried out following the manner specified under A above. | | |
| | (2) If not (1) above, then catches must be reported at regular intervals to a central body such as the Secretariat. Following rules established by the Commission, the Secretariat would then determine when the season should close and inform CGs. (see for example the USA suggestion that reporting might be weekly until 80% of the total limit has been reached and then daily thereafter). | | |
| | Reporting would be by: | | |
| | International observer at point of landing. | Combined international observer/national inspector | International observer |
| D. Additional information and samples required by Scientific Committee | Collection the responsibility of the CG. Observed by international observer/national inspector. | Collection the responsibility of the CG. Observed by international observer/national inspector. | Collection the responsibility of the CG. Observed by international observer/national inspector. |

¹ Norway noted its view that due account should be given to the rights, jurisdiction and duties of a coastal state in its EEZ in terms of the 1982 United Nations Law of the Sea Convention.

² Norway noted its view that, (1) the owners of such vessels could not refuse to receive an observer appointed by the Commission, but (2) the Commission should not be obliged to necessarily place observers on all such vessels.

2.3.2 Pelagic whaling

After considerable discussion, the EDG could not reach complete consensus as to the most appropriate scheme for pelagic whaling.

Whilst all members of the EDG **agreed** that there should be two international observers onboard each factory ship, two main views emerged with respect to the presence of observers on each catcher vessel:

- (1) there should be an international observer on each catcher vessel – members supporting this viewpoint noted that such vessels were effectively category (c) vessels described above for coastal whaling;
- (2) it is not necessary to have international observers on each catcher vessel – members supporting this view believed that this would only slightly reduce the quality of monitoring but would be considerably more cost effective.

2.3.3 Selection of observers

The EDG **agreed** that the procedure for selection of observers should be identical irrespective of whether the observer might also be a National Inspector. Such a process is designed to engender as much confidence as possible in persons fulfilling the combined role. Observers chosen for the combined role with a national inspector must fulfil the qualifications for both positions. The EDG noted that the process below alters the nature of the ‘multiple objection’ problem referred to in earlier RMS discussions. It considered this issue at some length, including the question as to whether it was necessary to include a provision to try and accommodate the hypothetical situation whereby a Government or Governments might object to all of the observers in any list. The EDG **agreed** that it was possible to proceed on the basis that Contracting Governments would act in good faith. It therefore **recommends** the procedure given below.

Observers shall be selected in accordance with the following procedure.

- (1) The Secretariat will put out a call for candidates to apply (including via Contracting Governments, the Scientific Committee and the IWC website). It will develop a standard application form that will include information on the scientific and technical criteria that will be used in the selection process. It will also request information on *inter alia*: language(s) spoken; available dates; previous experience (including time at sea); any known problems with admission to certain countries; references.
- (2) The Secretariat will draw up list of suitable candidates.
- (3) The list will be circulated to all Contracting Governments with a summary of information on each candidate (individual applications may be given to any Commissioner on request).
- (4) Any Contracting Government may veto any candidate.
- (5) Following predetermined guidelines, and after consultation with relevant Contracting Governments over practical arrangements, the Secretariat will decide the placement of observers and will inform the appropriate Contracting Governments at least 30 days prior to the start of whaling operations. In particular, (a) an individual shall not be appointed to observe in the territory or on a vessel flying the flag of the State of which he/she is a national or permanent resident; except if this results in a serious problem with (b) the fact that an observer must be able to communicate effectively with the senior personnel of that component of the whaling operation they have been selected to observe. [*see old paras 14c and 12b in IWC/53/RMS 2 rev*]

The EDG also noted that there must be a review process established such that the Secretariat can remove someone from the approved List of Observers if they are found to have failed to perform their duties adequately. The precise details of any review process need to be determined.

The EDG recognised that training of observers is particularly important and agreed that all remaining candidate observers after stage (4) should receive suitable training.

2.3.4 Wording for the Schedule

In the light of the above discussions and agreement, the EDG **agreed** to the wording given in Appendix 5. It adopted the approach that the details of the International Observer Scheme (IOS) should be included as an Annex to the Schedule. This has resulted in a considerable editorial modification to the draft Schedule Chapter V considered in London (i.e. in IWC/53/RMS 2 rev).

2.4 Oversight of Infractions

2.4.1 Name and duties of oversight committee

A proposal to establish a Review Committee to review and report on the compliance of all whaling operations (as a replacement of the current Infractions Sub-committee) that would include a certain number of accredited Non-Governmental Observers (NGOs) with non-voting rights was first introduced to the RMS Working Group in Adelaide (June 2000). The proposal was addressed again in London last year, but while some countries supported the principle behind the proposal, others believed that the current Infractions Sub-committee was sufficient to deal with issues of compliance and noted that all observers were already allowed to attend its meetings.

The EDG returned to this issue, and after some discussion **agreed** to change the name of the oversight group to the 'Compliance Review Committee'. There was broad agreement that the duties of the Committee would be to:

- (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.

Japan reserved its right to submit comments at a later date.

New Zealand drew attention to its earlier proposal (see IWC/53/RMS 2 rev) that the text should include reference to the fact that the Committee should work in accordance with the principles of fairness, transparency and due process. It also noted that if there was ultimately agreement to include a requirement for DNA registers in the RMS, then the need to review compliance with any such systems would need to be included in the Committee's duties.

2.4.2 Composition of the Compliance Review Committee

Regarding the composition of the Compliance Review Committee, some countries preferred to reduce the number of Contracting Governments participating (rather than membership being open to all member governments). They believed that a smaller committee, that was representative of the various interests within the Commission, would be able to function more efficiently than the Infractions Sub-committee had done in the past. Others considered that the Infractions Sub-committee functions efficiently and believed that the Compliance Review Committee should be open to all Contracting Governments.

Despite their preference for a smaller committee, those who favoured this option indicated that in order to achieve agreement on the overall concept of a Compliance Review Committee, they were prepared to compromise to reach an overall consensus. The EDG therefore **agreed** that the Compliance Review Committee should be open to all Contracting Governments, noting that this could be reviewed in the light of experience.

Regarding the participation of NGOs, some members supported the proposal to include a small number on the Committee representing the broad range of views and with speaking, but not voting rights. They drew attention to other bodies, such as the International Review Panel of AIDCP³ where they believed this has already been done to good effect. Others expressed concern that reducing the number of NGOs able to attend the Committee would reduce transparency. They preferred to continue to allow all NGOs to observe. A suggestion was made that in this situation, a small number of NGOs could be allowed speaking rights.

With respect to speaking rights, concern was expressed by some members that NGOs may abuse such a privilege. It was generally agreed that such speaking rights should be limited to raising questions and making comments relevant to the Compliance Review Committee's agenda.

³ Agreement on the International Dolphin Conservation Program

In this context, a proposal was made that infractions data be collected earlier and the Secretariat's summary circulated to all Contracting Governments and observers well in advance of the Annual Meeting. This would provide time for the information to be reviewed and for NGOs to submit written questions via the Chair of the Compliance Review Committee. The Chair would filter the questions, amalgamate them as necessary and pass on relevant questions to Contracting Governments as appropriate. These questions would then be answered at the meeting. This proposal was noted but not discussed further and the issue of the participation of NGOs with speaking rights was not resolved.

The EDG therefore **agreed** to keep the status quo (i.e. open to all accredited NGOs as observers) and to include draft Schedule text in square brackets referring to the participation of 'x' NGOs with speaking rights (see Annex E).

2.4.3 Serious infractions

A proposal that a list of 'serious' infractions could be identified and a mechanism developed for the advanced notification of the occurrence and the beginning of an investigation by the concerned Contracting Government of such infractions was discussed. Most of the group saw no need for such a procedure primarily since agreed draft Chapter V text (paragraph 10 (a) in IWC/53/RMS 2 rev) requires international observers to immediately inform a number of persons including national inspectors, the competent national authority and the Secretariat when they suspect an infraction has occurred. The EDG therefore **agreed** to note the points of view but not to consider this issue further at this stage.

2.4.4 Wording for the Schedule

The draft Schedule text referring to the Compliance Review Committee is shown in Appendix 5.

2.5 Catch verification

2.5.1 DNA registers and genetic monitoring

For several meetings there has been disagreement as to whether DNA registers and genetic monitoring were a legitimate topic for discussion in the context of the RMS. After some preliminary discussion in Cambridge and an intervention by the USA, although fundamental positions were not altered, it was agreed that the USA (in co-operation with the Secretariat) would attempt to draft a document that might allow some progress to be made. The resultant document (IWC/F02/EDG 5) was presented in Auckland. It attempted to develop a process that tried to begin to explore the balance between national control and international oversight by suggesting some possible elements to a system based on national registers with IWC oversight and suggesting the formation of a group of technical experts to develop possible practical guidelines for the use by the IWC in the RMS.

However, this approach was not successful in assisting those members whose view was that DNA registers were outside the scope of the RMS and the EDG was unable to offer any consensus view on the issue of genetic monitoring. The existing proposals included in square brackets are thus unaltered.

At the conclusion of the discussion, the UK expressed its grave disappointment that those countries in favour of whaling had flatly rejected the compromise proposal, even as a basis for discussion. It further noted that its agreement to any aspects of the supervision and control scheme was dependent upon satisfactory resolution of the overall package, which in its view must include a catch documentation scheme, the introduction and use of DNA registers and the collection of animal welfare data. New Zealand concurred with this view.

In a similar manner, Norway noted that it had made a number of important concessions with respect to its original position on the overall inspection and observation issue, as well as on other issues, seeing this as part of an overall package of measures. If such a package fails to materialise, Norway may also not be able to support the compromise position it had adopted elsewhere in discussions.

2.5.2 Catch documentation

At the RMS Working Group meeting in Monaco, New Zealand presented a proposal to incorporate catch certification data, in association with DNA registers, into the RMS, as has been done in a number of fishery agreements. It noted that this would be in accord with best international practice. While this approach was supported by some countries, others saw no need for such provisions which they considered excessive and beyond the scope of the Convention. The issue was not discussed at the June 2001 meeting of the RMS Working Group.

During EDG discussions, the need for a catch documentation scheme in addition to other aspects already incorporated into the supervision and control scheme was addressed.

Some members considered such a scheme to be an important part of any future compliance regime that would be consistent with international best practice. It would be of value in helping identify and trace whale products on the market (the extent of tracking in the market would need to be decided). These members stressed that catch documentation schemes do not attempt to control trade.

