

## **Chairs' Reports of the RMS Working Group Meetings**

**Strand Hotel, Borgholm, Sweden, 29 November to 1 December 2004, and  
Eigtveds Pakhus, Copenhagen, Denmark, 30 March to 1 April 2005**

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## PREFACE

Resolution 2004-6 on Completion of the Revised Management Scheme (RMS) adopted by consensus at the 56<sup>th</sup> Annual Meeting of the Commission in Sorrento in July 2004 revived formally the RMS Working Group (it last met at IWC/54 in Shimonoseki in 2002) with the following Terms of Reference:

- (1) To complete work on the RMS package, with the goal of having a finalized RMS text ready for consideration, including for possible adoption, at IWC 57, and/or to identify any outstanding policy and technical issues.
- (2) To take account of delegates' comments at IWC 56, as well as written submissions from delegates.
- (3) To provide guidance to, and to review the work of, the Small Drafting Group [established under the RMS Working Group].

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

The first of the series of meetings, hosted by the Swedish and Dutch governments, was held at the Strand Hotel, Borgholm, Sweden. The RMS Working Group met from Monday 29 November to Wednesday 1 December 2004, and the SDG met immediately afterwards.

The second series of meetings was held at the Eigtveds Pakhus, Copenhagen, hosted by the Danish Government. The RMS Working Group met from 30 March to 1 April 2005 and was again followed by a 2-day meeting of the SDG.

This document includes the reports from both RMS Working Group meetings<sup>1</sup>. The report from the Borgholm meeting is included as Part I, and that from the Copenhagen meeting as Part II. The report from the Copenhagen meeting should be read in conjunction with the first SDG report (IWC/D04/SDG 5). For ease of reference, the report from the Copenhagen meeting has the reports from the various technical specialist groups established in Borgholm attached as Annexes.

The consolidated report from the two meetings of the SDG is available as IWC/57/RMS 4.

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<sup>1</sup> The report of the first RMS Working Group meeting was previously made available as IWC/N04/RMSWG 16.

# Part I

## Chair's Report of the RMS Working Group Meeting Strand Hotel, Borgholm, Sweden, 29 November to 1 December 2004

### 1. INTRODUCTORY ITEMS

#### 1.1 Appointment of Chair

In Henrik Fischer's absence due to ill health, it was agreed that Horst Kleinschmidt, IWC Commissioner for South Africa and Vice-Chair of the Commission, should Chair the meeting.

#### 1.2 Introductory remarks

Horst Kleinschmidt welcomed delegates and observers to the meeting and thanked Sweden and the Netherlands for hosting the event. He noted his intention to Chair the meeting in a fair and open-minded way, to try to find convergence and consensus where possible, to note differences where they occur, and to allow all opinions a fair hearing. He recalled that Henrik Fischer favours a 'package' approach to the RMS. He recognised that it was likely that the Working Group would develop a series of options within an overall package. However, noting that discussions must lead to a coherent, robust and comprehensive RMS, he warned against the development of a shopping list of options that may be contradictory or unworkable. He urged delegates to seek compromises to the extent possible. Finally, noting the limited time available to the Working Group, he informed the meeting that he did not intend to entertain opening statements. He would, however, allow interventions from Japan and the UK who had indicated a wish to speak regarding matters of process.

Japan explained that the purpose of its intervention, made on behalf of those pro-use countries at the meeting, was to review briefly the history of work on the RMS and to put the various items in context so that there could be a more structured discussion on the details. Japan recalled that work on an RMS started from discussions on the Revised Management Procedure (RMP) and that over the 10 years in which discussions have taken place, the elements considered to form part of the RMS have increased, starting from the introduction of the Irish Proposal. It noted that pro-use countries have been striving to reach an outcome that would include the resumption of commercial whaling, and that in doing so they have made a number of concessions. Japan and others viewed the Chair's proposal for an RMS 'package' introduced at IWC/56 to be a noble attempt at reaching consensus. Unfortunately however, through adoption of Resolution 2004-6, the Chair's proposal is now considered as only one of many possible proposals. Furthermore, through comments made in response to the questionnaire on the Chair's proposal (see IWC/N04/RMSWG 4), new and more difficult items had been introduced. Japan indicated that it continued to support the Chair's proposal, even though it involved difficult concessions on its part, since it considered an RMS is necessary for the survival of IWC and that it would be in the best interests of conservation and management of whale stocks. It stressed that for pro-use countries, the linking of adoption of an RMS with the lifting of paragraph 10(e) (the moratorium) is essential. It urged constructive and sensible discussions within the Working Group.

The UK on its own behalf. It indicated that it would work constructively and stressed the need to not limit discussion. The UK recognised the hard work of the Chair of the Commission (and his small group that met twice between IWC/55 and IWC/56), but stressed the need now for more transparency in the work on the RMS. In response to one of Japan's points, it considered that it is not surprising that the perceived needs of an RMS have become clearer and wider over the last 10 years. The UK believed that the aim of the Working Group should be to produce one RMS text with a series of options where appropriate, since in its opinion, any other approach would be a recipe for chaos. It suggested that the objective for the meeting should be to determine the issues and how they might be resolved. It further stressed that the role of the SDG was to produce draft Schedule text as directed by the Working Group and not to discuss policy issues.

#### 1.3 Reporting

In the interest of making the best use of the time available, the Working Group agreed that a Chair's report summarising the main discussions and outcomes of the meeting should be prepared and circulated after the meeting. Noting, however, that one of the Working Group's tasks was to provide guidance to the SDG, it was recognised that a paper documenting this guidance should be prepared and agreed before the end of the meeting.

The meeting agreed that Nicky Grandy and Greg Donovan (Secretariat) should act as rapporteurs.

#### 1.4 List of participants

The list of delegates and observers to the RMS Working Group is provided in Annex I.A.

## **1.5 Review of documents**

The list of documents available to the meeting is given as Annex I.B.

## **2. ADOPTION OF AGENDA**

The draft agenda was adopted with the addition of an item 4.0 on 'Statement of Principle' for an RMS, and 4.10 on 'Sanctuaries' (at the request of New Zealand). The adopted agenda and Terms of Reference for the Working Group are provided in Annex I.C.

## **3. MECHANISMS FOR ADOPTING AN RMS**

Before entering into discussions on the RMS itself, the Working Group Chair believed it would be useful to have some preliminary discussions regarding the mechanisms that could be used for the adoption of an RMS since this will have an impact on the format of the draft text(s) to be developed by the SDG.. He noted that for example, one option could involve development of a single draft Schedule RMS text that includes all different options by using square brackets that would be voted on paragraph by paragraph. Another option would be to develop complete text for one or more scenarios/RMS packages that reflect the different views on what the RMS should contain that the Commission could agree to vote on as a whole.

In the Working Group, most support was given to the development of a single text with options in square brackets as appropriate. However, some drew attention to the fact that such an approach would involve voting paragraph by paragraph and expressed concern that this could lead to an RMS text with internal contradictions.

One member expressed the opinion that a Protocol was needed to amend the Convention in relation to certain aspects it considered relevant to the RMS (i.e. special permit whaling, compliance, dispute settlement, objection procedure). However, the Chair proposed that this matter should be addressed as appropriate under item 4.

## **4. ELEMENTS OF AN RMS PACKAGE AND INSTRUCTIONS TO THE SMALL DRAFTING GROUP AND SPECIALIST TECHNICAL GROUPS**

### **4.0 Statement of Principle**

#### *4.0.1 Background*

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 discussed at the RMS Working Group at the 53<sup>rd</sup> Annual Meeting in 2001. 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 RMS Expert Drafting Group (EDG) returned to these proposals during its meetings between IWC/53 and IWC/54 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) had been provisionally agreed as a compromise (see IWC/54/RMS 1):

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. ]

These proposals were reviewed by the RMS Working Group at IWC/54 in Shimonoseki (see IWC/54/7). While a number of Working Group members saw no need for the text in paragraph 1(a), the Working Group did agree that it could be included in a revised Chapter V. There was no agreement on the need for paragraph 1(b), and hence it remained in square brackets.

#### *4.0.2 RMS Working Group discussions*

In the Working Group, New Zealand, who had been a member of the EDG, recalled that it had reluctantly agreed to the shorter version of paragraph 1(a) in the spirit of compromise, but noted that it had decided to withdraw this agreement in the absence of compromises from others on other matters under discussion. It therefore wished to re-introduce its earlier more detailed text as captured in Document IWC/53/RMS 2rev, Appendix 6. New Zealand also continued to support the inclusion of paragraph 1(b).

Sweden, supported by the Netherlands, indicated that it was in favour of the inclusion of a statement of principle. It preferred the shorter version, but had no problem with both options being put forward to the SDG. Others agreed. Japan recalled that the EDG had decided that it was not practical to include a long list of principles as proposed by New

Zealand as it would be difficult to reach agreement on the list. Japan preferred the shorter version, but noted that in any case, it did not necessarily agree to the inclusion of any statement of principle.

Australia considered the EDG's proposal too brief and lacking context. It was of the view that the international community would look unfavourably on an RMS 'package' that is not based on best practice as its point of departure, and drew attention to a list of general principles included in: (1) the 1995 *Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*; and (2) the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. It subsequently agreed to develop a document for consideration by the SDG (i.e. Document IWC/N04/RMSWG 13).

St Kitts and Nevis, urged the Working Group to focus on past agreements, believing that re-opening discussions would not be conducive to progress. It believed that only the shorter option should be put forward to the SDG.

The Chair noted the different views, and indicated that if a particular proposal has sufficient support, it should go forward to the SDG with the request that appropriate text be drafted. It was not the role of the Working Group to decide between different options. On this basis, the Working Group agreed that the EDG proposal, the New Zealand proposal and the suggestions of Australia should go forward to the SDG. As this was the outcome, St. Kitts and Nevis together with the Republic of Guinea, Gabon, Nicaragua, Dominica and Antigua and Barbuda also proposed a list of items that they considered should be included in any statement of principles (Document IWC/N04/RMSWG 14).

#### 4.0.3 *Instructions to the SDG*

The RMS Working Group requested that the SDG develop draft Schedule text for the following options:

- (1) short version of paragraph 1(a) as in Report of the RMS Working Group from IWC/54 in Shimonoseki (IWC/54/7);
- (2) longer version of paragraph 1(a) as proposed by New Zealand and included in document IWC/53/RMS 2 rev and including consideration of proposals submitted by Australia (IWC/N04/RMSWG 13) and St Kitts and Nevis, Republic of Guinea, Gabon, Nicaragua, Dominica and Antigua and Barbuda (IWC/N04/RMSWG 14);
- (3) include and exclude paragraph 1(b) as in Report of the RMS Working Group from IWC/54 in Shimonoseki (IWC/54/7);
- (4) No statement of principle.

### 4.1 **Revised Management Procedure (RMP)**

#### 4.1.1 *Recap on the Chair's proposal*

The Chair of the Commission had proposed that the RMP as agreed by the Scientific Committee and endorsed by the Commission should be used to set commercial whaling catch limits (see IWC/56/26).

In making this proposal, the Chair noted that in effect all catches will be zero until the Scientific Committee has completed an *Implementation* for a particular species and area. The Committee cannot begin an *Implementation* without instructions from the Commission. Referring to the present atmosphere of mistrust, the Chair also proposed that safeguards are needed to ensure that non-scientific methods are not used to delay/prevent *Implementation* work (in either the Commission or the Committee) as well as to ensure that it is carried out with appropriate scientific rigour. In relation to this he noted that the Scientific Committee is already working on guidelines on the level of information needed to begin and complete an *Implementation* as well as the time such a process should take.

At the RMS Working Group meeting, the Secretariat provided an overview of the RMP to provide background to the discussions and to address some of the comments made by governments in their responses to the questionnaire on the Chair's proposal. This overview included the objectives of the RMP, a history of the development process, its various components, and the processes involved in implementation (pre-pre-implementation assessment, pre-implementation assessment, implementation, and implementation reviews). No major changes to the RMP itself are envisaged unless directed by the Commission and under specified circumstances. However, the supporting annotations, requirements and guidelines are expected to be updated more regularly by the Committee. The Working Group was reminded that for a new region/species, there would be a minimum of 4 years (i.e. 4 Annual Meetings) from a first proposal by a government or governments for consideration to completion of an *Implementation* and a Scientific Committee recommendation for consideration by the Commission. The inherently conservative nature of the RMP was stressed (e.g. at the start of the process, for a population estimated at 10,000, the catch limit would be about 50).

The Secretariat noted that no changes to the RMP text are needed for its inclusion into the Schedule, but that very limited work by the Scientific Committee is needed: (1) to ensure that the annotations and guidelines/requirements are adequately referenced in the RMP text; and (2) minor updates to the *Implementation* process and spatio-temporal aspects of the annotations are required. The Secretariat clarified that the intention was that the annotations and guidelines would not be part of the Schedule itself but rather separate dated documents to which the RMP text in the

Schedule referred. Thus if the Commission were to adopt any modifications to the annotations/guidelines, then it is only the date in the Schedule that would need to be modified. If the changes are non-controversial, amendment of the Schedule would be straightforward. If the changes are controversial, then unless there is a three-quarters majority, the Schedule will still refer to the earlier version. Similarly, if a Contracting Government were to object to a change in the date, it will still be bound by the earlier version. The Secretariat also stressed that the tuning level and protection level would be included in the RMP text within the Schedule.

#### 4.1.2 *Discussion of the Chair's proposal*

The Working Group supported the current RMP, although some members stressed the need to retain the current tuning level of 0.72 and protection level of 0.54, while others believed the tuning level to be too conservative. One member believed that the Commission should move away from a generic RMP to specific management procedures for specific stocks with tuning levels set within a given range. The question of the relationship between the RMP and an ecosystem approach to management was raised briefly. Some support was also given to a new suggestion that there should be a requirement for independent oversight/observation of abundance estimate surveys given the importance of such data in the RMP. In response to this latter proposal, it was noted that the Scientific Committee has discussed this matter extensively in the past. In developing the present guidelines, the Committee has oversight in the planning, methods and data analysis. It also nominates its own representative to be on board, which may be independent of the cruise organisers. Some felt the current situation worked well and noted that the Scientific Committee was not recommending such a change. While indicating that some criticism of the RMP is valid, one member reminded the meeting that this was a single element of a compromise proposal for an RMS 'package' and that while minor amendments to the package could be acceptable, major amendments would disrupt the balance and derail progress towards agreeing an RMS.

#### 4.1.3 *Instructions to the SDG*

Noting the different views expressed on the Chair's proposal, the Working Group agreed on the following instructions to the SDG, i.e.:

- To develop Schedule text for the following two options:
  1. The RMP as currently adopted by the Commission; and
  2. With square brackets concerning the tuning level.
- To review existing draft Schedule text for incorporating the RMP into the Schedule and to develop draft Schedule text that refers to a dated version of the RMP annotations and requirements and guidelines.

The Working Group agreed to return to discussions regarding oversight of abundance estimate surveys under agenda item 4.3 on inspection and observation.

## 4.2 **Phased-in approach to the resumption of commercial whaling**

#### 4.2.1 *Recap on the Chair's proposal*

The Commission Chair believed that some sort of phased-in approach to commercial whaling could be useful in building public confidence in the IWC's ability to manage whaling and conserve whale stocks. He did not mean this to imply either that the RMP is not safe or that there will be immediate widespread whaling on all species around the world. He suggested that the best approach would be by phasing-in the areas in which commercial whaling would be allowed and proposed that when whaling resumed, it would initially (e.g. for a 5-year period) be within waters under national jurisdiction of member countries. The Chair noted that safeguards would be needed to make sure that this would only be a temporary measure, such as a clear sunset clause in the Schedule text. One option for such text might be:

*'Notwithstanding the catch limits by Small Area shown in Table 2, whaling will be restricted to waters under the national jurisdiction of the relevant Contracting Governments until 1 January 200X. After that date, this restriction will no longer be in effect.'*

#### 4.2.2 *Discussion of the Chair's proposal*

Before opening the floor to discussions, the Working Group Chair invited the Secretariat to summarise the views already expressed on this part of the Chair's proposal either at IWC/56 or in responses to the questionnaire on the Chair's proposals, i.e.:

- Support for a phased-in approach – could be useful to help build public confidence
  - any phasing-in should be linked to a phase-out of scientific permit whaling
- Unsure that restricting commercial whaling to coastal waters initially serves any useful purpose, has no scientific basis and may have adverse impacts on whale stocks
- Schedule paragraph 10(e) should remain in place after adoption of an RMS, but could then entertain setting catch limits on a regional basis which could be recorded in subsequent sub-paragraphs of 10(e) thereby having a kind of 'test' of the RMS system.

- A phased-in approach doesn't need to be specifically addressed because the process of producing agreed abundance estimates and RMP implementation would automatically lead to a phase-in of commercial whaling.
- Do not support resumption of commercial whaling and therefore do not support a phased-in approach. Fail to see how it would build public confidence in ability of IWC to manage commercial whaling.

Similar views were expressed by Working Group members regarding the Chair's proposal for a phased-in approach as had been aired previously. With respect to the concern expressed that restricting commercial whaling to coastal waters may have adverse impacts on whale stocks, the Secretariat reminded the Working Group that at its meeting at IWC/54 in Shimonoseki, it had requested the Scientific Committee to comment on the management implications (in terms of yield and risk) of restricting whaling in this way and that the outcome of the Committee's discussions were reported to the private meeting of Commissioners on the RMS at IWC/55 in Berlin (see *J. Cetacean Res Manage.* 6 (Suppl), 2004: 7-8). The Secretariat thus clarified that the Chair's proposal is not a concern from a conservation perspective. However, it may reduce yield beyond that that would be obtained under the already conservative RMP.

There was some debate regarding whether the use of the term 'waters under national jurisdiction' was sufficiently clear and whether use of the term Exclusive Economic Zone would be better. However, it was pointed out that not all countries have declared EEZs and that 'waters under national jurisdiction' is the term used by the UN, with a meaning of up to 200 nautical miles. One member who could not accept the Chair's proposal questioned how IWC can enforce rules within EEZs/waters under national jurisdiction. In response, the Secretariat noted that the 1946 International Convention for the Regulation of Whaling applies to all waters.

#### 4.2.3 *Instructions to the SDG*

Noting that there was no agreement on the Chair's proposal and while recognising a link between a phase-in of commercial whaling and any link between adoption of the RMS and the lifting of paragraph 10(e), the Working Group requested the SDG to incorporate the proposal into the draft Schedule in square brackets.

### 4.3 National inspection and international observation

#### 4.3.1 *Recap on the Chair's proposal*

The Commission Chair proposed that national inspection and international observers should be as proposed by the EDG in IWC/54/RMS 1 (where observers and inspectors are placed on all boats where practical), and include the proposals made by the Chair's Small Group on VMS (Vessel Monitoring Systems) and observers on catcher vessels, i.e. VMS on very small vessels with <24hr trips and one observer per catcher vessel attached to a factory ship.

The Secretariat summarised the proposals, based on document IWC/N04/RMSWG 8 '*Discussion Document on Inspection, Observation and Use of VMS*'. In doing so, the Working Group was reminded of the framework used by the EDG when developing its proposals for inspection and observation, i.e.

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, 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).

According to the Chair's proposal, the Secretariat indicated that deployment of national inspectors and international observers and use of VMS would be as follows<sup>2</sup>:

	<b>National inspectors</b>	<b>International observers</b>	<b>Position verification</b>
<b>Points of landing</b>	At least an international observer		n/a
<b><u>Coastal whaling*</u>:</b>			
(a) vessels operating day-trips, no substantial flensing on board, no room for an inspector or observer	No	No	VMS (to observer on shore) <sup>3</sup>
(b) vessels <24m, operating within own EEZ and can accommodate only 1 person in addition to crew	Combined role (international observer may also be appointed as national inspector by a Contracting Government), i.e. international observer given preference		By observer with independent GPS <sup>4</sup>
(c) all other vessels	At least an international observer		By observer with independent GPS
<b><u>Pelagic operations:</u></b>			
Factory ships	Yes	Yes (2)	By observer with independent GPS
Catcher boats	?	Yes (1)	By observer with independent GPS

\*Note that for coastal whaling, the vessel categories (a), (b) and (c) were based on information provided by Japan and Norway to the EDG regarding likely future whaling operations.

The Chair's proposal for the international observer scheme also includes provision for:

- an observer selection and placement process in which:
  - (1) Contracting Governments are able to veto candidates
  - (2) in principle, an observer would not be placed in territories/on vessels of the same Flag State, unless communication with the crew would be a problem)
  - (3) provisions to remove observers from the list are included
- Observer duties and reporting
- Observer training
- Responsibilities of those receiving observers.

#### 4.3.2 *Discussions on the Chair's proposal*

Before opening the floor for discussions, the Working Group Chair summarised the views already expressed on this part of the Chair's proposal either at IWC/56 or in responses to the questionnaire on the Chair's proposals, i.e.:

- General support for the Chair's proposal.
  - Could support less strict measures regarding the international observer scheme (i.e. not total and overall coverage and/or duplication of the national inspector tasks, but some form of oversight by way of spot checks. This would also help to reduce costs.
  - Need to address certain elements not covered in the Chair's proposal (IWC/56/26) in detail, e.g. nationality of independent observers, observer candidate veto arrangements.

<sup>2</sup> Note two amendments have been made to this version of the table compared with that appearing in IWC/N04/RMSWG 16, i.e. for points of landing and category (c) coastal vessels it is now indicated that there will be at least an international observer. This more accurately reflects the recommendations from the EDG.

<sup>3</sup> VMS data would be transmitted in real-time to an observer at the point of landing.

<sup>4</sup> The proposal for all but category (a) vessels, is that the international observer on board would be equipped with a portable Global Positioning System (GPS). Such systems will be able to provide the necessary accuracy regarding vessel position and, if linked to a suitable storage device will enable a full record of the ship's position again time to be kept without undue effort by the observer. Such procedures are currently used in many cetacean surveys.

- 100% coverage of whaling vessels by the combination of inspection, observation and VMS proposed by the Chair is unnecessary and not cost-effective. However, depending on the specifics of other elements of the RMS package and overall balance of these elements, there could be agreement on the Chair's proposals.
- Inspection as well as observation should be co-ordinated at the international level by IWC.
- International best practice must be applied.
- International observers should be present on board all boats (there should be no exemptions as proposed by the Chair).
- It is undesirable and not feasible to allow room for the substitution of international observers by national inspectors.
- VMS should be installed on all vessels and provide real-time reporting.
- A centralised real-time VMS for both coastal and pelagic whaling operations is necessary. IWC should look to provisions for finfish fisheries under CCAMLR to identify appropriate benchmarks.
- A registry of approved whaling vessels is an essential part of any inspection and observation scheme.

The Chair also reminded the Working Group that at IWC/56, it was envisaged that a technical specialist group would be needed to work on aspects related to VMS.

To try to help focus discussions on the Chair's proposal for an inspection and observation scheme, the Secretariat identified the following issues arising from the views expressed prior to the meeting:

Inspection/observation:

- Should inspection be a national responsibility (as in accordance with the Convention and as previously assumed in RMS discussions) or should it be run by IWC?
- Should there be a national inspector and/or international observer on all boats, for would exemptions be allowed for small boats involved in coastal whaling:
  - If required on all boats, this would imply that 'small boats' would not be allowed to operate.
- Consideration of the nationality of observers and observer candidate arrangements and whether current proposals are sufficient.

VMS

- Should VMS be required on all boats, rather than on just category (a) vessels?
- If required on all vessels (the rationale should be explained), should VMS be managed by the relevant Flag States or should there be a centralised system managed by the Secretariat?

Vessel registry

- Should an IWC registry of approved whaling vessels be included in the RMS 'package'. (Note that the EDG-proposed text implies that such a registry would be held by the Secretariat. This information is needed for the placement of observers. It is proposed that information on the vessels would remain confidential, made available to Contracting Governments on request, and used only in conjunction with the international observer scheme).

Some Working Group members broadly supported the Chair's proposal, believing it to be a cost-effective approach and recognising that it was part of a compromise 'package' of measures. Different views were expressed however with respect to category (b) vessels, and whether on these vessels it should be the international observer that has precedence over the national inspector (as in the Chair's proposal) or *vice versa*. There did not appear to be significant support for establishing an international inspection regime. Several members stressed the need for a simple, cost-effective approach that would not be prohibitively expensive for any developing country that may wish to engage in commercial whaling at some point in the future. Others however continued to support the requirement to have international observers and VMS on all vessels (with real-time reporting of vessel position and with a centralised VMS system preferred to national systems). Such attributes were considered to be following international 'best practice' and similar to the requirements of CCAMLR and other regional fisheries bodies. The fact that a requirement for 100% coverage of vessels by observers would discriminate against small vessels traditionally used in coastal whaling was noted but not discussed further. Some members questioned the advantages of (1) VMS on all vessels over international observers with independent GPS and (2) centralised versus national VMS, and considered that these alternatives would simply be more costly than the Chair's proposal without providing additional benefits. Others believed these measures to be essential when, in future, authorised vessels may be operating in more than one *Small Area* and in the case of shared quotas (when they believed it may be difficult for observers to provide information in a timely manner) and in combating illegal, unreported and unregulated (IUU) whaling.

The need for a vessel register was mentioned by some members, but not discussed to any great extent, suggesting perhaps that the provisions already proposed by the EDG are sufficient. One member stressed the importance of keeping vessel information confidential. Reference was made to the lists of IUU vessels that other fisheries bodies are beginning to establish, with the suggestion that this could be considered by the Commission.

Several members again supported the view that there should be independent observation of abundance estimate surveys, although this was not discussed further.

#### *4.3.3 Instructions to the SDG*

##### Placement of national inspectors and international observers

At the end of discussions, despite the differing views on the approach to be taken in the case of small vessels used in coastal operations (i.e. vessel categories (a) and (b)), there appeared to be significant agreement with the Chair's proposal for the placement of national inspectors and international observers on other vessels. The Working Group therefore requested the SDG to develop draft Schedule text for the following options:

- (1) the Chair's proposals for national inspection and international observation, as described in document IWC/N04/RMSWG 8;
- (2) the requirement for all whaling vessels to have a national inspector and an international observer on board (i.e. 100% coverage).

##### Application of VMS

The Working Group agreed that a technical specialist group should be established, as proposed earlier, to consider this matter further and to report back to the RMS Working Group at its next meeting. The Terms of Reference and background on this issue are provided in Annex D. The Terms of Reference are repeated below:

'The RMS Working Group requests the VMS specialist technical group, taking into account the existing international experience, to:

- (1) identify the possible advantages/disadvantages in the context of IWC to add VMS (of various types) to vessels which have an international observer with GPS on board;
- (2) identify the relevant benefits from a compliance point of view of national VMS systems and a centralized system;
- (3) identify an appropriate system or systems and develop text for the technical document that would accompany the Schedule as described in (b) above;
- (4) develop cost estimates for the option(s) developed in (3) above;
- (5) report to the RMS Working Group on the outcome of items 1 to 4.

Participants in the VMS technical group should primarily comprise experts familiar with VMS and their application in the monitoring, control and surveillance regimes of other fisheries and related bodies.'

The Chair noted that the following Contracting Governments had expressed interest in participating in the VMS technical specialist group: Australia, Iceland, Japan, New Zealand, Norway and the USA. It was suggested that Iceland convene this group, and Iceland's Commissioner undertook to investigate this possibility.

## **4.4 Additional catch verification measures**

### *4.4.1 Recap on the Chair's proposal*

The Chair's proposed RMS 'package' included additional catch verification measures, i.e. measures additional to his proposed national inspection and international observation scheme.

In his document, the Chair noted that the objectives of a catch verification scheme are to ensure that:

- IWC commercial catch limits (and other regulations) are not exceeded by member countries; and that
- Total anthropogenic removals (direct catches and bycatch) are not exceeded (both in terms of IWC and non-IWC countries) – this involves obtaining information on their levels.

The aim is not to monitor trade.

The Chair took the view that for whaling vessels registered by Contracting Governments, the inspection and observation scheme he proposed will provide internationally verified information on all aspects of the catch (including quota monitoring) required by the IWC (position, sex, date, etc.). However, he recognised that for vessels from IWC member countries operating illegally or vessels from non-member countries involved in taking whales (i.e. IUU whaling) there clearly will be no inspectors/observers involved and consequently other measures will be needed to detect/deter such operations. Similarly, measures would be needed to detect/deter unreported bycatch. He therefore proposed that the following three measures be included as part of the RMS 'package':

1. National diagnostic DNA registers and market sampling to agreed standards (with outside review) and a procedure to allow checking of samples against the registers;

By having a system whereby all 'legal' whales/whale products on the market are included in a national register, products from whales not taken in accordance with the provisions of the Schedule can be identified.