Other members considered that a catch documentation scheme would be unnecessary since, *inter alia*, it would duplicate the work done by national inspectors and international observers – particularly in the situation where observer schemes provide 100% coverage – and would therefore simply add another level of compliance. They also noted that such schemes have been established primarily for the purpose of controlling IUU⁴ fishing, which although a problem in the past for IWC, they did not believe to be a current problem. In addition, given that the possible market for whale products would be small, at least in the short-term, the establishment of a catch documentation scheme would be premature and expensive. Finally, they expressed the view that no satisfactory explanation had been provided that there are any benefits in the simultaneous operation of a catch documentation scheme and a DNA system.

Those supporting the establishment of a catch documentation scheme considered that it would not necessarily duplicate information obtained by observers and inspectors since it would include information downstream from whaling operations. Moreover, they considered that the functions of inspection and observation and catch documentation are fundamentally different since the latter seeks to be able to distinguish products once they are on the market. It was also noted that: (1) such schemes should not be contingent on the percentage availability of observers, and that they exist in other fishery regimes having 100% observer coverage; (2) the introduction of a scheme would not be premature and should be implemented at the same time as commercial whaling; (3) they could provide information useful for scientific purposes (e.g. better catch data); and (4) they would not necessarily be costly. They also did not share the view expressed that IUU fishing is no longer a problem for IWC. Finally they noted their view that DNA analysis is needed to corroborate and verify any catch documentation scheme including the identification of illegal products.

A proposal to return to the possible future requirement for a catch documentation scheme once experience had been gained from an operational International Observer Scheme was not accepted by those proposing the establishment of such a scheme.

Given the above discussion, the EDG **agreed** to retain the proposed text for paragraph 18 in square brackets but to incorporate changes to sub-paragraph (a) proposed by the UK (see Appendix 5).

2.6 Costs of the supervision and control scheme

The issue of the cost of any supervision and control scheme that might be agreed was discussed briefly. Two issues were addressed: (1) the magnitude of the cost; and (2) how it might be shared among Contracting Governments. For the former, the EDG **agreed** that the Secretariat should prepare cost estimates based on likely future commercial whaling activities for review by the RMS Working Group in Shimonoseki – some countries felt that it is necessary to have an appreciation of the potential costs before agreeing to any scheme.

Regarding how costs might be shared, New Zealand brought back for consideration by the Group, a slightly revised version of a ‘compromise’ proposal first introduced to the RMS Working Group last year. The proposed draft Schedule text was as follows:

‘Observers salaries and expenses shall be paid by the Commission. These and other costs and expenditure resulting from this supervision and control scheme shall be recovered in the following manner –

- (a) core administrative expenditure (including, but not limited to, core Secretariat salaries and expenses) associated with this supervision and control scheme shall be paid by the Commission;
- (b) operating expenditure for this supervision and control scheme (including, but not limited to, recruitment costs, observers’ salaries and expenses, other travel and accommodation expenses, third party contract costs and an appropriate annual share of capital expenditure as set out in subparagraph (c) of this paragraph) shall be recovered exclusively from the Contracting Governments under whose jurisdiction whaling operations are carried out; and
- (c) capital expenditure (including but not limited to computer equipment and software costs and vessel monitoring systems) shall be amortised in the manner required by the current UK GAAP and recovered over time, on an annual basis, as part of operating expenditure, as set out in subparagraph (b) of this paragraph.’

Some members welcomed this proposal. Others however did not agree that it should be the whaling countries who should bear the bulk of the costs. They expressed the view that it is not reasonable for Contracting Governments to demand a comprehensive and costly scheme without being willing to pay their fair share of the expense. Yet others noted that under the existing system, whaling nations already pay about 50% of the costs. They believed that it was not possible to sensibly discuss this issue in isolation from the ongoing discussions regarding the general cost sharing mechanism within the Commission.

⁴ Illegal, unregulated and unreported

Given the lack of consensus on this issue, it was agreed to include the New Zealand proposal as alternative text in the revised draft given in Appendix 5.

3. REVISIONS TO CHAPTER VI, INFORMATION REQUIRED

3.1 Scientific information

The EDG **agreed** to the following revised text.

‘B. The following samples and/or information shall be provided:

- (a) The length of all animals caught shall be obtained, measured in a straight line parallel to the whale from the tip of the upper jaw to the notch of the flukes. These data shall be reported to the Secretariat at the end of each season and included in the IWC database.
- (b) [Where possible, at least one earplug (or bulla) shall be collected from each whale caught. The resultant age estimations and the identity of the reader shall be reported to the Secretariat sufficiently in advance (normally one year) of the next Implementation Review and included in the IWC database.]
(**Secretariat:** a recommendation on this is expected at the next meeting of the Scientific Committee.)
- (c) Where possible, both ovaries shall be collected from each female caught. Corpora counts shall be reported to the Secretariat within one year of the close of the season and included in the IWC database.
- (d) If sufficiently trained personnel are present, the presence, length and sex of foetuses shall be recorded. If it is not possible for such personnel to be present, these data should still be recorded where possible, and the lack of trained personnel noted. These data shall be forwarded to the Secretariat at the end of the season and included in the IWC database.
- (e) Lactation shall be recorded and reported to the Secretariat at the close of the season and included in the IWC database.
- (f) At least 5cm² of skin shall be collected from each whale caught and, where possible, a sample of tissue from the foetus should be collected. Long term archiving of all samples with appropriate identifying information is the responsibility of the harvesting nation. A list of archived samples shall be forwarded to the Secretariat at the end of each season.

Further details are provided in the most recent version of the Scientific Committee’s ‘*Guidelines for Data Collection and Analysis under the Revised Management Scheme (RMS) Other than those Required as Direct Input for the Catch Limit Algorithm (CLA)*.’

Japan indicated that with the above changes, it could remove its reservation on the version of paragraph B in IWC/53/RMS 2 rev. New Zealand’s comment that it needed more time to consider the legal aspects of the final paragraph was noted. The revised draft of Chapter VI now incorporates this text (see Appendix 6).

3.2 Collection of animal welfare data

There had been insufficient time at the RMS Working Group meeting at IWC 53 to discuss the UK’s proposal to include data on whale killing methods and associated welfare issues. The EDG returned to this issue as required by its terms of reference (see Item 1).

During discussions at the first meeting of the EDG, there was no consensus that the UK proposal should be inserted into the Schedule. However, in addition to the original proposal, two alternative proposals were made for further consideration at the second meeting (IWC/F02/EDG 6), i.e.:

- (a) Include the proposed UK wording in the Schedule but with an associated expiry date (e.g. 2 years). After completion of this trial period, the Commission may wish to renew the reporting requirements.
- (b) Consider, as a minimum, including those items recommended by Resolution 1999-1 arising from the workshop on whale killing methods.

In Auckland, the UK reported that they had considered both alternative proposals but were not prepared to accept either considering it imperative to keep animal suffering to a minimum and that to ensure this it is important to collect the data proposed.

The EDG **agreed** that the UK proposal should be included in the revised draft Schedule text of Chapter VI in square brackets (see Appendix 6).

4. CLOSING REMARKS

The EDG recognised that whilst it had made good progress in some areas, such as the International Observer Scheme, fundamental differences remain in others, such as the question of catch verification. It **agreed** that the process of working in a small focussed group had proved a valuable and productive exercise.

It also **agreed** to release a short Statement upon conclusion of the meeting and this is given as Appendix 7.

The EDG expressed its thanks to New Zealand for its hospitality in hosting the second meeting of the group in Auckland.

Finally, the EDG thanked the Chair for his wise guidance during the meetings and intersessionally. It also commended the Secretariat for producing documentation for the meetings, its intersessional work and its general contribution to the work of the group, not the least in acting as rapporteurs.

Appendix 1

List of Participants

Chair

Mr. Henrik Fischer, Denmark

Antigua and Barbuda

Daven Joseph (S)

Hyrarn Forde

Denmark

Einar Lemche (S)

Amalie Jessen

Kate Sanderson

Japan

Joji Morishita (S)

Dan Goodman

Yasuo Iino

New Zealand

Jim McLay (S)

Mike Donoghue

Al Gillespie*

Gina Lento*

Norway

Odd Gunnar Skagestad (S)

Halvard P. Johansen

Hild Ynnesdal

Sweden

Stellan Hamrin** (S)

Bo Fernholm** (S)

Thomas Lyrholm

United Kingdom

Richard Cowan (S)

Rob Bowman

Laurie Kell

USA

Michael F. Tillman (S)

Jean-Pierre Ple

Roger B. Eckert

Secretariat

Nicky Grandy

Greg Donovan

(S) spokesperson

* Al Gillespie and Gina Lento shared an advisor role at the first meeting of the group in Cambridge. Only Al Gillespie was present at the meeting in Auckland.

** Stellan Hamrin was spokesperson for the first meeting, and Bo Fernholm for the second meeting. Stellan Hamrin did not attend the second meeting.

Appendix 2

Agenda

APPENDIX 2A, CAMBRIDGE, 29 OCT - 1 NOV 2001

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. INTRODUCTORY ITEMS <ol style="list-style-type: none"> 1.1 Appointment of rapporteurs 2.2 Review of documents 2. TERMS OF REFERENCE FOR THE GROUP AND OBJECTIVES FOR THE MEETING 3. ADOPTION OF THE AGENDA 4. BACKGROUND TO DISCUSSIONS ON CHAPTER V, SUPERVISION AND CONTROL <ol style="list-style-type: none"> 4.1 Current and potential commercial whaling operations <ul style="list-style-type: none"> • Brief review of information provided by Japan and Norway • Comments and questions 4.2 Approaches to monitoring, control and surveillance by other international organisations and regional fisheries management bodies <ul style="list-style-type: none"> • Brief review of approaches of other organisations/bodies • Comments and questions | <ol style="list-style-type: none"> 4.3 General objectives of the inspection and observation scheme for commercial whaling <ul style="list-style-type: none"> • Discussion document from the Secretariat • Discussion 5. DISCUSSION OF REVISIONS TO CHAPTER V, SUPERVISION AND CONTROL <ol style="list-style-type: none"> 5.1 Major problem areas 5.2 Other issues to be resolved 6. DISCUSSION OF REVISIONS TO CHAPTER VI, INFORMATION REQUIRED <ol style="list-style-type: none"> 6.1 Additions necessary as a result of discussions under item 5 6.2 Other proposals 7. ANY OTHER BUSINESS 8. ACTION ARISING 9. ADOPTION OF THE REPORT |
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APPENDIX 2B. AUCKLAND, 26 FEB - 1 MARCH 2002

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| <ol style="list-style-type: none"> 1. INTRODUCTORY ITEMS <ol style="list-style-type: none"> 1.1 Appointment of rapporteurs 2.2 Review of documents 2. OBJECTIVES FOR THE MEETING 3. ADOPTION OF THE AGENDA 4. DISCUSSIONS ON REVISIONS CHAPTER V, SUPERVISION AND CONTROL <ol style="list-style-type: none"> 4.1. National inspection, international observer schemes and related aspects <ul style="list-style-type: none"> • The approach (the 'straw man') • Process for the selection and appointment of observers • A register of vessels and points of landing • Other | <ol style="list-style-type: none"> 4.2 Catch verification <ul style="list-style-type: none"> • DNA registers • Catch documentation • Other 4.3 Compliance Review Committee 4.4 Other 5. DISCUSSION OF REVISIONS TO CHAPTER VI, INFORMATION REQUIRED <ol style="list-style-type: none"> 5.1 Collection of animal welfare data 5.2 Other 6. OTHER MATTERS 7. REPORT TO THE COMMISSION AND FUTURE WORK/CONSIDERATIONS |
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Appendix 3

List of Documents

Documents for the first EDG Meeting:

- IWC/O1/EDG 1: Information on current and potential commercial whaling operations.
- IWC/O1/EDG 2: Overview of the monitoring, control and surveillance schemes of other international organisations and Regional Fisheries Management Bodies
- IWC/O1/EDG 3: General objectives of the inspection and observation scheme for commercial whaling
- IWC/O1/EDG 4: Information required: Schedule requirements and Scientific Committee and other recommendations
- IWC/O1/EDG 5: Issues to be resolved in Chapter V, Supervision and Control
- IWC/53/9: Report of the Revised Management Scheme Working Group
- IWC/53/RMS 2 rev: Revised Text of Chapter V, Supervision and Control, from the RMS Intersessional Meeting (Monaco, February 2001) Annotated with Comments Received.