Believing that preventing the import of whale products from non-IWC countries or from illegal operations of boats registered in IWC countries is an essential element of the catch verification approach the Chair also proposed:

2. A Resolution urging countries to institute national legislation prohibiting the import of whale products from non-IWC countries as well as from IWC countries that are non-whaling;
3. A system of national catch documentation up to the point of entry/landing. The Chair recognised that some form of documentation will be required by national governments at the point of entry to show that the products came from whales caught legally by an IWC country. Whale products not accompanied by such document would not be allowed to be imported. The Chair took the view that while it is the responsibility of national governments to decide what documentation they would require when products are being imported, it would be valuable to develop an IWC *pro forma* that takes into account harmonisation activities of FAO, existing CITES requirements and documentation, and sensitivities regarding IWC's competency to address trade issues. The Secretariat had been requested to develop a draft *pro forma*. The Chair did not believe that documentation/product labelling once a product has entered an IWC country is necessary given other measures in place.

#### 4.4.2 DNA registers/market sampling

##### Range of views expressed on the Chair's proposal at IWC/56 or in responses to the questionnaire

These were:

Regarding inclusion of DNA registers/market sampling in the RMS 'package':

- Support inclusion of such measures as part of the RMS 'package'.
  - Any such scheme must be practical, cost effective and based on good practice.
- The inclusion of such measures as part of the RMS 'package' is unnecessary – the inspection and observation scheme will ensure that regulations are obeyed and seen to be obeyed. DNA registers/market sampling could be considered at a later date if the inspection and observation scheme has been found insufficient.

Regarding the level of, and responsibility for outside oversight and procedures for checking samples against a register:

- Reliable international monitoring is a prerequisite for credibility.
- There should be an international register maintained by IWC or another suitable body, accessible to all members of the IWC or approved users.
- International supervision should be guaranteed – for example, give an international supervisory body direct access to national registers. An IWC sub-committee could carry out supervisory tasks to agreed procedures.
- Contracting Governments should provide genetic profiles of each whale in their register in confidence to an outside body. Observers should be required to collect tissue samples for archiving in an approved independent laboratory.
- IWC should have responsibility for overseeing domestic registers, although verification need not necessarily be carried out by IWC itself. Copies of DNA registers should be maintained at an international body to allow independent checking of samples.
- Need transparent DNA registry of whale products in market place. Validity verified through random sampling by a qualified independent third party.
- Existing DNA registers have been developed for domestic purposes and are not required as part of the RMS package. Genetic profiles will not be provided to an outside body for purpose of checking samples. May be prepared to consider some voluntary measures.

### Some thoughts on the DNA register/market sampling approach and the RMS

Prior to Working Group discussions on the Chair's proposal, Mike Tillman (USA) introduced document IWC/N04/RMSWG 9 developed jointly with the Secretariat.

This document provided some thoughts on the DNA register/market sampling approach and the RMS. It began by noting that it is commendable that both Norway and Japan have established DNA registers (of genetic profiles) of individual whales. Such registers, in conjunction with some type of market sampling scheme (MSS) can *inter alia* help Governments to fulfil their obligations under the Convention to ensure that the provisions of the Convention are applied (and in particular that catch limits are not exceeded). The Scientific Committee has commented that the technical specifications of the Norwegian system are of the highest quality and that its specifications provide a useful model for such registers. The Japanese system is modelled on that of Norway.

The document noted that the Scientific Committee has recognised the need for 'diagnostic' registers. A diagnostic register is one such that all animals registered are considered 'permitted' and any others are defined as 'not permitted'. In order to achieve this, a system needs to be established whereby bycaught, ship-struck and stranded animals are also included registers.

In the light of the general agreement that the objectives of the Supervision and Control scheme are to ensure that the Commission's Rules and Regulations *are* obeyed and *seen to be* obeyed, the document suggested that it would be sensible to consider this issue in the light of the considerable progress already achieved by Norway and Japan – and in the context of an overall package. It was suggested that the following factors must be borne in mind in any such consideration:

- (1) the contribution such registers make to the overall RMS;
- (2) the balance between avoidance of duplication of effort and 'transparency' (outside oversight);
- (3) standards required of any future additional whaling nations;
- (4) standards required with respect to submission of samples/profiles for 'testing';
- (5) resolution of possible disputes between two or more nations over the legitimacy of a given sample.

The document suggested that in practice, the key to each of these points lies in the balance between national control and outside oversight. Perhaps the two extremes under such circumstances would be:

- (1) national governments are wholly responsible for establishing and maintaining any DNA registers, carrying out any comparisons that they deem necessary and reporting any results that they feel are appropriate to the IWC;
- (2) the IWC establishes a single DNA register that it maintains and carries out any comparisons – national governments must supply a suitable tissue sample to the IWC of each whale caught, bycaught, ship struck or stranded.

The document noted that there are potential disadvantages with both of these approaches. Whilst the first approach may ensure that illegal catches are detected, it does not fulfil the criterion that the Commission's rules and regulations *are seen* to be obeyed. The second approach, whilst clearly fully transparent, ignores the fact that at least two national governments have already established their own national registers as part of their fulfilment of obligations under Article IX.1 of the Convention – thereby resulting in considerable duplication of effort and greatly increased costs of any overall RMS.

In suggesting a possible way forward, Document 9 indicated that the first issue is to consider is whether the DNA/MSS approach does provide the RMS with additional benefits (in terms of ensuring that the provisions of the Convention are upheld) to the Inspection and Observation Scheme i.e. rules *are* obeyed. It has been generally agreed that it does in the context of IUU whaling and/or unreported bycatches. Given this, the next issue is to try to reach consensus on what level of 'oversight', if any, is necessary to ensure that the rules are *seen to be* obeyed. Assuming that some degree of oversight is acceptable as part of the overall RMS package, the document explored issues surrounding the possible balance between national control and outside oversight as shown in the table below. The table includes those elements that should be included in the consideration of a generalised genetic identification system in which *an outside body* (note this might be the IWC itself or some other body – perhaps an independent contractor or a related international organisation such as CITES) maintains oversight.

Issues to consider	Comment
<b>‘National’ registers</b>	
(1) Should Schedule provisions (presumably in the Chapter on Supervision and Control) contain a requirement that a contracting party wishing to engage in commercial whaling, shall establish a system for catch verification based upon the use of genetic data?	<p>Norway and Japan are now doing this voluntarily. If it is agreed that such measures do add to the RMS in the light of its agreed objectives, then consideration must be given to whether it is appropriate to make this compulsory. An additional rationale for this is that it would be unfair if any new nations that might wish to go whaling do not have to include the same safeguards as existing countries. However, if such a nation lacks the technical capability to establish its own system, then it should be permissible that an appropriately qualified party can be authorized to provide such services (subject to the same provisions that the national systems meet).</p> <p>Additionally, particularly with respect to possible fraudulent allegations of illegal whaling, consideration must be given to the idea that <i>all</i> Governments (at least in ocean areas where whaling is carried out) in whose waters/coastline large whales are either caught, bycaught, ship-struck or stranded, should hold national registers.</p>
(2) Should national or other systems be diagnostic and established in accordance with the requirements and guidelines developed by the IWC, based upon the advice of a small group of technical experts (that will include representatives of those coordinating existing national registers)?	<p>The Scientific Committee has already recommended that registers should be diagnostic and existing registers are intended to be so. If it is agreed that provision for such registers should be compulsory, it makes sense (and is fair to those that have already developed such registers) that minimum standards are specified and that the IWC, via technical experts, is involved. This will ensure, consistency, comparability and equity. The Scientific Committee has already contributed in this regard. The EDG conditions of practicality and cost-effectiveness should be met.</p>
(3) Should the IWC, in conjunction with the relevant national authorities, develop requirements and guidelines for requests for comparison of samples/profiles obtained by appropriate third parties (e.g. national governments or relevant intergovernmental bodies)?	<p>It is extremely important to ensure that fraudulent requests for comparisons are not made and to provide a possible method for the resolution of disputes should these occur. It might be helpful for the IWC to have a facilitating role in this, irrespective of the outside oversight question. Note that database software and software for searching such databases are available from human forensic laboratories</p>
<b>Market sampling</b>  (4) Market sampling in conjunction with registers can act both to detect whether illegal products have entered the market and as a deterrent to potential illegal activities. Should they be designed in conjunction with the IWC or other appropriate international body and who should carry them out?	<p>Whether carried by a national government or outside body, it is not simple to design appropriate market sampling strategies and to determine the level of sampling necessary to provide either a deterrent to potential illegal activities. The expertise currently existing in e.g. Japan plus the discussions in the Scientific Committee could be built upon. Other organisations such as CITES may have suitable experience. It would need discussion by an appropriate technical group. The likely outcome would probably have to be determined in terms of general principles and guidelines given the case-specific nature of markets.</p>
<b>Outside oversight for the DNA/MSS approach</b>	
(4) Should Contracting Governments provide the genetic profiles of each individual in their national registers to the outside body (e.g. the IWC Secretariat) in a pre-specified electronic format? If so, they could be held confidentially. Could they (under guidelines established by the Commission) be used for comparison in the context of possible infractions?	<p>This might be considered as an appropriate level of oversight, in that it allows the comparisons with ‘suspect’ samples to be compared independently from the national database. It could provide a simple yes/no answer to whether a sample is from an animal in a diagnostic register. This, in itself, will encourage the updating of registers (a negative result may have more serious consequences than a positive one for whaling nations).</p>

<p>(5) Should the IWC and/or some other outside body, based upon the advice of the same small group of experts (see (2) above), develop a system of oversight of such national systems to ensure that they meet the agreed guidelines and requirements? Such a system might include:</p> <ul style="list-style-type: none"> <li>• periodic reviews of national procedures and an audit of their performance;</li> <li>• specification of an appropriately qualified third party to carry out such reviews/audits;</li> <li>• a review of the results reviews/audits by appropriate IWC body/ies (e.g. the Scientific Committee/Compliance Review Committee).</li> </ul>	<p>This would represent an additional level of oversight to that above. It would be considerably more expensive and time-consuming. The need for this should be examined in the light of the EDG objectives and the conditions of practicality and cost-effectiveness. Such an examination could be done by a small group of technical experts such as that referred to in (2) above.</p>
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Document 9 suggested that if an approach similar to that described above is considered worth pursuing, once the general principles are established (e.g. those outlined in the Chair's proposal), the Commission should establish a *small* group of technical experts to finalise the details of this for use in an RMS.

#### Discussion of the Chair's proposal

In the Working Group, some members continued to express a preference for a central DNA register managed by IWC or some other appropriate body, and reference was made to Schedule text proposed earlier in this regard (e.g. IWC/54/RMS 1 – The Report of the RMS Expert Drafting Group, IWC/54/35 – Proposed Schedule amendment for adoption of the RMS). However, there was a willingness to consider a system of national registers as proposed by the Chair providing adequate international oversight could be ensured.

One member expressed concern regarding the technical and cost difficulties that developing countries may face if required to establish national DNA registers/market sampling, and suggested that there should be some form of derogation from any such requirement for a period of, for example 5-10 years. In the meantime it was suggested that a catch document system could be used, and if there was export of whale products to countries with DNA registers, then samples could be taken for DNA analysis at export. Another member expressed concern regarding the current stockpiles of whale meat and other products and how these might be accounted for. Their preference was that such stockpiles are disposed of by a certain date, although it could accept that such stockpiles are entered into a DNA registry. On this particular aspect, Japan reported that for its stockpiles of whale meat taken prior to the moratorium, all Japanese wholesalers are encouraged to submit information as well as samples for it national DNA register.

#### Next steps

The Working Group recognised that further technical work is needed before the SDG would be in a position to develop draft text. It therefore agreed to establish a specialist group on the DNA register/market sampling scheme approach (SGNDA). The Terms of Reference and background on this issue are provided in Annex E. The Terms of Reference are repeated below:

‘.....taking into account the work already undertaken by Japan, Norway and the Scientific Committee, as well as the various Commission groups, it is agreed that the SGNDA should report on the following technical issues, and, where appropriate develop text for technical specifications, concerning the following:

- (1) specifications for the establishment/maintenance of diagnostic DNA registers (including tissue analysis and specification of markers, minimum laboratory requirements, format of individual records, database structure and search facility);
- (2) technical aspects of possible system(s) for submission to avoid fraudulent claims;
- (3) general approaches for designing MSS including consideration of likely detection rates given assumptions of particular levels of occurrence of infractions and coverage, recognising the case-specific nature of MSS;
- (4) technical aspects of potential mechanisms for transparency/audit/oversight with respect to (1) and (3) above;
- (5) technical advantages and disadvantages of holding a centralised tissue archive and centralised copies of the electronic profiles for national registers versus only having the electronic profiles.’

The USA agreed to convene this group (with assistance from the Secretariat), together with experts from Belgium, Iceland, Japan, Netherlands, New Zealand, Sweden and the USA.

#### 4.4.3 *Resolution to deter IUU whaling*

##### Discussion of the Chair's proposal

The Commission Chair had requested the Secretariat to develop a draft Resolution urging countries to institute national legislation prohibiting the import of whale products from non-IWC countries as well as from IWC countries that are non-whaling, taking into account earlier similar Resolutions adopted by the Commission. The Secretariat's draft Resolution (IWC/N04/RMSWG 10) therefore formed the basis for discussions of the Working Group.

The views expressed by Working Group members were similar to those expressed either at IWC/56 or in responses to the questionnaire on the Chair's proposal. Some supported the proposed Resolution, while others believed that a non-binding Resolution is inadequate and that the requirement for appropriate national legislation to deter IUU whaling should form part of the RMS text itself within the Schedule.

##### Instructions to the SDG

The Working Group agreed to:

- (1) Keep the draft Resolution as proposed in IWC/N04/RMSWG 10 in hand.
- (2) Request the SDG to develop draft text to incorporate the operative paragraphs of the Resolution into the Schedule.

With respect to the draft Resolution, the Working Group should note that during the process of developing draft text to incorporate the operative paragraphs of the draft Resolution into the Schedule, the SDG recognised that the text in the second operative paragraph needed to be revised. This paragraph initially read as follows: 'Contracting Governments shall take all appropriate measures, including such amendments to their national laws and regulations as may be required, to prohibit the import of whales and whale products from non-Contracting Governments as well as from Contracting Governments that are not engaged in whaling'. Revision is necessary since: (1) it is not Contracting or Non-Contracting Governments that engage in whaling, but rather operations under their jurisdiction and (2) it needed to be made explicit that this provision did not apply to aboriginal subsistence whaling operations.

The SDG therefore brings the revised draft Resolution given in Annex F to the attention of the RMS Working Group.

#### 4.4.4 *Catch documentation*

##### Background to RMS Working Group discussions

The range of views expressed on the Chair's proposal at IWC/56 or in responses to the questionnaire were:

- Agree that a formal system of catch documentation to the point of entry/landing should be implemented (i.e. the Chair's proposal).
- The catch documentation system should extend to the point of final consumption not just to the point of entry/landing. [This would not only help deter IUU whaling but will also recognise consumer needs and may also help to rebuild public confidence.][This is good practice for other products, is generally required in respect of food products entering retail trade and should also be the norm for whale products.]
- In matters concerning trade, it would be necessary to ensure that systems are co-ordinated with CITES.
- The possibility of instant checking of products on the basis of both accompanying documents and the fact that a product is marked (DNA being the best method for marking) is essential for the control of catches and trade (especially international trade). CITES documents will usually have to accompany products for international trade and introductions from the sea. In these cases, the addition of DNA data of catches on the CITES documents would establish a strong link between the visible, immediately verifiable document, and the less tangible but reliable DNA data.
- A system of catch documentation would simplify verification on site and could be a simple harmonization of a numbering system of existing international and national documentation requirements.
- A catch documentation system to deter IUU whaling is not necessary since there is no evidence that IUU whaling is currently a problem or that it would become so with the resumption of commercial whaling. The working group on catch verification 'reached broad agreement' that the proposed inspection and observation scheme would ensure that regulations are obeyed and are seen to be obeyed for registered IWC operations. The introduction of additional catch verification measures are therefore unnecessary and duplicative but could be considered at some future time if conditions arose to warrant such measures. In any case a system of catch documentation to the point of entry/landing is virtually in place because of CITES requirements

Given the differing views on whether or not catch documentation should be included in the RMS 'package' and on the nature and extent of any such system, rather than developing a *pro forma* for national documentation at this stage, the Secretariat believed that it would be more useful to develop a discussion document (see also IWC/N04/RMSWG 11) that considered in some detail: (1) the approaches to catch documentation of other Regional Fisheries Management Bodies and FAO; and (2) CITES requirements. Having reviewed the operation of existing schemes, the Secretariat

noted that while the development of a list of items that should be included on any catch document might not be too difficult, the development of the underlying processes and procedures would not be a trivial matter and suggested that the Working Group take the following approach in its discussions:

1. Consider the differing types of (catch) documentation approaches available (e.g. CITES permits/certificates, implementation of a trade/statistical document approach as being used by the Tuna FMBs, implementation of a CCAMLR-style catch documentation, etc.);
2. Consider whether, if a catch documentation scheme is desirable, it should extend only to the point of entry/landing or whether it should extend further down the supply chain;
3. Make recommendations for the approach or approaches, if any, that would be most suitable for IWC purposes, taking into consideration
  - the fact that while whale species remain CITES-listed, CITES permits will be required (implying that attention should be given to avoiding unnecessary duplication of systems)
  - the harmonization activities taking place within the RFMBs and FAO;
4. Given the potential complexity of this issue, consider whether it would be appropriate to establish an expert group to develop any approaches recommended under 2. above. Such a group should include individuals with detailed knowledge of how the existing systems work in practice and individuals with a knowledge of the whaling industry.
5. Provide policy guidance to the Small Drafting Group as appropriate.

#### Discussion of the Chair's proposal

Not surprisingly, the views expressed within the Working Group were similar to those expressed earlier. While some members continued to support the Chair's proposal for national documentation, others considered that an IWC document system along the lines of that of CCAMLR should be developed. Some members did not believe additional documentation is necessary given CITES requirements and existing national requirements for catch certification. Among those supporting some form of documentation, there appeared to be agreement that it should begin from the point of harvest. However, there was disagreement regarding how far down the supply chain any documentation should go. Some believed that it should stop at the point of entry/landing, others that it should stop at the wholesaler level, and others that it should extend to the retail level.

#### Instructions to the SDG

The Working Group did not consider it necessary to establish an expert group to further develop approaches to catch documentation, but requested the SDG to develop draft Schedule text for the following options:

- (1) Chair's proposal for national schemes to point of entry;
- (2) Modified Chair's proposal extending consideration to wholesaler level and retail level;
- (3) Proposal for an IWC-operated scheme – building on, for example CITES requirements and CCAMLR's Catch Document Scheme for toothfish and with options for (a) point of entry/landing, (b) wholesaler level; and (c) retail level. [Note that the SDG (see Document IWC/D04/RMS SDG 5), that a specific detailed proposal for an IWC-operated scheme needed to be developed and available for review by the RMS Working Group at its next meeting. Sweden and New Zealand undertook to develop such a proposal in consultation with the Secretariat.]

## **4.5 Compliance**

### *4.5.1 Recap on the Chair's proposal*

The Commission Chair proposed to establish a Compliance Review Committee the duties as developed by the EDG and agreed by the Commission (see IWC/54/7 and IWC/55/COMMS 2). He noted that under the Convention, it is clear that it is the responsibility of relevant Contracting Governments and not the IWC to impose penalties and proposed that the recommendations from the Compliance Working Group from IWC/55 be followed, i.e. that the following text be included in the Schedule: *The Compliance Review Committee reports on infringements and the seriousness of these infringements to the Commission and advises the Commission what actions, if any, to be taken*'

The Schedule text proposed by the Chair would be as follows:

#### **Oversight**

- (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.<sup>5</sup>

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<sup>5</sup> **Secretariat:** At the October 2002 RMS intersessional meeting, Japan indicated to the Chair that it is now in the position, in principle to lift its general reservation to the establishment of a Compliance Review Committee, although it had also indicated that it may wish to propose some word changes to some sentences in the draft Schedule text at a later date. On this understanding, the

- (b) The Compliance Review Committee shall:
- (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.
- (c) The Compliance Review Committee reports on infringements and the seriousness of these infringements to the Commission and advises the Commission what actions, if any, to be taken.<sup>6</sup>

#### 4.5.2 Discussion on the Chair's proposal

Before opening the floor to discussions, the Working Group Chair invited the Secretariat to summarise the range of views already expressed on this part of the Chair's proposal either at IWC/56 or in responses to the questionnaire on the Chair's proposals, i.e.:

- Broadly support Chair's proposal. Compliance Review Committee should develop a list of serious infractions.
- Agree that IWC will not have competence to impose penalties on individuals (that is prerogative of Contracting Governments), but IWC should have competence to impose sanctions on Contracting Governments that are in non-compliance with the Convention and Schedule.
- There is a need to develop binding dispute and penalties procedures which would include, for example, that in the case of serious infractions, there should be a provision which would result in catch limits being set temporarily to zero.
- Chair's proposal offers no significant improvement over the current Infractions Sub-committee. Effective compliance requires an independent, impartial and transparent adjudicative body. There is a need to amend the Convention/develop a Protocol in this respect.

In the Working Group, some members continued to give broad support for the Chair's proposal. In view of the proposal to include DNA registers/market sampling as part of the RMS package, one country suggested that the review of the operation of such systems be added to the duties of the Compliance Review Committee.

However, some members were very critical of the Chair's proposal, judging it to be insufficient to ensure compliance with what would be a brand new management scheme. They considered it imperative to have a system that would be defensible to the wider public, that the Commission should have some leverage in the way catch quotas are managed, that the Commission should have power to impose sanctions (on Contracting and possibly non-Contracting

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square brackets have been lifted from sub-paragraphs (a) and (b). At that same meeting, the USA withdrew a sub-paragraph regarding involvement of NGO representatives in the spirit of compromise and in recognition that NGOs would continue to have observer status. During discussions of the Compliance Working Group at IWC/55, the Group agreed to withdraw a sub-paragraph indicating that the Compliance Review Committee shall act in accordance with the principles of fairness, transparency and due process etc, on the understanding that the Group acknowledged the importance of such principles. At the time, the Working Group was not able to decide how these principles might be embedded in the work of the CRC (e.g. formulating rules of procedure or other) and it recommended that the Commission consider drawing up rules of procedure. As a member of the Working Group, Germany, while endorsing the consensus text considered that from a legal perspective, work has to be done to address two important legal issues before deciding definitely, i.e. (1) if and how the rules of procedure should be drawn up; and (2) setting a legal framework for the definition of infringements and the seriousness of them as well as the legal consequences, addressing also the question whether this framework should be in the text of the RMS or elsewhere.

<sup>6</sup> **Secretariat:** the Compliance Working Group proposed that earlier wording (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'*) be replaced by that shown. However, during discussions at the following Private Commissioners' Meeting at IWC/55, one member of the Working Group – the UK – indicated that they would enter a reservation to the effect that any RMS text not providing for the automatic operation of penalties fails to meet the objectives that IWC has set, i.e. that the rules are obeyed and seen to be obeyed. Australia agreed.

Governments) and that a legally-binding dispute settlement mechanism should be established through the development of a Protocol to the Convention (this being considered the only way to establish such a mechanism). While recognising that Contracting Governments could discuss whether or not it is necessary or appropriate to amend the Convention, some members considered it an unrealistic proposal that would effectively block any agreement on an RMS. One member suggested that the discussion was confusing compliance and dispute settlement. This member considered that within the Chair's proposal there is an effective system for compliance and that a dispute settlement mechanism should be looked at separately, perhaps through the development of a Protocol.

#### 4.5.3 Outcome of discussion and instructions to the SDG

Given there was no consensus on this matter, the Working Group agreed to take the following two options forward:

- (1) Put Chair's proposal (see 4.5.1) forward to the SDG. Recognizing the proposal for DNA registers/market sampling as additional catch verification measures, include in the duties of the Compliance Review Committee, the need to review the operation of such systems (refer to text in IWC/54/35). Also take account of the proposal that one of the activities that the Compliance Review Committee should do once established is to develop a list of serious infractions (and see section 4.10.2 on sanctuaries) and subsequent measures which could, in the case of an infraction, be taken by the Commission.
- (2) Development of a Protocol (or Protocols) to the Convention to:
  - a) Establish a dispute settlement mechanism
  - b) Give power to the Commission as a body to set penalties

While the first option gave instructions to the SDG, it was noted that the second option regarding development of a Protocol (or Protocols) is not an issue for either the RMS Working Group or the SDG. New Zealand noted its intention to work on this with a view to providing some discussion text, possibly before the RMS Working Group meets in March 2005. It stressed that such text would not form part of the mandate of the Working Group, but rather provide background to discussions in the margins of the meeting regarding development of (a) Protocol(s). In addition to addressing a dispute settlement mechanism and compliance (i.e. a and b above), New Zealand's intention is to also include Article VIII and whaling under special permit and opting out of provisions within the scope of a Protocol or Protocols (see section 4.8.3).

## 4.6 Mechanism to apportion costs among Contracting Governments

### 4.6.1 Recap on the Chair's proposal

The Commission Chair noted that more discussion is needed on the details of how RMS costs should be apportioned, but recommended that it is based on the general principle that costs for national activities be borne by relevant national governments, while international costs for securing transparency could be allocated in the context of the overall financial contributions scheme – as indicated below.

Cost element	Who pays
National inspectors	Appropriate member countries
International observers	The Commission, in accordance with a Financial Contributions Scheme
VMS	Appropriate member countries
DNA registers and market sampling:	
Set-up and running of systems	Member countries with DNA registers
Oversight/review of national systems	The Commission, in accordance with a Financial Contributions Scheme
Checking	The country requesting the checking

### 4.6.2 Discussion of the Chair's proposal

The Working Group Chair summarised the range of views already expressed on this part of the Chair's proposal either at IWC/56 or in responses to the questionnaire on the Chair's proposals, i.e.:

- Support for the Chair's proposal;
- Could support the Chair's approach in general, providing costs for 'duplicative' or unnecessary measures do not involve a greater share for whaling countries. It is unreasonable for those insisting on such measures to insist that they are paid for by others;
- In the current financial contribution scheme, a catch component is already in place to take account of the 'resource-utilisation' factor. There should not be an additional cost component for the whaling nations as a consequence of adopting an RMS that will benefit all members;

- Whaling countries should be responsible for all costs or a greater share, which would be:
  - Consistent with the user-pays principle
  - Consistent with approaches used elsewhere.

In the Working Group, concern was expressed by some members regarding the apparent extent of duplication in the proposed inspection and observation scheme, leading to higher costs that might be prohibitive to any developing country that may wish to engage in commercial whaling at some point in the future. It was noted that attention should be paid to the total cost of any scheme as well as how costs might be apportioned. However, discussions focused on how costs of international observers would be covered. Some members continued to support the Chair's proposal that such costs would be paid by the Commission in accordance with a Financial Contributions Scheme. Others proposed that such costs should be borne by the whaling countries alone (Contracting Governments could determine the extent of any cost recovery), in line with the practice in other fisheries organisations. Pointing out that IWC differs from other fisheries organisations in that not all IWC members would wish to take whales, some members considered this proposal inappropriate and again drew attention to the catch component already factored into the contributions scheme. In response, it was noted that CCAMLR has a wider role in the conservation of Antarctic marine living resources than simply fisheries management, is an organisation in which not all member countries engage in fishing in the Convention area but in which costs of observers are borne by those that do. Some members therefore believed that similarities did exist between CCAMLR and IWC, which also has a wider role than simply managing whaling.

Reference was made to an alternative proposal introduced at IWC/53 in London in 2001 (see IWC/53/9) in which core administrative expenditure associated with the international observation scheme would be borne by the Commission as a whole, while operating expenditure would be paid by the Commission but recovered exclusively from countries engaged in commercial whaling. Those supporting this approach noted that costs for developing countries might be greater under the Chair's proposal.

#### 4.6.3 Instructions to the SDG

Noting the different views, the Working Group agreed that the SDG should be requested to develop draft Schedule text for the following two options:

- (1) The Chair's proposal as outlined in IWC/56/26;
- (2) Proposals introduced at the RMS Working Group meeting in London as reported in IWC/53/9. Draft text is available in IWC/54/RMS 2. In this option, the SDG was requested to take into account any recommendations from the Working Group on Costs that met in Antigua in May 2003 (see IWC/55/COMMS 4).