Documents for the second EDG Meeting:

- IWC/F2/EDG 1: Comments submitted by EDG members on the 'Straw Man' and Denmark's proposal for the appointment of observers
- IWC/F2/EDG 2: The 'Straw Man' annotated with comments received
- IWC/F2/EDG 3: Denmark's proposal for the appointment of observers annotated with comments received
- IWC/F2/EDG 4: Revised 'Straw Man'
- IWC/F2/EDG 5: Some thoughts on DNA registers
- IWC/F2/EDG 6: Proposals for the incorporation of reporting requirements needed to assess whale killing methods and associated issues into Chapter VI of the Schedule
- IWC/F2/EDG 7: Revised texts of Schedule Chapters V and VI based on EDG discussions in Cambridge
- IWC/F2/EDG 8: Information relevant to discussions on infractions and the Compliance Review Committee

Plus:

- Chair's Notes from the Meeting of the RMS Expert Drafting Group, Cambridge, 29 October - 1 November 2001
- Advance copy of the Report from the Expert Consultation of the Regional Fisheries Management Bodies on the Harmonization of Catch Certification, La Jolla, January, 2002

Appendix 4

Historical Background to the Inspection and Observation Scheme for Commercial Whaling

In accordance with the Convention, it is the National Government that has the responsibility for ensuring that whaling operations carried out under its flag and/or by its nationals obey the rules and regulations of the Commission. Such rules are set out in the Convention and the Schedule to the Convention:

Article I.1. This Convention includes the Schedule attached thereto which forms an integral part thereof. All references to "Convention" shall be understood as including the said Schedule either in its present terms or as amended in accordance with the provisions of Article V.

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.

The Convention does not define what 'appropriate measures' are, but the language used implies that this will include the use of inspectors:

Article IX.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.

This was made explicit in the Schedule (paragraph numbers follow the current version) with considerably more detail for factory ships (24 hr inspection) than for land stations ('adequate' not defined):

21. (a) *There shall be maintained on each factory ship at least two inspectors of whaling for the purpose of maintaining twenty-four hour inspection provided that at least one such inspector shall be maintained on each catcher functioning as a factory ship. These inspectors shall be appointed and paid by the Government having jurisdiction over the factory ship; provided that inspectors need not be appointed to ships which, apart from the storage of products, are used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.*
- (b) *Adequate inspection shall be maintained at each land station. The inspectors serving at each land station shall be appointed and paid by the Government having jurisdiction over the land station.*

Inspection and observation

Given that the Convention clearly puts responsibility on the Contracting Government for ensuring that the Commission's rules and regulations are followed, initially Contracting Governments designed their own national schemes and reported any infractions found to the Commission. However, due to certain incidents of unreported infractions, most notably those carried out by the factory vessel *Olympic Challenger* that sailed under the flag of Panama in the mid-1950s, the Commission began to look at the idea of international observers to provide additional reassurance that regulations were not being broken. In fact it was not until the early 1970s that such a scheme was established. Despite the considerable negotiations, the entry in the Schedule was rather brief:

21. (c) *There shall be received such observers as the member countries may arrange to place on factory ships and land stations or groups of land stations of other member countries. The observers shall be appointed by the Commission acting through its Secretary and paid by the Government nominating them.*

In practice, the issue of observers was dealt with bilaterally, although the letter of appointment was sent by the Secretary and the original of the report was received by the Commission. Review of the Observer's reports was undertaken by the Infractions sub-committee.

Appendix 5

Revised Draft of Schedule Chapter V⁵, Supervision and Control

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|--|--|---|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| | | <p>Statement of principle</p> <p>1. (a). The purpose of this Chapter is to set out the basic requirements for a robust supervision and control scheme to ensure compliance with the provisions of the Convention.</p> <p><i>[(b). No provision of this Chapter is intended to, nor shall it be deemed or interpreted to be, a restriction on any legitimate trade in any whale product.]</i></p> |
| 1. Whales may only be taken by vessels authorised by Contracting Governments. Primary processing may only be undertaken on vessels or at points of landing authorised by Contracting Governments. <i>[Secondary processing may only take place at processing plants authorised by Contracting Governments.]</i> | | <p>2. Whales may only be taken by vessels authorised by Contracting Governments. Primary processing may only be undertaken on vessels or at points of landing authorised by Contracting Governments. <i>[Secondary processing may only take place at processing plants authorised by Contracting Governments.]</i></p> <p>(no change to IWC/53/RMS 2 rev)</p> |
| <p>Contracting Governments will inform the IWC Secretariat of: the number of vessels authorised for whaling</p> <ul style="list-style-type: none"> ➤ <i>[and the number of additional persons to the crew that they can accommodate];</i> ➤ <i>[the location of each point of landing];</i> ➤ <i>[and the names of authorised processing plants]</i> ➤ <i>[and other relevant data].</i> <p>Such information shall remain confidential <i>[, is to be made available to Contracting Governments on request]</i> and is to be used only in conjunction with the international observer scheme.</p> | <p>UK: Prior to the start of the hunting season Contracting Governments will inform the IWC Secretariat of the number of vessels authorised for whaling and the number of additional persons to the crew that they can accommodate; the location of each land station/landing site; and the names of authorised processing plants and other relevant data. Such information shall remain confidential, is to be made available to Contracting Governments on request, and is to be used only in conjunction with the international observer scheme.</p> | <p>3. At least 3 months before the start of the season, Contracting Governments shall inform the Secretariat of the following information necessary for implementation of the International Observation Scheme (Annex A to this Schedule):</p> <ul style="list-style-type: none"> (a) the location of each point of landing/primary processing site⁶ and the authorised dates of operation; (b) the name or identifying code of each vessel, and its vessel category (as recognised in the International Observer Scheme), home port and authorised dates of operation; (c) <i>[the names of authorised secondary processing plants]</i> <p>Such information shall: remain confidential; is to be made available to Contracting Governments on request; and is to be used only in conjunction with the international observer scheme.⁷</p> |

⁵ Note: final numbering of this Chapter and the paragraphs within will depend on the overall revision of the Schedule.

⁶ Secretariat note: Is it necessary to stipulate 'primary processing site' given the text in paragraph 2 of the EDG proposal?

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|--|--|--|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p><i>[Contracting Governments under whose jurisdiction commercial whaling operations occur shall:</i></p> <ul style="list-style-type: none"> ➤ <i>[?notify each other of whaling vessels which are likely to operate in the same waters];</i> ➤ <i>[notify any Contracting Governments in or near whose waters they will operate or navigate;]</i> ➤ <i>[respond to requests received via the Secretariat from Contracting Governments or appropriate intergovernmental organisations concerning vessels observed in or near their waters].]</i> <p>Notes: <i>the UK may propose to reinsert the term ‘ landing site’</i> <i>Japan has some practical problems with including secondary processing</i></p> | <p>UK: Remove square brackets.</p> <p>USA: would only accept the text of the first two sub-paragraphs if one of the versions of the third sub-paragraph were also accepted. That is, if the whole package proposed as a compromise is not accepted, then the US would prefer to revert to the original language given in Document 1 [i.e. outcome of Adelaide meeting].</p> | <p>Note: no longer necessary given para 3.</p> |
| <p>2. All whaling vessels engaged in whaling operations shall be equipped with an autonomous system which records data that assist in ensuring compliance with the RMS, (such as <i>[real-time reporting of]</i> position, date, time and speed of the vessel). Contracting Governments shall supply copies of the data at the end of each season in a format specified by the Secretariat. Should the Commission deem necessary, it may request that the data be supplied to the Secretariat more frequently.</p> | <p>UK:</p> <p>All whaling vessels engaged in whaling operations shall be equipped with an autonomous system able to automatically transmits satellite signals to the Commission. This data will be used to ensure compliance with the RMS, and will include real-time reporting of position, date, time and speed of the vessel. The satellite system should be tamper proof and should be operational at all times. In the interests of security, the satellite system should be capable of producing encrypted information.</p> | <p>4. All whaling vessels engaged in whaling operations shall be equipped with an autonomous system which records data that assist in ensuring compliance with the Schedule, as detailed in the International Observer Scheme (Annex A)⁸. Contracting Governments shall supply copies of the data at the end of each season in a format specified by the Secretariat. Should the Commission deem necessary, it may request that the data be supplied to the Secretariat more frequently.</p> <p>In addition, data from certain vessels shall be transmitted in real time to the appropriate international observer, as detailed in Annex A.</p> |

⁷ The EDG **agreed** that there may be a need to consider other issues in this paragraph, including flags of convenience.

⁸ The EDG **agreed** that there should be discussion at IWC/54 on whether all vessels should be required to have VMS, rather than just those without international observers on board.

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|--|--|--|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p>3. <i>[(a) Contracting Governments shall maintain a tissue sample from each whale killed or otherwise obtained within its jurisdiction and that are destined for the market. The Contracting Government shall arrange for genetic analysis of each such sample according to the specifications drawn up by the Scientific Committee so that individual and species identity can be determined with a high degree of probability, and a copy of the resulting DNA profile shall be forwarded to the Commission within six months of the date of sampling for inclusion in a central diagnostic register of DNA profiles. The register shall be available to the Scientific Committee and accredited scientists according to the Committee's Rules of Procedure.] [Contracting Governments which may not assume the costs of genetic analysis may/shall use the central archive of DNA analysis placed by the RMS to comply.]</i></p> | <p>UK: (a) Contracting Governments shall maintain a tissue sample from each whale killed or otherwise obtained within its jurisdiction to ensure whales or whale produce were taken in accordance with the RMP. The Contracting Government shall arrange for genetic analysis of each such sample according to the specifications drawn up by the Scientific Committee so that individual and species identity can be determined with a high degree of probability. A copy of the resulting DNA profile shall be forwarded to the Commission within six months of the date of sampling for inclusion in a central diagnostic register of DNA profiles. The register shall be available to the Scientific Committee and accredited scientists according to the Committee's Rules of Procedure. Those Contracting Governments, that do not assume the costs of genetic analysis may/shall, use the central archive of DNA analysis placed by the RMS to comply.</p> | <p><i>[5. (a) Contracting Governments shall maintain a tissue sample from each whale killed or otherwise obtained within its jurisdiction and that are destined for the market. The Contracting Government shall arrange for genetic analysis of each such sample according to the specifications drawn up by the Scientific Committee so that individual and species identity can be determined with a high degree of probability, and a copy of the resulting DNA profile shall be forwarded to the Commission within six months of the date of sampling for inclusion in a central diagnostic register of DNA profiles. The register shall be available to the Scientific Committee and accredited scientists according to the Committee's Rules of Procedure.] [Contracting Governments which may not assume the costs of genetic analysis may/shall use the central archive of DNA analysis placed by the RMS to comply.]</i></p> <p>(no change to IWC/53/RMS 2 rev)</p> |
| <p><i>[(b) The Commission shall arrange for the establishment of a central archive of tissue samples maintained according to specifications drawn up by the Scientific Committee. A sub-sample from each tissue sample maintained according to sub-paragraph (a) shall be submitted to the central archive within six months of the date of sampling, or the date of notification of establishment of the archive, whichever is the later. The means of transportation of samples shall be such that they ensure proper preservation. The Commission shall arrange for further genetic analysis of the archived samples based on advice from the Scientific Committee, including where appropriate the generation of additional DNA profiles for inclusion in the Commission's register.]</i></p> | <p>UK: remove square brackets and in first sentence, add 'of' after 'establishment'.</p> | <p><i>[(b) The Commission shall arrange for the establishment of a central archive of tissue samples maintained according to specifications drawn up by the Scientific Committee. A sub-sample from each tissue sample maintained according to sub-paragraph (a) shall be submitted to the central archive within six months of the date of sampling, or the date of notification of establishment of the archive, whichever is the later. The means of transportation of samples shall be such that they ensure proper preservation. The Commission shall arrange for further genetic analysis of the archived samples based on advice from the Scientific Committee, including where appropriate the generation of additional DNA profiles for inclusion in the Commission's register.]</i></p> <p>(no change to IWC/53/RMS 2 rev)</p> |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|---|--|--|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| [(c) All perishable whale products traded domestically or internationally after January 1 st , 2004 shall be derived exclusively from whales whose DNA profile has been submitted to the Commission's register at the time of trade, or within six months of the date of capture, whichever is the later. Products not meeting this requirement shall be deemed to be derived from whales not taken in accordance with this Schedule.] | <p>UK: remove square brackets.</p> <p>SWEDEN/NEW ZEALAND: delete current 3 (c) and replace with words that exclude possible misinterpretation of the intention of restricting trade. We offer the following text to accomplish this:</p> <p>'After January 1st, 2004, any commercially available perishable whale products that have not been derived from whales whose DNA profile has been registered with the Commission by this date or within six months of capture, whichever is the later, shall be deemed to have been derived from whales not obtained in accordance with this Schedule.'</p> | <i>[(c) After January 1st, 2004, any commercially available perishable whale products that have not been derived from whales whose DNA profile has been registered with the Commission by this date or within six months of capture, whichever is the later, shall be deemed to have been derived from whales not obtained in accordance with this Schedule.]</i> |
| <p>National Inspection Schemes</p> <p>4. Each Contracting Government under whose jurisdiction whaling operations for commercial purposes are carried out shall have in place appropriate enforcement legislation and effective administrative frameworks to ensure that the requirements of the Revised Management Scheme are fully met. Copies of the relevant laws and regulations shall be transmitted to the Commission.</p> | | <p>National Inspection Schemes</p> <p>6. Each Contracting Government under whose jurisdiction whaling operations for commercial purposes are carried out, shall have in place appropriate enforcement legislation and effective administrative frameworks to ensure that the requirements of the Revised Management Scheme are fully met. Copies of the relevant laws and regulations shall be transmitted to the Commission.</p> <p>(no change to IWC/53/RMS 2 rev)</p> |
| <p>5. National inspection schemes shall at least include:</p> <p>(a) provisions ensuring appropriate inspection during the season on each whaling vessel, at each point of landing;</p> <p>(b) provisions authorizing national inspectors to check and ensure compliance with the provisions of the Convention and national regulatory measures.</p> | <p>UK: (a) provisions ensuring appropriate inspection during the season on each whaling vessel, at each land station/landing site and, where applicable specified processing plants;</p> | <p>7. National inspection schemes shall at least include:</p> <p>(a) provisions ensuring appropriate inspection during the season on each whaling vessel and at each point of landing/primary processing site⁹;</p> <p>(b) (b) provisions authorising national inspectors to check and ensure compliance with the provisions of the Convention and national regulatory measures.</p> |

⁹ Secretariat note: Is it necessary to stipulate 'primary processing site' given the text in paragraph 2 of the EDG proposal?