## 4.7 Measures for the lifting of paragraph 10(e)

### 4.7.1 Recap on the Chair's proposal

In his 'proposals for a way forward on the RMS' (IWC/56/26), the Commission Chair made the following statement and proposal:

*'I do not believe that trying to finalise an RMS in isolation of discussions on paragraph 10(e) is appropriate, and consider that a way of linking agreement on an RMS with the lifting of paragraph 10(e) needs to be found. My preferred approach is to modify paragraph 10(e) such that it becomes invalid on a specific day whilst ensuring that any whaling operations are undertaken under the full RMS package as adopted by the Commission.'*

He recognised that developing appropriate text to achieve this is not a simple task, and asked the Secretariat to develop some possible scenarios and text for consideration. The aim of any mechanism developed under the Chair's proposal will be to enable a lifting of paragraph 10(e) whilst ensuring that (1) whaling only occurs under a full RMS, and (2) that the objection of a non-whaling country could not prevent the possibility of whaling under an RMS. While some Contracting Governments believed strongly that there should be no link between adoption of an RMS and the lifting of paragraph 10(e), this request was supported by the Commission at IWC/56. The Secretariat therefore developed document IWC/N04/RMSWG 12 'Discussion document: The RMS and lifting of Schedule Paragraph 10(e) for consideration by the RMS Working Group'.

#### 4.7.2 Discussion of the Chair's proposal

##### Background to Working Group discussions

The range of views expressed on the Chair's proposal at IWC/56 and in responses to the questionnaire could be broadly summarised as follows:

- There should be no link between reaching agreement on the RMS and lifting paragraph 10(e). Decisions on lifting or otherwise modifying the zero catch limits should be kept separate from considerations of the elements that in principle comprise a best-practice management scheme for whaling. Agreement on an RMS must be reached prior to any discussions on lifting the moratorium. (Any eventual process that might result in the lifting of the moratorium should not only be time-sensitive but also geographically sensitive to take account of the rights of coastal States that have opted for the non-lethal management of whale stocks.) (Another reason for objecting to an automatic lifting of the moratorium once the RMS is lifted is that were whaling to be resumed, disputes are bound to arise that the Convention is not equipped to deal with as it contains no mechanism for settling disputes.)
- There should be no link between reaching agreement on the RMS and lifting paragraph 10(e). The RMS should be rigorously tested first to make sure that it works and it would be prudent to formally retain paragraph 10(e) through that testing/trial period (with any catch limits set for particular stocks being regarded as exceptions to the general rule).
- There is no need to remove paragraph 10(e) in a single step – rather a phased-out approach would be more appropriate, i.e. exemptions from the moratorium would gradually be introduced for certain stocks under certain conditions.
- A link between the RMS and lifting of 10(e) could only be considered if a proposal is presented that ensures that 10(e) remains in force until the adopted RMS has entered into force without objections.
- Finalising the RMS must be linked to the lifting of 10(e). At least one Contracting Government takes the position that 10(e) is no longer in force due to its wording, i.e. '....and by 1990 at the latest.....'.

The following specific concerns were also raised by one or more Contracting Governments:

- Concern that the Chair's proposal would not prevent a Contracting Government from leaving the Commission after the 90-day objection period and rejoining with a reservation to the RMS, or a new government joining with a reservation to the RMS.
- The sunset clause proposed by the Chair provides that if a Contracting Government objects to the RMS as it is entered into the Schedule, 10(e) will remain in place. However, in this situation, the RMS will remain in the Schedule with objections lodged against it. It will not be binding on the countries that lodged objections should the moratorium ever be lifted in the future. Such an outcome is entirely unsatisfactory. To avoid this situation arising, any sunset clause added to 10(e) must have additional language stating that if any objections are made to the RMS then not only will 10(e) remain in place, but the RMS in the Schedule will also be rendered invalid. In other words, if there are any objections lodged against the RMS, 10(e) remains intact and the RMS added to the Schedule is deemed invalid.
- The Chair's approach is essentially analogous to Contracting Governments giving up their right under Article V of the Convention to file an objection. Clearly the Convention was drafted specifically to allow Parties to object to regulations so the insistence that any commercial whaling operations are undertaken under the full RMS package sets a possible problematic precedent of diminishing the rights of Parties.

Document IWC/N04/RMSWG 12 addressed the Chair's request to develop some possible scenarios for how adoption of an RMS and lifting of paragraph 10(e) might be linked and took account of comments on the Chair's proposal made at IWC/56 or in the questionnaire. Before laying out some possible options of how adoption of an RMS and the lifting of paragraph 10(e) might be linked, the document also considered what the practical consequences of lifting the moratorium would be assuming that a robust RMS, in which the RMP is used to set catch limits, is in place. Given this assumption, the document indicated that should paragraph 10(e) be removed, the practical consequences are that commercial whaling catch limits would remain at zero until the Commission decides otherwise. The 'moratorium' would therefore effectively remain in place, and a three-quarter majority would still be needed for catch limits to be set at anything other than zero. Moreover, if paragraph 10(e) is removed, catch limits will be zero until the Scientific Committee has completed an *RMP Implementation* for a particular species and area, and the Committee cannot begin an *Implementation* without instructions from the Commission. If implemented today, the RMP would only allow catches from some stocks of minke whales and there would be a natural phase-in of commercial whaling. Bryde's whales in the North Pacific and fin whales in the North Atlantic are at the *pre-Implementation Assessment* stage. In addition, the lifting of paragraph 10(e) would not affect paragraph 10(d), which would remain in place unless the Commission decides otherwise. Paragraph 10(d) forbids the taking, killing or treating of sperm whales, killer whales and baleen whales (except minke whales) by factory ships or whale catchers attached to factory ships.

The document considered the following two options in relation to the Chair's preferred approach to linking RMS adoption and lifting of paragraph 10(e), although it was noted that both have disadvantages:

- (1) Modifying paragraph 10(e) such that it is lifted on a certain date provided no objections to the RMS package have been lodged. This approach would certainly ensure that future commercial whaling was undertaken under the full RMS package. The primary disadvantage is that an otherwise broad agreement would collapse if a single country (of whatever view on whaling) lodged an objection to the RMS.
- (2) Modifying paragraph 10(e) such that it is lifted only if there are no objections to the RMS package from 'key players' – in a similar way to when a Convention only goes into force once certain named countries have ratified it (as was the case with the ICRW). The drawback to this approach is that it may be very difficult to reach agreement on who the 'key players' should be (ideally they should at least include all countries with an interest now or in the future in commercial whaling). In addition, this approach would allow a country not included as a 'key player' at the time the RMS is adopted to lodge an objection and then whale outside the RMS at some point in the future.

Other approaches the document suggested for possible consideration included:

- (3) Lift paragraph 10(e) simultaneously with adoption of the RMS, but include a clause/provision in the Schedule such that the Commission will not instruct/authorise the Scientific Committee to determine catch limits for a particular stock if the request for such a determination comes from a Contracting Government that has an objection or reservation to any part of the RMS. This has three possible disadvantages: (a) it may be considered to conflict with that part of Article V.2(c) that notes that 'amendments shall not involve restrictions on the.....nationality of factory ships or land stations.....'; (b) a country with no objection to the RMS may request the Commission to determine a catch limit for a particular stock on behalf of a country that has an objection/reservation; (c) it penalises a country with no objections who may wish to catch whales from the same stock as one that does have an objection.
- (4) Lift Paragraph 10(e) simultaneously with the adoption of the RMS and include a note to the Table of catches that states that catches may be taken only by operations under the jurisdiction of Contracting Governments that do not have objections or reservations to the RMS. This does not preclude Governments lodging objections but the implications if they do are clear. Although, it too may be regarded by some as conflicting with Article V.2 I it is perhaps one of the more promising approaches, given good will to find a solution.

The document noted that the above options do not fully address the concern that Contracting Governments are essentially being required to give up their right under Article V.3 of the Convention to object to Schedule amendments, although option (4) is perhaps the closest to this.

Options (3) and (4) address the concern expressed over the possibility of Contracting Governments leaving the Commission and rejoining with a reservation to the RMS or a new government joining with a reservation to the RMS. They also avoid the situation that could occur in Options 1 or 2 whereby if there are objections to the RMS, 10(e) remains in place and the RMS remains in the Schedule with objections lodged against it – in such a situation, the RMS would not be binding on the countries that lodged objections should the moratorium ever be lifted in the future.

Finally, the document noted that several governments suggested that there is no need to remove paragraph 10(e) in a single step and that a phased-out approach would be more appropriate, helping to build public confidence. In this approach, exemptions from the moratorium would be gradually introduced for certain stocks under certain conditions, for example by adding a sub-paragraph 10(f) specifically stating '*notwithstanding the provision in 10(e), catch limits are allowed for.....*'. The symbolism of 10(e) would be retained, although commercial whaling would be phased in (as mentioned above, there would be a natural phasing-in of commercial whaling even if 10(e) were to be lifted). This approach might address the view expressed by some governments that the RMS should be thoroughly tested before paragraph 10(e) is lifted, since presumably some commercial whaling will need to be allowed to enable such testing to be done. However, removal of paragraph 10(e) is equally symbolic to those countries supporting a resumption of sustainable commercial whaling and such an approach does not meet their wish for a direct link between adoption of the RMS and the lifting of the moratorium.

#### Working Group discussions

In the Working Group, there was continued strong support from some members for the Chair's proposal to link adoption of an RMS and the lifting of paragraph 10(e). Some took the view that the moratorium should be lifted simultaneously with adoption of an RMS to avoid the situation where Contracting Governments would essentially be required to give up their right under the Convention to object to Schedule amendments (as is the situation with the Chair's preferred approach). These members recognised the difficulties of developing a suitable mechanism, but felt that the options in Document 12 provided a starting point. Some members, while not supporting simultaneous lifting of paragraph 10(e), indicated that they were attracted by a phased approach to lifting the moratorium on a stock-by-stock basis and suggested that this approach be explored. These members believed that a phased approach to lifting paragraph 10(e) would help build confidence within the Commission and the general public in IWC's ability to manage

whaling. Others could not support any link between RMS adoption and lifting of paragraph 10(e) and believed that the Chair of the Commission had not given sufficient justification for such an approach. Several members stressed the need for any RMS 'package' to guarantee the right of coastal States to appropriate whale resources through non-lethal means. In response, other members suggested that whaling nations would not be operating in the EEZs of other States. Several members believed it important to have an ecosystem approach to resource management.

Statements supporting a phased-approach to lifting paragraph 10(e) were welcomed by some supporting simultaneous lifting as an indication that common ground might be found among some Contracting Governments. However, it was nevertheless noted that with simultaneous lifting of the moratorium, there would still be a phase-in of commercial whaling by species/area/stock (for reasons as described above), and that while confidence-building is important, sufficient confidence should already be in place because of the already conservative nature of the RMP.

With respect to the practical consequences should paragraph 10(e) be lifted assuming a robust RMS is in place, there was confirmation that catch limits for all stocks are zero, unless otherwise agreed by the Commission and included specifically in the Schedule for a particular stock or stocks.

#### 4.7.3 *Instructions to the SDG*

Noting the different views expressed on the Chair's proposal, the RMS Working Group requested that the SDG develops draft Schedule text for the following three options:

- (1) The Chair's proposal for linking adoption of the RMS with lifting 10(e), taking into account options discussed in IWC/N04/RMSWG 12;
- (2) The suggestion that 10(e) should not be removed in a single step and that a phased-out approach would be more appropriate. In this approach exemptions from the moratorium would be gradually introduced for certain stocks for certain conditions, for example by adding a sub-paragraph 10(f) specifically stating '*notwithstanding the provision in 10(e), catch limits are allowed for.....*'.
- (3) No link between completion of the RMS and paragraph 10(e).

## 4.8 Whaling under special permit

### 4.8.1 *Recap on the Chair's proposal*

Recognising (1) the right of governments under the Convention to issue special permits, (2) concern expressed by some Contracting Governments regarding scientific whaling, and (3) the need to obtain as broad a consensus as possible on an RMS 'package', the Chair of the Commission believed that an appropriate approach would be to develop a voluntary 'code of conduct' for whaling under special permit as part of the RMS 'package'. Such a code might include certain features that research programmes should have, e.g. with respect to appropriate abundance estimates, improved participation of scientists from other countries in the design, review and conduct of research programmes, e.g. through international intersessional workshops. Noting that there was already a small group within the Scientific Committee working to consolidate existing guidelines, the Chair also proposed that this group develop recommendations for a code of conduct.

### 4.8.2 *Discussion of the Chair's proposal*

Before opening the floor for discussions, the Working Group Chair invited the Secretariat to summarise the views already expressed on this part of the Chair's proposal either at IWC/56 or in responses to the questionnaire on the Chair's proposal, i.e.:

- Support for the Chair's proposal;
- A voluntary code is insufficient.
  - There is no longer any scientific justification for lethal research programmes.
  - There is a need for binding provision, and possibly the amendment of the Convention through the development of a Protocol, to restrict/phase-out/abolish whaling under special permit. Adoption of an RMS package would need to be preceded by such binding action.

In the Working Group, some members continued to support the Chair's proposal for a voluntary code of conduct. For others, the inclusion in the RMS 'package' of a mechanism to restrict/phase out whaling under special permit was important not only for those who could not support any resumption of commercial whaling, but also for those countries that might be able to support a resumption at some point in the future given an appropriate RMS 'package'. Some believed that the possibility to address this issue through the development of a Protocol to amend the Convention, or through some other instrument should be pursued. One member noted that they would be prepared to adopt an RMS pending formal adoption of a Protocol.

Other members could not accept any proposal to restrict or remove their rights under Article VIII to conduct whaling for research purposes, and believed that the Commission should work within the framework of the existing Convention to reach agreement on an RMS 'package'. They considered development of a Protocol removing such rights to be futile since it would be unlikely that consensus could be achieved and that it would be binding only on those members agreeing to it.

#### 4.8.3 *Outcome of discussions and future work*

Given the views expressed, the Working Group agreed to take the following two options forward:

- (1) The Chair's proposal for a Voluntary Code of Conduct for whaling under special permit. An initial draft Code of Conduct will be developed by the small group within the Scientific Committee identified in the Chair's proposal (i.e. Chair and Vice Chair of Scientific Committee and the Secretariat's Head of Science). This initial draft will be available for review by the RMS Working Group at its next meeting, but it should be recognized that the Code of Conduct will also need to be reviewed by the Scientific Committee at IWC/57.
- (2) Phasing-out of whaling under Special Permit. One of the mechanisms proposed is the development of a Protocol to the Convention.