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|---|---|---|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| 6. National inspectors shall be appointed and paid by the Contracting Government having jurisdiction over the commercial whaling operations to be inspected and shall receive their instructions from their national authorities. | | 8. National inspectors shall be appointed and paid by the Contracting Government having jurisdiction over the commercial whaling operations to be inspected and shall receive their instructions from their national authorities. (no change to IWC/53/RMS 2 rev) |
| International Observer Scheme 7. For the purpose of monitoring compliance with the provisions of the Convention pertaining to commercial whaling operations, the Commission <i>[may/shall]</i> appoint observers to whaling vessels, points of landing <i>[and if the Commission deems necessary, specified processing plants]. [In exercising its discretion, the Commission may consider the size of the vessel, the accommodation on board and other factors related to specific whaling operations.] [If there is space for only one additional person to the crew on a vessel, priority shall be accorded to the [national inspector][observer].]</i> | UK: For the purpose of monitoring compliance with the provisions of the Convention pertaining to commercial whaling operations, the Commission may/shall appoint observers to whaling vessels, land stations/landing sites and if the Commission deems necessary, specified processing plants. In exercising its discretion, the Commission may consider the size of the vessel, the accommodation on board and other factors related to specific whaling operations. If there is space for only one additional person to the crew on a vessel, priority shall be accorded to the international observer . | International Observer Scheme 9. For the purpose of monitoring compliance with the provisions of the Convention pertaining to commercial whaling operations, the Commission shall appoint observers to whaling operations in accordance with the International Observer Scheme (Annex A). |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|---|--|--|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p>8. Observers appointed by the Commission <i>[shall/may]</i> be present on all vessels <i>[nominated by the Commission]</i> undertaking whaling operations and at each point of landing. <i>[The Commission may also designate observers to be present at specified processing plants.]</i></p> <p>The observer on a whaling vessel must be notified at the start of each hunt. The observer at a point of landing <i>[and, where appropriate, processing plant]</i>, must be notified in sufficient time to allow them to observe each landing.</p> <p>If, through no fault of the Contracting Government or relevant whaling operation, an observer is not available, the Secretariat <i>[shall/may]</i>, on behalf of the Commission, waive the requirement for an observer to be present.</p> | <p>UK: Observers appointed by the Commission shall be present on all vessels nominated by the Commission undertaking whaling operations and at each land station/landing site. The Commission may also designate observers to be present at specified processing plants.</p> <p>The observer on a whaling vessel must be notified at the start of each hunt. The observer at a land station and, where appropriate, processing plant, must be notified in sufficient time to allow them to observe each landing.</p> <p>Japan: replace 'If, through no fault of the Contracting Government or relevant whaling operation, an observer is not available, the Secretariat <i>[shall/may]</i>, on behalf of the Commission, waive the requirement for an observer to be present.' with:</p> <p>'Notwithstanding the above, vessel departure, hunting or landing of whales shall neither be delayed nor prevented if, through no fault of the Contracting Government or relevant whaling operation, an observer is not available.'</p> | <p>10. If, through no fault of the Contracting Government or relevant whaling operation, an observer is not available, the Secretariat <i>[shall/may]</i>, on behalf of the Commission, waive the requirement for an observer to be present.</p> <p><i>[Notwithstanding the above, vessel departure, hunting or landing of whales shall neither be delayed nor prevented if, through no fault of the Contracting Government or relevant whaling operation, an observer is not available.]</i></p> <p>Note: most of the old para 8. has been transferred to Annex A.</p> |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|--|---|--|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p>9. Observers shall carry out the duties conferred on them by the Commission. Nothing in the duties confers on the observers' authority to enforce the provisions of the Convention. Observers cannot intervene in whaling operations or activities connected with these operations. Observers' duties shall include:</p> <ul style="list-style-type: none"> (a) monitoring that whaling operations are carried out in accordance with the provisions of the Convention; (b) monitoring that information required under the Revised Management Scheme is collected, sampled, maintained or processed; (c) checking licenses, logbooks and other relevant documents; (d) checking equipment used to catch and flense whales; (e) checking whaling operation areas on vessels, points of landing [and processing plants]; (f) checking equipment referred to in paragraph 2; (g) reporting to the Commission on the observations carried out in accordance with the above and as required in paragraph 10. | <p>UK: (e) checking whaling operation areas on vessels, land stations/landing sites and processing plants;</p> | <p>Note: this has been transferred to Section 3.1 of Annex A.</p> |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|---|---|--|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p>10. (a) Observers on whaling vessels shall report <i>[daily]</i> to the Secretariat on any whales <i>[hunted]</i> struck and/or killed. Reports on other relevant observations shall be made at the end of each whaling voyage, and on a monthly basis by land-based observers. However, if an observer suspects that an infraction of the provisions of the Convention has taken place, he/she shall immediately inform the captain of the vessel, the national inspector and/or the manager of the point of landing, as well as the competent national authority and the Secretariat.</p> <p>(b) Observers shall submit their reports in English to the Secretariat. The Secretariat shall have the reports translated into the language of the Contracting Government having jurisdiction over the commercial whaling operations observed and send copies to that Government. On receipt of the report the Secretariat will transmit a copy of the report to the senior personnel of the component of the whaling operation they [that?] had [been?] observed. If a report indicates a possible breach of provisions of the Convention, the Secretariat shall ask the Contracting Government to seek comments from the vessel captain, its national inspector and/or the manager of the point of landing as appropriate. Such comments shall be passed to the Secretariat and be attached as an addendum to the observer's report.</p> <p>(c) Observers shall ensure confidentiality with respect to the conduct of their duties and their reports.</p> | <p>UK: in 10 (a) remove brackets from 'daily' and 'hunted' and add '/landing site' after 'land station' in last sentence. In 10(b), add '/landing site' after 'land station' in penultimate sentence.</p> | <p>Note: this has been transferred to item 3.2 of Annex A</p> |
| <p>11. The Secretariat shall write an annual report for review by the Commission about the functioning of the international observation scheme. This report shall, in particular, list all alleged infractions. It shall be considered by the <i>[Infractions Sub-Committee]</i><i>[Review Committee described in Para. 19]</i>.</p> | <p>UK: The Secretariat shall write an annual report for review by the Commission about the functioning of the international observation scheme. This report shall, in particular, list all alleged infractions. The report shall be considered by the <i>[Infractions Sub Committee]</i><i>[Review Committee]</i> described in paragraph 19.</p> | <p>11. The Secretariat shall write an annual report for review by the Commission about the functioning of the international observation scheme. The Secretariat shall also provide a list of all alleged infractions. They shall be considered by the Compliance Review Committee.</p> |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|--|--|---|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p>12. (a) The Commission shall ensure that each observer shall be adequately informed of the provisions of the Convention and have the biological and other relevant knowledge necessary to carry out his/her duties.</p> <p>(b) The Commission shall ensure that each observer must be able to communicate effectively with the senior personnel of that component of the whaling operation they have been selected to observe.</p> | | Note: this has been transferred to Sections 3 (training) and 2.1 (selection process) of Annex A. |
| <p>13. (a) The Secretariat shall develop scientific and technical criteria to select suitable observers. These criteria shall be approved by the Commission.</p> <p>(b) The Secretariat shall annually call for applications; Contracting Governments shall make this opportunity known to their nationals.</p> <p>(c) The Secretariat shall select qualified candidates and annually circulate a list of qualified candidates available for observer duty.</p> <p>(d) The Secretariat shall develop appropriate administrative procedures for observers regarding, <i>inter alia</i>, remuneration, travel, insurance and conduct.</p> | | <p>Note: 13(a) – (c) has been transferred to Section 2.1 (selection process) of Annex A.</p> <p>It was not considered necessary for 13 (d) to be included as wording in the Schedule.</p> |
| <p>14 (a) Contracting Governments under whose jurisdiction whaling activities are to be conducted shall provide the information specified in Para. 1 (above) at least 60 days prior to the start of the whaling season.</p> <p>(b) The Secretariat shall appoint the number of observers in accordance with paragraph 8 and shall by 30 days prior to the start of the whaling operations provide each Contracting Government with the list of observers appointed to observe whaling operations falling under the jurisdiction of that Government.</p> <p>(c) An individual shall not be appointed to observe in the territory or on a vessel flying the flag of the State of which he/she is a national or permanent resident.</p> <p><i>[(d). Contracting Governments may object to the appointment as observers of any persons.]</i></p> <p>(e) The personnel of the whaling operation to be observed cannot object to observation by an observer appointed under Para. 8.</p> | <p>UK: (d) Contracting Governments may ask for the reconsideration of the appointment as observer of any persons, but the Commission's decision is final.</p> | Note: 14(a) deadline has been included in Para. 1. Content of 14(b) – (d) has been transferred to Section 2.1 (selection process) of Annex A. |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|---|---|---|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p>15. (a) Observers are responsible to the Commission for the conduct of their duties as described in paragraph 9. Observers may neither seek nor receive instructions from any other person, organisation or authority.[]</p> <p>(b) Contracting Governments, national inspectors and all those involved in activities subject to the international observation scheme shall take appropriate measures to ensure the safety, freedom and dignity of the observer at all times and shall cooperate fully with the observer so that he/she can fulfil his/her duties properly and efficiently.</p> <p>(c) The Contracting Government under whose jurisdiction the observer is to carry out his/her activities shall take all necessary measures to assist the observer in obtaining the required visas and immigration documents.</p> | <p>UK: (b) Contracting Governments, national inspectors and all those involved in activities subject to the international observation scheme shall take appropriate measures to ensure the safety, freedom and dignity of the observer at all times. Contracting Governments shall co-operate fully with the observer so that he/she can fulfil his/her duties properly and efficiently.</p> | <p>Note: 15(a) to Sections 3.1 (Duties) and 15(b) and (c) to Section 4 (Responsibilities of those receiving observers) of Annex A.</p> |
| <p>16. Each observer shall carry out his/her duties subject to domestic legislation and other applicable rules and customs, including the authorised mandate of the captain of the whaling vessel and the manager of the point of landing, of the State under whose jurisdiction the observation activities are carried out.</p> | <p>UK: add '/landing site' after 'land station'.</p> | <p>Note: this has been transferred to Sections 3.1 (duties) of Annex A.</p> |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
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| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p>17. Observers' salaries and expenses shall be paid by the Commission.</p> <p><i>[These costs shall be recovered exclusively from the Contracting Government under whose jurisdiction whaling operations are carried out.]</i></p> <p>or -</p> <p><i>[The Commission shall recover [these and][all] other costs resulting from the supervision and control scheme through a factor in the membership contributions assessed from Contracting Governments [under whose jurisdiction whaling operations are carried out].</i></p> | <p>UK: Observers' salaries and expenses shall be paid by the Commission. These and other costs resulting from the supervision and control scheme shall be recovered exclusively from the Contracting Government under whose jurisdiction whaling operations are carried out.</p> | <p>12. Observers' salaries and expenses shall be paid by the Commission.</p> <p><i>[These costs shall be recovered exclusively from the Contracting Government under whose jurisdiction whaling operations are carried out.]</i></p> <p>or</p> <p><i>[The Commission shall recover [these and][all] other costs resulting from the supervision and control scheme through a factor in the membership contributions assessed from Contracting Governments [under whose jurisdiction whaling operations are carried out].</i></p> <p>or</p> <p><i>[These and other costs and expenditure resulting from this supervision and control scheme shall be recovered in the following manner –</i></p> <p>(a) <i>core administrative expenditure (including, but not limited to, core Secretariat salaries and expenses) associated with this supervision and control scheme shall be paid by the Commission;</i></p> <p>(b) <i>operating expenditure for this supervision and control scheme (including, but not limited to, recruitment costs, observers' salaries and expenses, other travel and accommodation expenses, third party contract costs and an appropriate annual share of capital expenditure as set out in subparagraph (c) of this paragraph) shall be recovered exclusively from the Contracting Governments under whose jurisdiction whaling operations are carried out; and</i></p> <p>(c) <i>capital expenditure (including but not limited to computer equipment and software costs and vessel monitoring systems) shall be amortised in the manner required by the current UK GAAP and recovered over time, on an annual basis, as part of operating expenditure, as set out in subparagraph (b) of this paragraph.]</i></p> |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|---|--|---|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p>[Verification of catch data by genetic monitoring]</p> <p>18. [(a) The Commission shall operate a standardised system for the collection of catch data that shall certify that all products derived from whales taken under the authority of a Contracting Government are within the chain of custody of that Government and are derived from whales taken in accordance with the provisions of the RMS. This scheme shall include a unique identifier for each product derived from each animal and shall include:</p> <ul style="list-style-type: none"> (i) date and location of catch; (ii) species; (iii) place and date of landing/transshipment (iv) vessel identification; (v) national issuing authority of catch quota; (vi) licence number for that catch quota.] <p>[(b) The Commission shall establish procedures to monitor the origins of perishable whale products sold and/or offered for sale in wholesale and retail markets under the jurisdiction of Contracting Governments. These procedures shall confirm whether the whale products are derived only from individual animals caught in accordance with the provisions of the Schedule, from individual animals that die as a result of by-catch, from strandings or from stockpiles of frozen meat. The overall purpose of these procedures shall be to confirm that whaling only takes place in accordance with the provisions of the Schedule, and that total human-caused mortalities are accounted for in the calculation of quotas under the Revised Management Procedure, as specified in Chapter III, paragraph 10.</p> <p>(c) Pursuant to this requirement, the Commission shall arrange for genetic surveys of perishable whale products sold and/or offered for sale in wholesale and retail markets under the jurisdiction of Contracting Governments to be conducted. These analyses shall involve comparisons of the DNA profiles of the market samples with those in the diagnostic DNA register as described in paragraph 3 in order to determine which of the sampled products arise from individual animals caught in accordance with the provisions of the Schedule. For those samples that can not be identified as having been derived from animals caught in accordance with the Schedule the probable species and stock origins shall be determined so far as is possible.</p> | <p>Sweden/New Zealand: To ensure that <i>the only perishable whale products deemed to have been legitimately taken</i> are derived from whales taken in accordance with the provisions of the Schedule, the RMS Working Group has previously considered separate proposals to verify catch data by the use of (1) genetic monitoring and (2) catch certification. Although these two methodologies utilise different verification mechanisms, they have many similarities as to principle and purpose. It is therefore proposed that the relevant requirements can be combined into a single Paragraph 18 as follows –</p> <p>(a) The Commission shall operate a standardised system for the collection of data that shall certify that all products derived from whales taken or collected under the authority of a Contracting Government are derived solely from whales taken in accordance with the provisions of the Schedule or from authorised utilisation of bycatch or stranding. This scheme shall include a unique identifier for each product derived from each animal and shall provide information on:</p> <ul style="list-style-type: none"> (i) date and location of catch, bycatch or stranding; (ii) species; (iii) national issuing authority of authorisations for catch or utilisation; (iv) licence number for that authorisation; <p><u>and, in the case of catches:</u></p> <ul style="list-style-type: none"> (v) place and date of landing/transshipment (vi) vessel identification. <p>(b) Each year by 31st March, any Contracting Government under whose jurisdiction there are significant markets for perishable whale products shall provide to the Secretariat information about the nature, quantity and distribution of the whale products offered in those markets under its jurisdiction, . This information shall be provided in a format determined by the Commission such that it will be able to determine the necessary scope, frequency and mode of analysis of the surveys referred to in sub-paragraph (c) of this Paragraph 18.</p> | <p>[Verification of catch data]</p> <p>13. (a) <i>The Commission shall operate a standardised system for the collection of catch data. This shall certify that all products derived from whales taken or collected under the authority of a Contracting Government are derived solely from whales taken in accordance with the provisions of the Schedule or from authorised utilisation of bycatch or stranding. This scheme shall include a unique identifier for each product derived from each animal and shall provide information on:</i></p> <ul style="list-style-type: none"> (vii) <i>date and location of catch, bycatch or stranding;</i> (viii) <i>species;</i> (ix) <i>national issuing authority of authorisations for catch or utilisation;</i> (x) <i>licence number for that authorisation;</i> <p><u>and, in the case of catches:</u></p> <ul style="list-style-type: none"> (xi) <i>place and date of landing/transshipment</i> (xii) <i>vessel identification.</i> <p>(b) <i>Each year by 31st March, any Contracting Government under whose jurisdiction there are significant markets for perishable whale products shall provide to the Secretariat information about the nature, quantity and distribution of the whale products offered in those markets under its jurisdiction, . This information shall be provided in a format determined by the Commission such that it will be able to determine the necessary scope, frequency and mode of analysis of the surveys referred to in sub-paragraph (c) of this Paragraph 18. If a Contracting Government fails to provide such information, the Commission will determine the scope, frequency and mode of analysis based on the best available information. The results of these surveys shall be reported to the Secretariat and reviewed by the appropriate body or bodies of the Commission.</i></p> <p>(c) <i>The Commission shall establish procedures to monitor the origins of perishable whale products sold and/or offered for sale in wholesale and retail markets under the jurisdiction of Contracting Governments. These procedures shall confirm whether the whale products are derived only from individual animals caught in accordance with the provisions of the Schedule, from individual animals that die as a result of by-catch, from strandings or from stockpiles of frozen meat. The overall purpose of these procedures shall be to help to confirm that whaling only takes place in accordance with the provisions of the Schedule, and that total human-caused mortalities are accounted for in the calculation of catch limits under the Revised Management Procedure, as specified in Chapter III, paragraph 10.</i></p> |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|--|--|---|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p><i>(d) Each year by 31 March, any Contracting Government with jurisdiction over a wholesale or retail market in which perishable whale products are sold or offered for sale, shall provide to the Secretariat information about the nature, quantity and distribution of the whale products offered in these markets under its jurisdiction. This information shall be provided in a format determined by the Commission such that it will be able to determine the necessary scope, frequency and mode of analysis of the surveys referred to in subparagraph (b). If a Contracting Government fails to provide such information, the Commission will determine the scope, frequency and mode of analysis based on the best available information. The results of these surveys shall be reported to the Secretariat and reviewed by the appropriate body or bodies of the Commission.]</i></p> | <p>If a Contracting Government fails to provide such information, the Commission will determine the scope, frequency and mode of analysis based on the best available information. The results of these surveys shall be reported to the Secretariat and reviewed by the appropriate body or bodies of the Commission.</p> <p>(c) The Commission shall establish procedures to monitor the origins of perishable whale products sold and/or offered for sale in wholesale and retail markets under the jurisdiction of Contracting Governments. These procedures shall confirm whether the whale products are derived only from individual animals caught in accordance with the provisions of the Schedule, from individual animals that die as a result of by-catch, from strandings or from stockpiles of frozen meat. The overall purpose of these procedures shall be to help to confirm that whaling only takes place in accordance with the provisions of the Schedule, and that total human-caused mortalities are accounted for in the calculation of catch limits under the Revised Management Procedure, as specified in Chapter III, paragraph 10.</p> <p>(d) Pursuant to the requirements of this Paragraph 18, the Commission shall arrange for genetic surveys of perishable whale products sold and/or offered for sale in wholesale and retail markets under the jurisdiction of Contracting Governments to be conducted. These analyses shall involve comparisons of the DNA profiles of the market samples with those in the diagnostic DNA register as described in Paragraph 3 in order to determine which of the sampled products arise from individual animals caught in accordance with the provisions of the Schedule. For those samples that can not be identified as having been derived from animals caught in accordance with the Schedule, the probable species and stock origins shall be determined so far as is possible.</p> <p>UK: Remove square brackets from whole paragraph and break the first sentence into two, i.e. (a) The Commission shall operate a standardised system for the collection of catch data. This shall certify that all products derived from whales taken under the authority of a Contracting Government are within the chain of custody of that Government and are derived from whales taken in accordance with the provisions of the RMS. Etc.....</p> | <p><i>(d) Pursuant to the requirements of this Paragraph 18, the Commission shall arrange for genetic surveys of perishable whale products sold and/or offered for sale in wholesale and retail markets under the jurisdiction of Contracting Governments to be conducted. These analyses shall involve comparisons of the DNA profiles of the market samples with those in the diagnostic DNA register as described in Paragraph 3 in order to determine which of the sampled products arise from individual animals caught in accordance with the provisions of the Schedule. For those samples that can not be identified as having been derived from animals caught in accordance with the Schedule, the probable species and stock origins shall be determined so far as is possible.]</i></p> |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
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| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| <p>[Oversight]</p> <p><i>[19. (a) The Commission shall [establish a Review Committee to][, through its Infractions Committee,] review and report on the compliance of all whaling operations [with agreed conservation measures] [with the provisions of the Schedule][with the provisions of the RMS].</i></p> <p><i>[(b) The [Review][Infractions] Committee shall:</i></p> <ul style="list-style-type: none"> <i>(i) review alleged infractions reported by observers and the information submitted by affected Contracting Governments regarding the actions that they have taken in response to the alleged infractions;</i> <i>(ii) identify those alleged infractions which are violations of [agreed conservation measures] [with the provisions of the Schedule][with the provisions of the RMS] and so inform the Commission;</i> <i>(iii) review available information on other cases where catches from commercial whaling appear to have exceeded catch limits established under paragraph 10 of Chapter III of the Schedule, and inform the Commission accordingly;</i> <i>(iv) act in accordance with the principles of natural justice in making any final decision in relation to any alleged infraction, breach of the RMS or other relevant requirements of the Commission; (Note: New Zealand may propose moving this sub-paragraph)</i> <i>(v) review the operation of the DNA register and tissue archives established pursuant to paragraph 3, and make appropriate recommendations;</i> <i>(vi) review the results of surveys conducted pursuant to paragraph 19, paying particular attention to cases where products from individual whales are found that are not included on the DNA register established pursuant to paragraph 3;</i> <i>(vii) review the actions which affected Contracting Governments have taken in response to identified violations of [agreed conservation measures] [with the provisions of the Schedule][with the provisions of the RMS];</i> <i>(viii) recommend to the Commission actions to be taken in order to ensure compliance [with agreed conservation measures] [with the provisions of the Schedule][with the provisions of the RMS]].</i> <p><i>[(c) The Commission shall determine the composition of the [Review][Infractions] Committee which shall include, inter alia, at least two accredited international observers as non-voting members.] [chosen by consensus and in accordance with criteria to be established.]</i></p> | <p>New Zealand: The text in (b)(iv) should be inserted as separate sub-paragraph (c) as originally proposed in Monaco. The words proposed are intended as an overriding instruction to the Review Committee as to how it should exercise its powers, and are not simply one of several components in a list of those powers. While the use of the phrase ‘natural justice’ is well-established in Common Law jurisdictions, it may be less well-known and recognised in other legal systems. Therefore it is suggested that the words ‘natural justice’ be replaced with ‘fairness, transparency and due process’. This suggested language is based on similar language being developed for a compliance regime under the Kyoto Protocol on Climate Change where consideration is being given to the establishment of a compliance body which would have to meet the same sort of ‘due process’ requirements that would be appropriate under the RMS. Adoption of these requirements will not mean that the Review Committee will function with the full formality of a court of law. The overall purpose of the language is, however, to ensure that it acts in an appropriate manner when addressing and resolving matters relating to any alleged infraction, and/or breach of the RMS, and/or any other relevant requirement of the Commission (including any Rules made under the proposed new paragraph 20 (see next page). This would include establishing – and then following – proper procedures, giving parties proper and timely notice of any allegation, providing relevant parties with the opportunity to be heard, reaching decisions in a fair and objective manner, ensuing ‘due process, etc.</p> <p>UK: [(a) The Commission shall [establish a Review Committee to][, through its Infractions Committee,] review and report on the compliance of all whaling operations with agreed conservation measures, within the provisions of the Schedule].</p> <p>[(b) The [Review][Infractions] Committee shall:</p> <ul style="list-style-type: none"> (i) review alleged infractions reported by observers and the information submitted by affected Contracting Governments regarding the actions that they have taken in response to the alleged infractions; <p>(continued on next page)</p> | <p>[Oversight]</p> <p><i>[19. (a) The Commission shall [establish a Compliance Review Committee to review and report on the compliance of all whaling operations with the provisions of the Schedule and penalties for infractions thereof].</i></p> <p><i>[(b) The Compliance Review Committee shall:</i></p> <ul style="list-style-type: none"> <i>(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;</i> <i>(ii) review other reports submitted by Contracting Governments on matters relevant to the Committee, including alleged infractions;</i> <i>(iii) compare the information in (i) and (ii) above and identify any disagreement in the details of an alleged infraction;</i> <i>(iv) report its view as to whether an alleged infraction is a violation(s) of the provisions of the Schedule;</i> <i>(v) review action(s) taken by a Contracting Government in response to violation(s) of the provisions of the Schedule identified above;</i> <i>(vi) review the actions taken, including progress made, by Contracting Governments in response to previous violations considered by the Commission;</i> <i>(vii) recommend to the Commission actions to be taken to improve compliance with the provisions of the Schedule;</i> <i>(viii) submit a report to the Commission on its deliberations and recommendations.</i> <p><i>[(c)The Compliance Review Committee shall act in accordance with the principles of fairness, transparency and due process in making any final deliberations and recommendations in relation to any alleged infraction, breach of the Schedule or other relevant requirements of the Commission.]</i></p> <p><i>[(d) Representatives from at least two, but not more than [x], non-governmental organisations (representing environmental groups and the whaling industry) shall be entitled to attend the Committee s nn-voting members, following a selection process agreed by the Commission.]</i></p> <p><i>[(e) In the event of an infraction the relevant catch limit will automatically revert to zero unless and until otherwise determined by the Commission on the advice of the Compliance Review Committee.]</i></p> |

| Text from IWC/53/RMS 2 rev | | EDG proposals |
|---|---|--|
| Text from Monaco intersessional RMS meeting | Comments prior to IWC/53 | (text on which agreement not yet reached is given in italics within square brackets) |
| | <p>UK (cont.)</p> <ul style="list-style-type: none"> (ii) identify those alleged infractions which are violations of agreed conservation measures within the provisions of the Schedule and so inform the Commission; (iii) review available information on other cases where catches from commercial whaling appear to have exceeded catch limits established under paragraph 10 of Chapter III of the Schedule, and inform the Commission accordingly; (iv) act in accordance with the principles of natural justice in making any final decision in relation to any alleged infraction, breach of the RMS or other relevant requirements of the Commission; (v) review the operation of the DNA register and tissue archives established pursuant to paragraph 3, and make appropriate recommendations; (vi) review the results of surveys conducted pursuant to paragraph 19, paying particular attention to cases where products from individual whales are found that are not included on the DNA register established pursuant to paragraph 3; (vii) review the actions which affected Contracting Governments have taken in response to identified violations of agreed conservation measures within the provisions of the Schedule; (viii) recommend to the Commission actions to be taken in order to ensure compliance with agreed conservation measures within the provisions of the Schedule. <p>(c) In the event of an infraction the relevant catch limit will automatically revert to zero unless and until otherwise determined by the Commission on the advice of the [Infractions] [Review] Committee.</p> <p>(d) The Commission shall determine the composition of the [Infractions] [Review] Committee which shall include, <i>inter alia</i>, at least two accredited international observers as non-voting members. chosen by consensus and in accordance with criteria to be established.</p> | |