It was recognised that neither of these options require work from the SDG at this stage. As with discussions on compliance, New Zealand noted its intention to develop some discussion text on a possible Protocol, possibly before the RMS Working Group meets in March 2005. Such text would not form part of the formal Working Group discussions but rather provide background to discussions in the margins of the meeting.

## 4.9 Animal welfare considerations

### 4.9.1 *Recap on the Chair's proposal*

The Chair of the Commission believed that the differing opinions among Contracting Governments over the competency of IWC to address animal welfare issues should be recognised and taken into account. He therefore suggested that animal welfare considerations be addressed primarily through an initiative (perhaps by Resolution) to focus discussions within the Commission on improving the techniques to kill whales, based on (1) voluntary reporting of data as discussed at the Workshop in Berlin; and (2) the voluntary provision of information from existing research programmes (and/or the development of a co-operative research programme) at regular (e.g. triennial) specialist workshops).

In addition, the Chair proposed that the importance of taking animal welfare considerations into account should be explicitly recognised in the Schedule through the inclusion of text along the following lines: *'The hunting of whales shall be undertaken so that the hunted whale does not experience unnecessary suffering and so that people and property are not exposed to danger.'*

### 4.9.2 *Discussion of the Chair's proposal*

Before opening the floor for discussions, the Secretariat was invited to summarise the views previously expressed on this part of the Chair's proposal either at IWC/56 or in responses to the questionnaire on the Chair's proposal, i.e.:

- Animal welfare is an important issue. Can support the Chair's proposal but would prefer some requirements for data collection be included in the Schedule.
- Animal welfare is outside the competence of IWC and therefore have difficulty in accepting the Chair's proposal, but could support an initiative to focus discussions within the Commission on improving techniques to kill whales.
- Cannot support the Chair's proposal as voluntary measures would be inadequate. If the IWC resumes commercial whaling, it has a moral obligation to ensure that it is done in ways that minimise suffering. Comprehensive data should be collected routinely and specific provisions should be made as to methods and conditions under which whales may be taken legally.

The Working Group Chair reminded the meeting, that at IWC/56, it was envisaged that a specialist technical group would be needed to develop more detailed proposals and input to the SDG.

In the Working Group, similar comments were made as had been aired previously. While all members considered animal welfare issues to be important, some did not believe it should be part of the RMS 'package' and should not block progress in this matter. Others stressed that the public's concern in this area must be recognised and considered that the Chair's proposal fails to introduce important elements.

### 4.9.3 *Outcome of discussions and future work*

The Working Group agreed to take the following four options forward:

1. The Chair's proposal (IWC/56/26);
2. The Chair's proposal augmented by the requirement in the Schedule for data collection (see Sweden's proposal in its response to the questionnaire in IWC/N04/RMSWG 4 and IWC/54/35);

3. The UK's earlier proposal (see text in IWC/54/RMS 1 – the EDG report), and including additional items raised in its response to the questionnaire (see IWC/N04/RMSWG 4);
4. No reference to animal welfare.

It was agreed that a technical specialist group should be established with the following Terms of Reference:

'The Terms of Reference of the Specialist Technical Group are to develop text to:

- a) give effect to the Chair's proposal; and
- b) provide for compulsory collection of data by international observers on all whales killed within the RMS to verify that Schedule conditions are complied with; and
- c) provide for compulsory collection of the data necessary to prescribe killing methods and conditions under which whales can legally be killed under the RMS; and
- d) consider consequences of including no text in the Schedule.

In order to fulfil its terms of reference, the group may need to:

- i) define criteria and identify data relevant to animal welfare to be collected in order to determine the degree to which current killing methods comply with Schedule requirements and relevant findings and recommendations of IWC Workshops, Working Groups and resolutions;
- ii) In accordance with Article V 2 b, develop a format for collection of data;
- iii) recommend analyses of data collected to provide guidance to the Commission on fulfilling relevant findings and recommendations of IWC Workshops, Working Groups and resolutions;
- iv) develop a framework for cooperative research for review by the Commission, or a designated Working Group, and the dissemination of results that may inform the development of possible Schedule amendments under Article V in respect of: open and closed seasons; size limits for each species; time, methods and intensity of whaling; types and specifications of gear, apparatus and appliances; methods of measurements and other statistical and biological records;
- v) In accordance with Article VI, develop draft dated text for incorporation into the Schedule (as part of the RMS) prescribing minimum conditions for killing methods;
- vi) To develop draft resolutions as may be necessary to give effect to terms of reference a- d.'

Richard Cowan (Commissioner for the UK) agreed to convene this group. Other members are Argentina, Belgium, Germany, Iceland, New Zealand and Germany. It was agreed that this group should aim to conduct its business by email correspondence.

The Working Group noted that at this stage it is not necessary for the SDG to address this matter until the technical group has reported back to the RMS Working Group.

#### **4.10 Sanctuaries**

##### *4.10.1 Recap on the Chair's proposal*

The Chair of the Commission noted that whale sanctuaries are provided for under the Convention and believed that they should be reviewed on their individual conservation and management merits. For this reason, he considered that it would be difficult to build sanctuaries into any RMS 'package'.

##### *4.10.2 Discussion of the Chair's proposal*

Some Working Group members indicated that they could not support an RMS in the absence of a commitment from all Contracting Governments to respect sanctuaries so that they can function effectively. There was some support for the suggestion that a breach of sanctuary provisions should be classed as a serious infraction and that this should be taken up by the Compliance Review Committee if established (see section 4.5). Others spoke in support of the Chair's decision. They saw no link between sanctuaries and the RMS and noted that: (1) unless the Commission decides otherwise, existing sanctuaries will remain even if paragraph 10(e) is lifted; (2) new sanctuaries will still require a three-quarter majority to be adopted; and (3) individual countries have the right to establish sanctuaries in their own EEZs.

##### *4.10.3 Outcome of discussions*

The Working Group Chair noted that there was support for and against including sanctuaries in the RMS 'package'. It was agreed that no action needed to be taken by the SDG at its first meeting.

#### **5. NEXT MEETING OF THE RMS WORKING GROUP**

The Chair informed the Working Group that plans were in place for the next meeting of the RMS Working Group to take place in Copenhagen from Wednesday 31 March to Friday 1 April 2005, hosted by the Government of Denmark. It was noted that the Working Group meeting would again be followed by a meeting of the SDG.

## Annex I.A

### List of Delegates and Observers

**Antigua & Barbuda**

Anthony Liverpool

**Argentina**

Eduardo Iglesias  
Miguel Iniguez

**Australia**

Jonathon Barrington  
Pam Eiser

**Belgium**

Alexandre de Lichtervelde

**Brazil**

Jose Truda Palazzo Jr.

**Denmark**

Kate Sanderson

**Dominica**

Lloyd Pascal

**Finland**

Esko Jaakkola

**Gabon**

Guy Anicet Rerambyath

**Germany**

Peter Bradhering

**Guinea, Republic of**

Amadou Telivel Diallo  
Sidiki Diane (I)

**Iceland**

Stefan Asmundsson  
Asta Einarsdottir  
Christian Loftsson

**Japan**

Joji Morishita  
Dan Goodman  
Yasuo Iino

**Netherlands**

Giuseppe Raaphorst  
Henk Eggink  
Cindy Heijdra

**New Zealand**

Geoffrey Palmer  
Jim McLay  
Alan Cook  
Mike Donoghue  
Rosemary Paterson  
Al Gillespie

**Nicaragua**

Miguel Marengo

**Norway**

Halvard P. Johansen  
Turid Rodrigues Eusébio

**South Africa**

Horst Kleinschmidt  
Herman Oosthuizen  
Chris Badenhorst

**Spain**

Carmen Asencio

**St. Kitts & Nevis**

Daven Joseph

**Sweden**

Bo Fernholm  
Stellan Hamrin  
Thomas Lyrholm

**UK**

Richard Cowan  
Geoff Jasinski  
Sue Fisher

**USA**

Rolland Schmitt  
Michael Tillman  
Jean Pierre-Ple  
Roger Eckert  
Cheri McCarty  
Kitty Block

**Intergovernmental  
Organisation Observers**

**IUCN**  
Justin Cooke

**Non-Governmental  
Organisation Observers**  
**Animal Care International**  
Niki Entrup

**Animl Welfare Institute**  
Susan Tomiak

**BANEA**

Ayako Okubo

**Campaign Whale**

Andy Ottaway

**EIA**

Jenny Lonsdale

**Greenpeace International**

John Frizell

**High North Alliance**

Olavur Sjurdarberg

**IFAW**

Vassili Papastavrou

**Nordic Council for Animal  
Welfare**

Sven Stenson

**Werkgroep Zeehond**

Geert Drieman

**WSPA**

Philip Lymbery

**Secretariat**

Nicky Grandy  
Greg Donovan  
Julie Creek

(I) Interpreter

## Annex I.B

### List of Documents

IWC/N04/RMSWG	1	Draft Agenda
	2	Draft list of documents
	3	List of Participants
	4	Responses to the questionnaire relating to ‘call for comments/positions on key issues in relation to the Chair’s Proposals for a Way Forward on the RMS’
	5	Verbatim Record of Discussions on the RMS at the 56 <sup>th</sup> Annual Meeting of the International Whaling Commission (Draft)
	6	Some thoughts on the RMP and the questionnaire responses ( <i>prepared by the Secretariat</i> )
	7	Overview of the monitoring, control and surveillance regimes of other international fisheries management bodies ( <i>prepared by the Secretariat</i> )
	8	Discussion document on Inspection, Observation and use of VMS ( <i>prepared by the Secretariat</i> )
	9	Some thoughts on the DNA/MSS approach and the RMS ( <i>prepared by Michael F. Tillman and the IWC Secretariat</i> )
	10	Draft Resolution on measures to deter illegal, unreported and unregulated whaling ( <i>prepared by the Secretariat</i> )
	11	Discussion document on catch documentation ( <i>prepared by the Secretariat</i> )
	12	Discussion document: The RMS and lifting of Schedule paragraph 10(e) ( <i>prepared by the Secretariat</i> )
	13	Elements of an RMS “Package” ( <i>submitted by Australia</i> )
	14	Statement of Principles should include ( <i>submitted by St. Kitts and Nevis, Republic of Guinea, Gabon, Nicaragua, Dominica, Antigua and Barbuda</i> )
15rev		Summary of outcome of discussions on elements for an RMS package, including instructions from the RMS Working Group to the SDG

#### Documents from previous meetings

IWC/56/	26	Chair’s Proposals for a Way Forward on the RMS
	27	Summary of status of discussions on RMS elements and related issues as of 55 <sup>th</sup> Annual Meeting in Berlin
	28	Statement from Henrik Fischer, Chair of the Commission, to the Private Meeting of Commissioners/Alternate Commissioners on the 16 <sup>th</sup> July 2004
	36	Discussion document: Further Work Required on the RMS based on IWC/56/26
Resolution 2004-6		On completion of the Revised Management Scheme (RMS)
IWC/55/COMMS	3	Report of the RMS Working Group on Catch Verification
	4	Report of the RMS Working Group on Costs
IWC/54/RMS	1	Report of the Revised Management Scheme Expert Drafting Group

## **Annex I.C**

### **Agenda and Terms of Reference**

1. INTRODUCTORY ITEMS
  - 1.1 Appointment of Chair
  - 1.2 Introductory remarks and objectives of the meeting
  - 1.3 Reporting
  - 1.4 Review of documents
2. ADOPTION OF THE AGENDA
3. MECHANISMS FOR ADOPTING AN RMS
4. ELEMENTS OF AN RMS PACKAGE
  - 4.0 Statement of Principle
  - 4.1 Revised Management Procedure (RMP)
    - 4.1.1 Recap on Chair's proposal
    - 4.1.2 Discussion of Chair's proposal
    - 4.1.3 Development of options
  - 4.2 Phased-in approach to the resumption of commercial whaling
    - 4.2.1 Recap on Chair's proposal
    - 4.2.2 Discussion of Chair's proposal
    - 4.2.3 Development of options
  - 4.3 National inspection and observation scheme
    - 4.3.1 Recap on Chair's proposal
    - 4.3.2 Discussion of Chair's proposal
    - 4.3.3 Development of options
  - 4.4 Additional catch
    - 4.4.1 Recap on Chair's proposal
    - 4.4.2 Discussion of Chair's proposal
    - 4.4.3 Development of options
  - 4.5 Compliance
    - 4.5.1 Recap on Chair's proposal
    - 4.5.2 Discussion of Chair's proposal
    - 4.5.3 Development of options
  - 4.6 Mechanism to apportion costs among Contracting Governments
    - 4.6.1 Recap on Chair's proposal
    - 4.6.2 Discussion of Chair's proposal
    - 4.6.3 Development of options
  - 4.7 Measures for the lifting of paragraph 10(e)
    - 4.7.1 Recap on Chair's proposal
    - 4.7.2 Discussion of Chair's proposal
    - 4.7.3 Development of options
  - 4.8 Whaling under special permit
    - 4.8.1 Recap on Chair's proposal
    - 4.8.2 Discussion of Chair's proposal
    - 4.8.3 Development of options

- 4.9 Animal welfare considerations
  - 4.9.1 Recap on Chair's proposal
  - 4.9.2 Discussion of Chair's proposal
  - 4.9.3 Development of options

- 4.10 Sanctuaries
  - 4.10.1 Recap on Chair's proposal
  - 4.10.2 Discussion of Chair's proposal
  - 4.10.3 Development of options

4.11 Other

- 5. INSTRUCTIONS TO THE SDG
- 6. SPECIALIST TECHNICAL GROUPS AND INSTRUCTIONS
- 7. NEXT MEETING OF THE RMS WORKING GROUP

#### **Terms of Reference**

Resolution 2004-6 indicated that the RMS Working Group will have the following responsibilities:

- (4) To complete work on the RMS package, with the goal of having a finalized RMS text ready for consideration, including for possible adoption, at IWC 57, and/or to identify any outstanding policy and technical issues.
- (5) To take account of delegates' comments at IWC 56, as well as written submissions from delegates.
- (6) To provide guidance to, and to review the work of, the Small Drafting Group.

RMS WG to be open to observers.

## **Annex I.D**

### **Terms of Reference for Specialist Technical Group on VMS**

#### **BACKGROUND**

In the context of IWC regulations and an inspection and observation scheme, knowledge of a vessel's position is primarily important to verify that whales caught are taken in the correct Small Area(s) designated by the RMP (see Table 1).

#### **Chair's proposal**

For those vessels that large enough to accommodate an international observer, the observer would be responsible for monitoring vessel position by means of an independent, portable Global Positioning System (GPS). Such systems are currently used in cetacean sighting surveys. Data can be transmitted as often as desired to shore.

For very small boats that operate day trips (<24 hours) only, carry out no substantial flensing on board, and can accommodate neither a national inspector or an international observer (i.e. the legal limit of persons on board does not exceed the number of the crew), the Chair proposed that these boats should be fitted with VMS that would transmit position data in near real-time to an observer at the point of landing.

#### **Other comments**

It has also been proposed by some delegations that VMS should be required on all vessels, irrespective of whether an observer is on board, and that this should comprise a centralised system run by or on behalf of the Secretariat.

#### **Incorporation into the Schedule**

Clearly, whatever system is used for vessel position monitoring/verification, practical/technical details will need to be developed. At IWC/54 in Shimonoseki, the RMS Working Group agreed to the proposal of the RMS Expert Drafting Group that the overburdening of the Schedule with such details should be avoided and that the following approach should be followed:

- (a) the Commission keeps all of the practical details in a single document, not the Schedule itself;
- (b) The Schedule refers to a dated version of this document. 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 controversial, then unless there is a three-quarter majority, the Schedule will still refer to the earlier version. Similarly, if a Contracting Government objects to a change in the date, it will still be bound by the earlier version.

#### **SPECIALIST TECHNICAL GROUP**

Within the RMS Working Group, some members supported the Chair's proposal regarding the use of VMS and GPS, while others considered that VMS should be installed on all vessels. Given the differing views, the Working Group agreed to establish a specialist technical group on VMS with the following Terms of Reference:

The RMS Working Group requests the VMS specialist technical group, taking into account the existing international experience, to:

- (1) identify the possible advantages/disadvantages in the context of IWC to add VMS (of various types) to vessels which have an international observer with GPS on board;
- (2) identify the relevant benefits from a compliance point of view of national VMS systems and a centralized system;
- (3) identify an appropriate system or systems and develop text for the technical document that would accompany the Schedule as described in (b) above;
- (4) develop cost estimates for the option(s) developed in (3) above;
- (5) report to the RMS Working Group on the outcome of items 1 to 4.

Participants in the VMS technical group should primarily comprise experts familiar with VMS and their application in the monitoring, control and surveillance regimes of other fisheries and related bodies.

**Table 1: Chair’s proposal regarding placement of national inspectors and international observers**

	Coastal whaling vessel category <sup>7</sup>			Pelagic operations
	(a)	(b)	(c)	
<b>Personnel</b>				
On vessel	No inspector or observer, but VMS	Combined international observer/ national inspector	At least an international observer	Factory ship: nat. inspector & int. observers Catcher boats: at least int. observer
At port of landing	At least an international observer	At least an international observer	At least an international observer	National inspector & int. observer
<b>Rule/information</b>				
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.	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).	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.	Collection the responsibility of the CG. Observed by international observer/national inspector.

<sup>7</sup> Category (a) vessels: operate day trips (<24 hours) only, carry out no substantial flensing on board and can accommodate neither a national inspector or international observer on board in addition to crew. Category (b) vessels: Vessels<24 m, operate only within waters under jurisdiction of the Flag State that can only accommodate one person in addition to the crew. Category (c): all other vessels.

## The EDG Framework

The EDG agreed that the primary objectives of any inspection and observation scheme are to:

- (5) ensure that the rules and regulations of the Commission are obeyed;
- (6) ensure that the rules and regulations of the Commission are seen to be obeyed;
- (7) report to the Contracting Government any infractions of those rules and regulations;
- (8) report to the Commission any infractions of those rules and regulations.

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

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

The following progression was then used to structure discussions:

- (1) identify the nature of the regulation or information required;
- (2) determine appropriate method(s) to monitor the regulation;
- (3) assess efficiency and practicality of method(s);
- (4) select most appropriate – recognising that this would require an overall review to determine the most efficient way to ensure the objectives of any scheme were met and to avoid any unnecessary ‘over-monitoring’ of any particular regulation;
- (5) determine whose responsibility to ensure method is used and who uses it;
- (6) determine reporting hierarchy;
- (7) determine who pays.

## **Annex I. E**

### **Terms of Reference for a Specialist Group on the DNA register/Market Sampling Scheme Approach (SGDNA)**

#### **BACKGROUND**

The use of a DNA/MSS (DNA register/Market Sampling Scheme) approach to obtain information that will help to ensure that catch limits set under the RMP are not exceeded has been discussed for several years. Such schemes are already in practice in Norway and Japan and discussion of some technical aspects has occurred within the IWC Scientific Committee. Such an approach can be particularly valuable in terms of detecting/deterring IUU operations or unreported bycatch (e.g. IWC/55/COMMS 3). Any wider issues of trade that may be of benefit to individual nations themselves are not of relevance to the IWC.

#### **Chair's proposal**

The Chair's proposal stated that DNA registers/market sampling systems should form the major part of the catch verification system. They should have the following attributes:

- National diagnostic DNA register for each whaling country or group of countries (to agreed specifications) to avoid redundancy and additional costs;
- Designed market sampling system (to agreed specifications);
- Some degree of outside audit.

The Chair had noted that further work is needed to adequately specify certain technical details and to consider the level of appropriate transparency that will fulfil the goal that regulations are not only obeyed but seen to be obeyed. He had also noted that an agreed specified system for submitting samples to the register(s) for 'checking' must be developed to prevent fraudulent claims of illegal products being found. Under this system it is proposed that: (1) samples must be submitted via national governments or appropriate intergovernmental organisations with proof of origin of the samples; and (2) analysis must follow agreed techniques in approved laboratories.

There is general (although not exclusive) agreement on this approach in the RMS working group; the primary area from a policy perspective is the level and nature of outside oversight.

#### **ESTABLISHMENT OF A TECHNICAL SPECIALIST GROUP (SGDNA)**

In accordance with the Chair's proposal, it has been agreed to establish an SGDNA to provide advice on the technical details related to the DNA/MSS approach. Without making specific recommendations on appropriate levels or who should carry out the outside audit, it would also be useful for the group to provide technical details of potential audit mechanisms for DNA registers and market sampling schemes. This information could then be considered at the next meeting of the RMS Working Group for consideration at both the policy and drafting levels.

#### **Membership**

This must be a specialist group and members should be familiar with DNA analysis (particularly with respect to individual identification, ideally in the context of DNA registers), market sampling approaches or both. The USA has agreed to act as Convenor of the group with assistance from the Secretariat. In order to facilitate work, Governments are requested to notify the name and email address of their expert to the Secretariat by 10 December 2004.

#### **Modus operandi**

The group should endeavour to complete its business by correspondence. However, it is recognised that with such a complex agenda this may be difficult and the possibility of the need to hold a short meeting (probably immediately prior to the March RMS Working Group meeting) cannot be ruled out. The Commission should consider whether it may be appropriate to provide some funds for participants in this regard. In either circumstance the report of the group must be available to the next meeting of the RMS Working Group.

#### **Existing documentation**

There has been considerable discussion of relevant matters both within the Commission's RMS groups and its Scientific Committee. The Secretariat will compile an electronic reference set of such documents for circulation to the SGDNA

### **Terms of reference**

Given the above, and taking into account the work already undertaken by Japan, Norway and the Scientific Committee, as well as the various Commission groups, it is agreed that the SGDNA should report on the following technical issues, and, where appropriate develop text for technical specifications, concerning the following:

- (1) specifications for the establishment/maintenance of diagnostic DNA registers (including tissue analysis and specification of markers, minimum laboratory requirements, format of individual records, database structure and search facility)
- (2) technical aspects of possible system(s) for submission to avoid fraudulent claims;
- (3) general approaches for designing MSS including consideration of likely detection rates given assumptions of particular levels of occurrence of infractions and coverage, recognising the case-specific nature of MSS;
- (4) technical aspects of potential mechanisms for transparency/audit/oversight with respect to (1) and (3) above;
- (5) technical advantages and disadvantages of holding a centralised tissue archive and centralised copies of the electronic profiles for national registers versus only having the electronic profiles.

**Annex I.F**  
**Revised draft Resolution on**  
**measures to deter illegal, unreported and unregulated whaling**

WHEREAS it is the purpose of the International Whaling Commission to provide for the effective world-wide conservation and management of whale stocks;

WHEREAS the International Whaling Commission has adopted a Revised Management Scheme to carry out that purpose;

WHEREAS, the verification of catches to deal with the issues of illegal, unregulated and unreported whaling and unreported bycatches is an essential element of the Revised Management Scheme;

WHEREAS, the importing of whales or products thereof from any State not a party to the International Convention for the Regulation of Whaling together with illegal activities of Parties will seriously detract from the effectiveness of the management scheme adopted by the International Whaling Commission;

RECALLING previous Resolutions passed at its 28<sup>th</sup>, 29<sup>th</sup> and 31<sup>st</sup> Annual Meetings [RIWC 21: 33, RIWC 28: 31, RIWC 30:38] and at its Special Meeting in December 1978 [RIWC 30:8] prohibiting the import of whales and whale products from non-member nations and/or proscribing the transfer of whaling vessels and equipment and the dissemination of assistance to non-member nations;

NOW THEREFORE THE COMMISSION:

REAFFIRMS the commitments undertaken by the adoption of Resolutions at its 28th, 29th and 31st Annual Meetings and at its Special Meeting in December 1978;

DECIDES that, if they have not already done so, Contracting Governments shall take all necessary measures to prohibit the import of whales and whale products obtained illegally, from operations not under the jurisdiction of Contracting Governments or for which local consumption is specified under paragraph 13.(b) of the Schedule dated October 2004, including such amendments to their national laws and regulations as may be required;

RESOLVES that all Contracting Governments shall report to each Annual Meeting of the Commission on their efforts to implement this Resolution.

## Part II

# Chair's Report of the RMS Working Group Meeting Eigtveds Pakhus, Copenhagen, Denmark, 30 March to 1 April 2005

### 1. INTRODUCTORY ITEMS

#### 1.1 Appointment of Chair

The meeting was chaired by Henrik Fischer, Chair of the Commission.

#### 1.2 Introductory remarks

The Chair welcomed delegates and observers to the meeting. He apologised for his unavoidable absence at the Sorrento and Borgholm meetings where his Chair's Proposal had been discussed.

The Chair provided a brief overview of the history of discussions on the RMS that had started just over 10 years ago. Despite the many years over which discussions have taken place, he believed that insufficient progress had been made. He feared that if discussions continued at the same pace, the future of the IWC as a management body would be in doubt and that this could have serious consequences for whale conservation. He therefore hoped that proposed draft RMS Schedule text could be available for review by the Commission at IWC/57 in Ulsan. In his view, all Contracting Governments have an obligation to co-operate on issues related to both conservation and management and he stressed the need to achieve compromises. Given the present situation with respect to whaling, he therefore believed that the most pertinent question now facing the IWC is not whether commercial whaling should take place or not, but whether it will take place under or outside IWC control.

Following these remarks, some stressed the need to be mindful of the goals established by Resolution 2004-6 which had two aspects, i.e. to complete work on the RMS package, with the goal of having a finalised RMS text ready for consideration, including for possible adoption, at IWC 57, and/or to identify any outstanding policy and technical issues. In response, the Chair explained that he had no intention of violating the Working Group's terms of reference. However, he reminded the meeting that when he had been invited by the Commission in 2001 to chair the RMS Working Group, he had been asked to try to make progress – he is still trying to do so. Nevertheless, he recognised absolutely that it is the right of each Contracting Government to decide whether or not it supports the idea of an RMS and the responsibility of the Commission to determine whether there will be an RMS and, if so, what form it should take.

#### 1.3 Reporting

In the interest of making the best use of the time available, the Working Group agreed that, as with the Borgholm meeting, a Chair's report summarising the main discussions and outcomes of the meeting should be prepared and circulated after the meeting. Noting, however, that one of the Working Group's tasks was to provide guidance to the SDG, it was recognised that a paper documenting this guidance should be prepared and agreed before the end of the meeting.

Nicky Grandy and Greg Donovan (Secretariat) were again appointed as rapporteurs.

#### 1.4 List of participants

The list of delegates and observers to the RMS Working Group is provided in Annex II.A.

#### 1.5 Review of documents

The list of documents available to the meeting is given as Annex II.B.

### 2. ADOPTION OF AGENDA

The draft agenda was adopted without changes. The adopted agenda and Terms of Reference for the Working Group are provided in Annex II.C.

### 3. ELEMENTS OF AN RMS PACKAGE AND INSTRUCTIONS TO THE SMALL DRAFTING GROUP AND SPECIALIST TECHNICAL GROUPS

Following the SDG meeting in Borgholm, comments on its report (IWC/D04/SDG 5) were invited and were made available to the RMS Working Group in Copenhagen as IWC/M05/RMSWG 4. Only Japan, New Zealand, Australia and Norway provided comments. Working Group members were also invited to comment on the Borgholm SDG report

at the present meeting. Substantive comments are captured in the sections below, while those of an editorial nature have not been mentioned but were considered by the SDG at its subsequent meeting.

### 3.1 Statement of Principle

#### 3.1.1 Recap on outcome of Working Group discussions in Borgholm (see Part I, Section 4.0)

The Secretariat summarised the background to this item, recalling that proposals to insert a statement of principle at the beginning of Chapter V Supervision and Control to describe the scope, mandate and purpose of any RMS were first introduced by New Zealand and the UK after the RMS Intersessional meeting in Monaco in February 2001. These proposals were then discussed at IWC/53; some countries supported the idea, while others saw it as unnecessary. This issue was then discussed within the RMD Expert Drafting Group (EDG) between IWC/53 and IWC/54. The EDG did not reach consensus on whether introductory text was necessary, but a compromise – a slimmed down version of the original proposals - was agreed. New Zealand and the UK subsequently withdrew from this compromise stating that this was due to the absence of compromises from others on other matters under discussion. At the meeting in Borgholm, New Zealand re-introduced its earlier proposal, leading to the introduction of two further proposals - one from Australia, and another from St Kitts and Nevis and others.