Annex A to the Schedule

The International Observer Scheme

1. PLACEMENT OF OBSERVERS [c.f old paras 7, 8 in IWC/53/RMS 2 rev]

| Alternative 1 | Alternative 2 |
|---|--|
| <p>[1.1 Coastal whaling operations] <i>The Commission shall appoint observers to all points of landing.</i></p> <p><i>For coastal whaling vessels, the following applies:</i></p> <ul style="list-style-type: none"> (a) <i>For vessels which only operate trips of less than 24 hours, carry out no flensing onboard* and for which the legal limit of persons onboard does not exceed the number of crew, VMS data shall be transmitted in real time to the observer at the identified point of landing, using IWC approved equipment.</i> (b) <i>For which vessels which are <24m, operate only within waters under the jurisdiction of the Flag State and that can only accomodate one additional person in addition to the crew, the Commission shall appoint an Observer who may also be appointed as a National Inspector by a Contracting Government.</i> (c) <i>For all other vessels, the Commission [shall/may] appoint an observer.</i> <p>1.2 Pelagic whaling operations <i>For pelagic whaling operations, the Commission shall appoint two observers to each factory ship.</i></p> <p><i>[The Commission shall also appoint an observer on each catcher vessel.]</i></p> | <p><i>[One observer appointed by the Commission [shall/may] be present on all vessels undertaking whaling operations and at each point of landing except that the following applies :</i></p> <ul style="list-style-type: none"> (a) <i>For vessels which only operate trips of less than 24 hours, carry out no flensing onboard* and for which the legal limit of persons onboard does not exceed the number of crew, VMS data shall be transmitted in real time to the observer at the identified point of landing, using IWC approved equipment.</i> (b) <i>For which vessels which are <24m, operate only within waters under the jurisdiction of the Flag State and that can only accomodate one additional person in addition to the crew, the Commission shall appoint an observer who may also be appointed as a National Inspector by a Contracting Government.</i> (c) <i>the Commission shall appoint two observers to each factory ship.]</i> |

2. SELECTION OF OBSERVERS

2.1 Selection process [see old para 13]

Observers shall be selected in accordance with the following procedure. Observers chosen for the combined role with a national inspector (1.1(b) above) must fulfil the qualifications for both positions.

- (1) The Secretariat will put out a call for candidates to apply (including via Contracting Governments, the Scientific Committee and the IWC website). It will develop a standard application form that will include information on the scientific and technical criteria that will be used in the selection process. It will also request information on *inter alia*: language(s) spoken; available dates; previous experience (including time at sea); any known problems with admission to certain countries; references. [see old 13 a, b]
- (2) The Secretariat will draw up list of suitable candidates.
- (3) The list will be circulated to all Contracting Governments with summary of information on each candidate (individual applications may be given to any Commissioner on request).
- (4) Any Contracting Government may veto any candidate.

* apart from slitting of the belly at sea

- (5) Following predetermined guidelines, and after consultation with relevant Contracting Governments over practical arrangements, the Secretariat will decide the placement of observers and will inform the appropriate Contracting Governments at least 30 days prior to the start of whaling operations. *[see old para 14b]*

In particular, (a) an individual shall not be appointed to observe in the territory or on a vessel flying the flag of the State of which he/she is a national or permanent resident; except if this results in a serious problem with (b) the fact that an observer must be able to communicate effectively with the senior personnel of that component of the whaling operation they have been selected to observe. *[see old paras 14c and 12b]*

2.2 Review of performance

After a review process determined by the Commission, the Secretariat may remove someone from the approved List of Observers if they are found to have failed to perform their duties adequately.

3. RESPONSIBILITIES OF OBSERVERS

3.1 Duties

Observers shall carry out the duties conferred on them by the Commission. Nothing in the duties confers on the observers' authority to enforce the provisions of the Convention. Observers cannot intervene in whaling operations or activities connected with these operations. *[Old para 9]*

Observers are responsible to the Commission for the conduct of their duties and may neither seek nor receive instructions from any other person, organisation or authority regarding the duties stated below. *[Old para 15a]*

Observers shall carry out their duties subject to domestic legislation and other applicable rules and customs, including the authorised mandate of the captain of the whaling vessel and the manager of the point of landing, of the State under whose jurisdiction the observation activities are carried out. *[Old para 16]*

Observers' duties shall include *[Old Para 9]*:

- (1) monitoring that whaling operations are carried out in accordance with the provisions of the Convention;
- (2) monitoring that information required under the Schedule is collected, sampled, maintained or processed;
- (3) checking licenses, logbooks and other relevant documents;
- (4) checking equipment used to catch and flense whales;
- (5) checking whaling operation areas on vessels, points of landing/primary processing sites¹⁰, *[and processing plants]*;
- (6) checking relevant equipment (e.g. VMS transmitters).

3.2 Reporting *[Old Para 10]*

Observers shall report to the Commission and the Secretariat in English.

Observers on whaling vessels shall report *[daily]* to the Secretariat on any whales *[hunted]* struck and/or killed. Reports on other relevant observations shall be made at the end of each whaling voyage, and on a monthly basis by land-based observers. However, if an observer suspects that an infraction of the provisions of the Convention has taken place, he/she shall immediately inform the captain of the vessel, the national inspector and/or the manager of the point of landing, as well as the competent national authority and the Secretariat.

The Secretariat shall have the observers' reports translated into the language of the Contracting Government having jurisdiction over the commercial whaling operations observed and send copies to that Government. On receipt of the report the Secretariat will transmit promptly a copy of the report to the senior personnel of the component of the whaling operation that had been observed. If a report indicates a possible breach of provisions of the Convention, the Secretariat shall ask the Contracting Government to seek comments from the vessel captain, its national inspector and/or the manager of the point of landing as appropriate. Such comments shall be passed to the Secretariat and be attached as an addendum to the observer's report.

Observers shall ensure confidentiality with respect to the conduct of their duties and their reports.

¹⁰ Secretariat note: Is it necessary to stipulate 'primary processing site' given the text in paragraph 2 of the EDG proposal for Chapter V?

4. TRAINING OF OBSERVERS

The Commission shall ensure that each observer shall be adequately informed of the provisions of the Convention and have the biological and other relevant knowledge necessary to carry out his/her duties. *[Old para 12a]*. The Secretariat will develop a suitable training programme.

5. RESPONSIBILITIES OF THOSE RECEIVING OBSERVERS

5.1 Visas and immigration

The Contracting Government under whose jurisdiction the observer is to carry out his/her activities shall take all necessary measures to assist the observer in obtaining the required visas and immigration documents. *[Old para 15c]*

5.2 Co-operation

Contracting Governments, national inspectors and all those involved in activities subject to the international observation scheme shall take appropriate measures to ensure the safety, freedom and dignity of the observer at all times and shall cooperate fully with the observer so that he/she can fulfil his/her duties properly and efficiently. *[Old para 15b]*

Contracting Governments shall ensure that observers appointed by the Commission must receive sufficient notification of whaling operations to enable them to carry out their duties. *[Old Para 8]*.

Appendix 6

Revised Draft of Schedule Chapter VI, Information Required

| Version from IWC/53/9, Appendix 4 ¹¹ | Revision reflecting EDG discussions ¹² |
|--|--|
| Scientific information | |
| <p>A. The following information required for the RMP shall be provided by Contracting Governments for all whaling operations and for all human-induced mortalities as specified in paragraph 7:</p> <ul style="list-style-type: none"> (a) date of capture, striking or discovery; (b) species; (c) sex; (d) position of capture or striking to the nearest minute of latitude and longitude (e) number of whales struck but lost. <p>The above information shall be verified as outlined in Chapter V and a set of verified records shall be submitted to the Secretariat at the end of each season.</p> | A. <i>No change</i> |
| <p>B. Contracting Governments shall arrange for the collection, archiving and analysis of such biological samples, tissue samples, specimens and data from whaling operations as the Commission may from time to time decide taking into account the advice of the Scientific Committee and with due regard to the most recent version of the '<i>Guidelines for Data Collection and Analysis under the Revised Management Scheme (RMS) Other than those Required as Direct Input for the Catch Limit Algorithm (CLA)</i>'. The results of the analyses of these collections shall be reported to the Commission in a timely fashion. The following samples and/or information shall be provided¹³:</p> | B. The following samples and/or information shall be provided: |
| <p>(a) The length of all animals caught shall be obtained, measured in a straight line parallel to the whale from the tip of the upper jaw to the notch of the flukes. These data shall be reported to the Secretariat at the end of each season and included in the IWC database.</p> | (a) <i>No change</i> |

¹¹ ITALICISED TEXT REPRESENTS AREAS WHERE THERE IS NO AGREEMENT. THIS INCLUDES TEXT BROUGHT IN FROM IWC/53/RMS3 FOR WHICH BY DEFINITION THERE WAS NO AGREEMENT.

Proposed new text on which there was no agreement is shown in italics within square brackets []

¹² Proposed new text on which there is no agreement is shown in italics within square brackets []

¹³ **Japan:** maintains its reservation with respect to the amount of information to be collected. (But see footnote 3)

| Version from IWC/53/9, Appendix 4 | Revision reflecting EDG discussions |
|--|--|
| (b) <i>[Where possible, at least one earplug (or bulla) shall be collected from each whale caught. The resultant age estimations and the identity of the reader shall be reported to the Secretariat sufficiently in advance (normally one year) of the next Implementation Review and included in the IWC database.] (Secretariat: It was suggested that the usefulness of collecting earplugs or bullae be referred back to the Scientific Committee.)</i> | (b) <i>No change</i> |
| (c) If sufficiently trained personnel are present, the presence, length and sex of foetuses shall be recorded. If it is not possible for such personnel to be present, these data should still be recorded where possible, and the lack of trained personnel noted. These data shall be forwarded to the Secretariat at the end of the season and included in the IWC database. | (c) <i>No change</i> |
| (d) Lactation shall be recorded and reported to the Secretariat at the close of the season and included in the IWC database. | (d) <i>No change</i> |
| (e) At least 5cm ² of skin shall be collected from each whale caught and, where possible, a sample of tissue from the foetus should be collected. Long term archiving of all samples with appropriate identifying information is the responsibility of the harvesting nation. A list of archived samples shall be forwarded to the Secretariat at the end of each season. | (e) <i>No change</i> |
| | Further details are provided in the most recent version of the Scientific Committee's 'Guidelines for Data Collection and Analysis under the Revised Management Scheme (RMS) Other than those Required as Direct Input for the Catch Limit Algorithm (CLA)'. ¹⁴ |

¹⁴ At the EDG meetings, Japan indicated that with the above changes, it could remove its reservation to the earlier version of paragraph B.

| Version from IWC/53/9, Appendix 4 | Revision reflecting EDG discussions |
|-----------------------------------|---|
| | <p>[Animal Welfare Information]</p> <p><i>C. For each whale hunted in whaling operations, the international observer [and/or national inspector] shall record, as a minimum, the following information on whale killing methods and associated welfare issues. This information shall be included in the observer's [inspector's] report to be provided to the IWC Secretariat at the end of each hunt or voyage or season as determined by the Commission.* The data will be publicly available.</i></p> |
| | <p><i>Preliminary</i></p> <ul style="list-style-type: none"> • <i>Time of sighting of the target whale/group containing target whale</i> • <i>Distance from vessel</i> • <i>Estimate of group size – presence/absence of calves in group</i> • <i>Behaviour of the whale pre-chase (i.e. slow travel, fast travel, resting, feeding, milling, social/sexual)</i> • <i>Time of start of chase.</i> |
| | <p><i>Primary Killing Method</i></p> <ul style="list-style-type: none"> • <i>Time of first harpoon</i> • <i>Type of harpoon (e.g. penthrate grenade head)</i> • <i>Distance of vessel to whale when first harpoon fired</i> • <i>Position of whale relative to vessel i.e. ahead, abeam or other</i> • <i>Behaviour of whale upon being struck, e.g. a) whale “runs at surface”; b) dives and disappears; c) blowing pattern; d) evidence of severe internal bleeding e.g. blood in exhalation; e) other behaviour e.g. thrashing or lolling. All behaviours to be timed.</i> • <i>Location of harpoon on detonation</i> • <i>Details on performance of harpoon (notes on unusual harpoon performance, if any)</i> • <i>Physical area of entry wound of harpoon, and exit wound (if appropriate).</i> |

* All data shall be recorded on standardised data sheets to be provided by and returned to the IWC Secretariat.

| | |
|--|---|
| | <p><i>Secondary Killing Method</i></p> <ul style="list-style-type: none"> • <i>Method used</i> • <i>Time of second/subsequent harpoon(s) if needed; is penthrite grenade used?</i> • <i>Distance of vessel to whale when additional harpoon fired</i> • <i>Position of whale relative to vessel i.e. ahead, abeam or other</i> • <i>Behaviour of whale upon being struck, e.g. a) whale “runs at surface”; b) dives and disappears; c) blowing pattern; d) evidence of severe internal bleeding e.g. blood in exhalation; e) other behaviour e.g. thrashing or lolling. All behaviours to be timed</i> • <i>Details on performance of harpoon (notes on unusual harpoon performance, if any)</i> • <i>Location of harpoon on detonation (indicated on diagram at Annex B)</i> • <i>Physical area of entry wound of harpoon, and exit wound (if appropriate)</i> • <i>Details of performance of gun used - calibre, number of shots, target area of whale, number of guns used.</i> |
| | <p><i>Information on Target Whale</i></p> <ul style="list-style-type: none"> • <i>Time when whale assessed as dead</i> • <i>Criteria used to assess that whale is dead (according to accepted veterinary criteria, i.e. mouth droops open, body goes limp, etc - see item 5 of Humane Killing Action Plan)</i> • <i>Total time to death i.e. from time of first harpoon to assessment as dead</i> • <i>Time when whale hauled alongside vessel</i> • <i>Time whale secured or taken on board</i> • <i>Whale escapes: Time when whale escapes; reasons for this (e.g. failure of equipment); approximate state of health of whale (e.g. severely wounded, whale has harpoon in it; whale dived but lost).</i> |
| | <p><i>Post Mortem</i></p> <p><i>Where the opportunity arises, and the specialist skills and knowledge are available, the following information should be recorded.</i></p> <ul style="list-style-type: none"> • <i>Exact position of entry and exit point of harpoon</i> • <i>Photograph of entry and exit point</i> • <i>Assessment of effectiveness of grenade, based on examination of internal injuries. Organs and tissues to be examined should, depending on location of harpoon, include lungs, heart (thoracic cavity), skull, brain, blood supply and spinal cord. Photographs should be taken where appropriate.</i> • <i>Assessment of effectiveness of any secondary killing method used, based on examination of internal injuries, as above.</i> |
| | <p><i>Data Collection</i></p> <p><i>All data shall be recorded on standardised data sheets to be provided by and returned to the IWC Secretariat}</i></p> |

| Version from IWC/53/9, Appendix 4 | Revision reflecting EDG discussions |
|---|--|
| Scientific Permits | Scientific Permits |
| <p>C. A Contracting Government shall provide the Secretary with proposed scientific permits before they are issued and in sufficient time to allow the Scientific Committee to review and comment on them. The proposed permits should specify:</p> <ul style="list-style-type: none"> (a) objectives of the research; (b) number, sex, size and stock of the animals to be taken; (c) opportunities for participation in the research by scientists of other nations; and (d) possible effect on conservation of stock. <p>Proposed permits shall be reviewed and commented on by the Scientific Committee at Annual Meetings when possible. When permits would be granted prior to the next Annual Meeting, the Secretary shall send the proposed permits to members of the Scientific Committee by mail for their comment and review. Preliminary results of any research resulting from the permits should be made available at the next Annual Meeting of the Scientific Committee. These results must include at least the information required under Paras. A and B above.</p> | <p><i>D. No change</i></p> |
| Operational matters | Operational matters |
| <p>D. For all whaling operations, Contracting Governments shall report to the Commission the methods used to kill each whale, other than a harpoon.</p> | <p><i>E. No change</i></p> |
| <p>E. All Contracting Governments shall report to the Commission the following information for all commercial whaling operations¹⁵:</p> <ul style="list-style-type: none"> (a) The name and gross tonnage of each factory ship. (b) A list of the land stations which were in operation during the period concerned, (c) For each catcher ship attached to a factory ship or land station: <ul style="list-style-type: none"> (i) the dates on which each is commissioned and ceases whaling for the season; (ii) the number of days on which each is at sea on the whaling grounds each season; (iii) the gross tonnage, horsepower, length and other characteristics of each; vessels used only as tow boats should be specified. | <p>F. Note: The EDG agreed that the Secretariat should review this paragraph in relation to paragraph 3 of the revised Chapter V and the information that will be obtained from the log books (see next paragraph).</p> |

¹⁵ The information to be included here depends to a large extent on discussions on Supervision and Control. The Scientific Committee has indicated the information it needs on the new logbook form. **Japan:** maintains its reservation on this paragraph because of security concerns.

| Version from IWC/53/9, Appendix 4 | Revision reflecting EDG discussions |
|---|-------------------------------------|
| F. The information required under paragraph E should also be recorded together with the operational information specific in the log book format shown in Appendix 3, and forwarded to the Commission at the end of each season. ¹⁶ | <i>G. No change</i> |
| Submission of Laws | Submission of Laws |
| G. A Contracting Government shall transmit to the Commission copies of all its official laws and regulations relating to whales and whaling and changes in such laws and regulations. | <i>H. No change</i> |

¹⁶ *Japan:* maintains its reservation on this para.

B. Operation information to be reported in addition to that listed in Chapter V, paragraph E, i.e. Appendix 3 – Logbook format for the DAILY RECORD SHEET^P

| | | | | | |
|-------------|--|------|--|-----------|--|
| Vessel Name | | Date | | Sheet no. | |
|-------------|--|------|--|-----------|--|

TARGET SPECIES ONLY

| | Sighting 1 | Sighting 2 | Sighting 3 | Sighting 4 | Sighting 5 |
|-------------------------------------|------------|------------|------------|------------|------------|
| Beginning (resumption) of searching | | | | | |
| Time | | | | | |
| Position latitude | | | | | |
| longitude | | | | | |
| Beaufort | | | | | |

| | |
|--------------------|--|
| Noon | |
| Time | |
| Position: latitude | |
| longitude | |
| Beaufort | |

| | | | | | |
|--|--|--|--|--|--|
| On sighting a whale/whales or stopping searching for other reasons | | | | | |
| Time | | | | | |
| Position: latitude | | | | | |
| longitude | | | | | |
| Beaufort | | | | | |
| Species | | | | | |
| School size | | | | | |
| Serial no. of whale(s) caught | | | | | |
| TOTAL SEARCHING DISTANCE | | | | | |

TOTAL WHALES SEEN OF ALL SPECIES

| Species | No. schools | No. animals | Species | No. Schools | No. animals |
|----------|-------------|-------------|------------------------|-------------|-------------|
| Blue | | | Sperm | | |
| Fin | | | Other (please specify) | | |
| Sei | | | | | |
| Minke | | | | | |
| Bryde's | | | | | |
| Right | | | | | |
| Humpback | | | | | |

^P Secretariat note: From RIWC 47: 238

Appendix 7

Statement

The following statement was released on conclusion of the meeting:

At its 53rd Annual Meeting, the International Whaling Commission agreed to establish a small Expert Drafting Group (EDG) to (1) progress the revision of Chapters V (Supervision and Control) and VI (Information Required) of the Schedule to the International Convention for the Regulation of Whaling; and (2) report back to the 54th Annual Meeting in Shimonoseki, Japan in May 2002. This is part of the process to complete the Revised Management Scheme (RMS) for commercial whaling.

The EDG comprises representatives from the Governments of Antigua and Barbuda, Denmark, Japan, New Zealand, Norway, Sweden, UK and the USA. It is chaired by Henrik Fischer (Denmark), the Vice-Chairman of the Commission.

The EDG met twice, in Cambridge (UK) from 29 October – 1 November 2001 and in Auckland, New Zealand from 26 February – 1 March 2002.

There was a valuable exchange of views and ideas on what should comprise an appropriate supervision and control system and on information that should be collected under the RMS. Progress was made in several areas but some fundamental differences remain. New and revised texts were developed that will be considered by the Commission in Shimonoseki.

Issued on behalf of:

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