The outcome of the Borgholm discussions was that the Working Group instructed the SDG to develop draft text for all options – including the option of having no statement of principle, i.e.:

- (1) a short version of paragraph 1(a) as in Report of the RMS Working Group from IWC/54 in Shimonoseki (IWC/54/7);
- (2) a longer version of paragraph 1(a) as proposed by New Zealand and included in document IWC/53/RMS 2 rev and including consideration of proposals submitted by Australia (IWC/N04/RMSWG 13) and St Kitts and Nevis, Republic of Guinea, Gabon, Nicaragua, Dominica and Antigua and Barbuda (IWC/N04/RMSWG 14);
- (3) to include and exclude paragraph 1(b) as in Report of the RMS Working Group from IWC/54 in Shimonoseki (IWC/54/7);
- (4) no statement of principle.

#### 3.1.2 Discussion and instructions to the second meeting of the SDG

When initiating discussions, the Chair recognised the differing opinions within the Working Group as to whether or not a statement of principle is needed and if so, what form it should take. However, drawing attention to the many options for this (and other possible RMS elements), he asked whether progress could be made by returning to the recommendation from the EDG captured in options (1) and (3) above. While some members supported this approach, others still preferred a longer version. Some members also commented that for the present, discussions should continue to focus on the substance at hand and not on trying to reduce the number of options. They believed that trying too hard to reduce options at this stage may be counterproductive and may lead to many proposed amendments at IWC/57. St Kitts and Nevis and others who proposed a longer statement of principle in Borgholm, indicated their willingness to withdraw this if Australia and New Zealand would do likewise. Australia and New Zealand declined, but did agree to merge their proposals. Norway, who preferred no statement of principle, indicated that they could accept the shorter version provided the square brackets placed around the words ‘aboriginal subsistence whaling’ were removed.

As a result of the above discussions, the Working Group noted that the following options regarding a statement of principle now exist:

- (1) Option 1 – see IWC/D04/RMS SDG 5, Annex D;
- (2) Option 1 above but with Norway’s proposal to remove the exemption for aboriginal subsistence whaling;
- (3) Option 2 - Proposal (B) – see IWC/D04/RMS SDG 5, Annex D;
- (4) Option 2 – replacement of old Proposals (A) and (C) by that proposed jointly by Australia and New Zealand - see IWC/D04/RMS SDG 5, Annex D;
- (5) Option 3 as drafted by the SDG – see IWC/D04/RMS SDG 5, Annex D;
- (6) Option 4 – no statement at all.

It was agreed that the SDG should consolidate the text in IWC/D04/RMS SDG5 Annex D to reflect these six options.

### 3.2 Revised Management Procedure (RMP)

#### 3.2.1 Recap on outcome of Working Group discussions in Borgholm (see Part I, Section 4.1)

In Borgholm, the Working Group had supported the current RMP. However, while some members stressed the need to retain the current tuning level of 0.72 and protection level of 0.54, others believed the tuning level to be too conservative. There was a suggestion by one member that the Commission should move away from a generic RMP to

specific management procedures for specific stocks. Such a change would need to follow an appropriate process – and would clearly take some time.

The Working Group agreed to instruct the SDG to develop draft text for two options:

- (1) the RMP as currently adopted by the Commission;
- (2) with square brackets concerning the tuning level.

The SDG was also requested to review existing draft Schedule text for incorporating the RMP and its annotations, requirements and guidelines into the Schedule (see IWC/D04/RMS SDG 5, Annex E).

The Secretariat reported that minor work to finalise the ‘Requirements and Guidelines for *Implementation*’ of the RMP would be done by the Scientific Committee at IWC/57 and will be reported to the RMS Working Group in Ulsan.

### 3.2.2 Discussion and instructions to the second meeting of the SDG

Australia noted that it believed that at IWC/56 many Commission members did not have a strong understanding of the RMP; Australia itself had some difficulties in relation to RMP implementation. It recalled that at IWC/56 it had requested a presentation on the RMP to be made in Ulsan and that it would reserve its position on the RMP until after this presentation. The UK took a similar view.

Argentina expressed concern regarding the second option above, i.e. to put the tuning level (technically this is the lower percentile of the marginal posterior distribution of  $L_t$  that gives effect to the tuning level) in square brackets. It questioned why option (2) is allowable since the RMP had been adopted by the Commission in 1994 by consensus. Argentina did not believe that the Working Group could change the position of the Commission. This view was supported by Brazil and Italy. In response, Norway, who had requested option (2) in Borgholm, reminded the meeting that it had reserved its position on the tuning level of 0.72 at the time. It uses a level of 0.62 to set catch limits for its commercial hunt under objection. It further remarked that it has plans to revise the RMP and proposed an additional third option to the effect that the best available science should be used in a new RMP. Japan recalled that at the Annual Meeting in 1991 when the tuning level of 0.72 was adopted by Resolution, the Scientific Committee had actually recommended three tuning options (0.6, 0.66 and 0.72) all of which were considered ‘safe’ – the choice of 0.72 had thus been a political rather than a scientific matter. The USA favoured removal of the square brackets (i.e. deletion of option 2). It believed that the Commission is already using the best available science but questioned whether perhaps what Norway is seeking is the possibility for periodic review of the RMP. Monaco thought this approach interesting given that science does evolve.

Norway declined to withdraw its proposal although thanked the USA for its comment and agreed to develop proposed draft Schedule text for a third option. Consequently the Working Group noted that the following options exist:

- (1) the RMP as currently adopted by the Commission - see IWC/D04/RMS SDG 5, Annex E;
- (2) as (1) but with square brackets around the lower percentile of the marginal posterior distribution of  $L_t$  - IWC/D04/RMS SDG 5, Annex E;
- (3) the new proposal from Norway using text it provided.

It was agreed that the SDG should consolidate the text in IWC/D04/RMS SDG5 Annex D to reflect these options.

## 3.3 Phased-in approach to commercial whaling

### 3.3.1 Recap on outcome of Working Group discussions in Borgholm (see Part I, Section 4.2)

In Borgholm there had been some, but not universal support for the Chair’s proposal for a phase-in of commercial whaling by initially restricting it to waters under national jurisdiction. The RMS Working Group had simply requested the SDG to incorporate the proposal into the draft Schedule in square brackets. The Chair believed that a phased-in approach to commercial whaling could be useful in building public confidence in IWC’s ability to manage whaling and conserve whale stocks.

### 3.3.2 Discussion and instructions to the second meeting of the SDG

New Zealand suggested that the background to the Chair’s proposal was the so-called Irish Proposal put forward in 1997. At the core of the Irish Proposal was a compromise involving the permanent restriction of commercial whaling to within EEZs, together with strict controls. New Zealand indicated its willingness to discuss this proposal, which it believed remained on the table. It felt that the ideas behind the Irish Proposal are what is driving work on the RMS and expressed disappointment that the Chair’s proposal was to restrict commercial whaling to national waters for a limited period only. Brazil and Monaco associated themselves with New Zealand, although Monaco stressed the need to seek compromises. The Secretariat reminded the Working Group that at the Commissioners’ meeting on the RMS in Cambridge, October 2002, Ireland indicated that it did not believe that restriction of commercial whaling to within waters under national jurisdiction needed to be permanent – rather it should be considered a time-limited measure and that the precise mechanism and time-scale would need to be determined (IWC/55/COMMS 2).

Nicaragua disagreed with the position of New Zealand. St Kitts and Nevis believed that the RMS should take a scientific, not a political approach, and that whales should be managed on a stock-by-stock basis. It questioned New Zealand's claim that the Irish Proposal remains the driving force for discussions since many governments opposed it at the time and that considerable work has been undertaken since. As has previously been stated many times, a number of States would be at a significant disadvantage if commercial whaling were to be restricted to EEZs. St Kitts and Nevis added that in such situations, it is normal to put compensation measures in place (e.g. a compensation fund), and that it could only agree to restrictions of commercial whaling if there was also agreement on a compensation mechanism. Iceland also noted the past disagreements over the Irish Proposal and explained that this is why the Chair's proposal is one of compromise.

Argentina indicated that it could not support a text which does not state that whaling will be restricted to waters under the national jurisdiction of the Contracting Governments that undertake whaling or in the waters under national jurisdiction of another Contracting Government subject to agreement with this Contracting Government. It further noted that any Contracting Government legislation that prohibits whaling should not be affected by the adoption of an RMS. Argentina was of the opinion that a better phase-in approach could be based on the gradual implementation of the RMS to some particular areas, under national jurisdiction, agreed by the Commission following recommendations of the Scientific Committee. This method would exclude the implementation of the RMS on waters under the jurisdiction of States whose national legislation forbids whaling and could better serve the purpose of protection of some endangered stocks. Japan stated that in its view it is already not possible for vessels from one Contracting Government to conduct whaling in the waters of another Contracting Government without the permission of that Government.

Following the discussions, the Working Group noted that the following options now exist:

- (1) No phase-in of commercial whaling;
- (2) No whaling on the high seas (i.e. re-introduction of earlier proposal - IWC/D04/RMS SDG 4, paragraph 3);
- (3) Phasing-in as proposed by the Chair - see IWC/D04/RMS SDG 5, Annex E, paragraph 3;
- (4) Option for compensation proposed by St Kitts and Nevis using text provided by St Kitts and Nevis as a basis.

It was agreed that the SDG should consolidate the text in IWC/D04/RMS SDG5 Annex E to reflect these options.

### **3.4 National Inspection and International Observation Scheme**

#### *3.4.1 Recap on outcome of Working Group discussions in Borgholm (see Part 1, Section 4.3) and subsequent intersessional work*

In Borgholm, some Working Group members broadly supported the Chair's proposal (which reflected previous broad agreement within the Commission on this issue), believing it to be cost-effective and recognising that it was part of a compromise 'package' of measures (see Part 1, Section 4.3.1).

There were two major areas of discussion:

Placement of national inspectors and international observers – The Working Group requested the SDG to develop draft Schedule text for:

- the Chair's proposal;
- the requirement for all whaling vessels to have a national inspector and an international observer on board (implies small vessels cannot be used);

#### Application of VMS

- The issue here was whether VMS (Vessel Monitoring System) is needed only for small boats with no inspector or observer on board, as in Chair's proposal, or whether VMS should be required on ALL boats.

The Working Group established a VMS technical specialist group to further develop this area (see Terms of Reference in Part 1, section 4.3.3). It comprised Iceland as convenor, Australia, Japan, New Zealand, Norway and the USA. It's report was made available as document IWC/M05/RMSWG 6 and is included here as Annex II.D. The document was introduced by Mr Gylfi Geirsson, convenor of the group.

#### *3.4.2 Discussion and instructions to the second meeting of the SDG*

##### **PLACEMENT OF NATIONAL INSPECTORS AND INTERNATIONAL OBSERVERS**

Japan drew attention to the Chair's proposals for coastal whaling vessels that can only accommodate one additional person in addition to the crew (i.e. category (b) vessels - see Part I section 4.3.1), i.e. to appoint an international observer who may also be appointed as a national inspector. It informed the meeting that such a situation would cause serious problems for Japan since under its national law, national inspectors have enforcement powers which could not be given to foreign nationals. It suggested that this problem could be avoided if it was the national inspector that could

be designated as an international observer. Japan noted that while the Chair's proposal would not currently cause a problem for Japan as it does not have coastal whaling falling into this category, it believed it may be a problem for others. Norway noted that it does not have the same legal problems as Japan, but added that it is unlikely to accept the Chair's proposal for other reasons, such as language problems<sup>8</sup>. Norway further reported that it does not now have a national inspector on board all vessels as it has developed an electronic system (the 'blue box') in combination with VMS to replace them. Norway undertook to provide detailed information on its 'blue box' system to the RMS Working Group in Ulsan.

New Zealand recalled that the Chair's proposal for category (b) vessels was one of the few areas on which there was agreement within the EDG and urged that discussions on this part of the proposal not be re-opened. In response, Norway drew attention to the fact that the EDG did not reach agreement on whether one observer appointed by the Commission shall be present on all vessels undertaking whaling operations or may be present. It therefore did not believe that any agreement would be broken.

Sweden asked for clarification from Japan and Norway regarding who has enforcement powers. Japan noted that their national inspectors have some legal capacity, but that it would be the responsibility for each Contracting Government to define the role of their own national inspectors. It considered that international observers would have no enforcement powers. Norway explained that it is their coastguards rather than national inspectors who have enforcement powers. It indicated that it trusted its whalers and considered it sufficient to take action on any infractions after the end of each season, as necessary.

Sweden indicated that it could support the Chair's proposal for the placement of national inspectors and international observers, particularly in view of the discussions regarding VMS requirements (see next section) and the possibility for new technology as being developed by Norway. Others however, including Australia, New Zealand, Brazil and the UK, preferred to have international observers on all boats and stated that all options should be kept open at this stage. Iceland expressed concern over the direction in which discussions were going. It believed that keeping all options open is not a way forward. Its own view was that the Chair's proposals for inspection and observation are excessive, but it was prepared to accept them in the spirit of compromise as part of an overall package.

The Chair noted that there appeared to be agreement on his proposals regarding pelagic whaling vessels and that the difficulties were only with respect to coastal whaling.

After the above discussions, the Working Group noted that the following options exist:

- (1) Chair's proposal - see IWC/D04/RMS SDG 5, Annex F;
- (2) National inspectors and international observers are required on all boats - see IWC/D04/RMS SDG 5, Annex F;
- (3) The nature of national inspection not being specified (i.e. being left to the Contracting Governments to specify) as proposed by Norway.

It was agreed that the SDG should consolidate the text in IWC/D04/RMS SDG5 Annex F to reflect these options.

#### **APPLICATION OF VMS**

The meeting thanked the convenor and members of the VMS group for their work and report.

The starting position of some members was that VMS should be required on all boats with real-time reporting to a Fisheries Monitoring Centre and/or the Secretariat as this is now the standard practice in most other fisheries management bodies. Others first sought clarification of what the added value of this would be compared with international observers monitoring position using portable GPS as in the Chair's proposal<sup>9</sup>.

In trying to provide some clarification, Iceland acknowledged that a requirement for wide-ranging VMS had not been included in the Chair's proposal and accepted that VMS is not necessarily needed since an inspector and international observer will be on board most vessels. However, it was prepared to consider such a requirement because VMS is: (1) so widely used already; (2) relatively cheap; and (3) very helpful for crew safety purposes (and in this respect real-time reporting is necessary).

Antigua and Barbuda thanked Iceland for this clarification but expressed concern that discussions were not leading to a cost-effective approach with respect to the regulation of whaling. Australia also welcomed Iceland's comments. It agreed that VMS costs are low and noted that developing countries in the Forum Fisheries Agency (FFA) have already accepted the use of VMS. It noted that VMS is needed to help ensure compliance. It believed that if commercial

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<sup>8</sup> The Secretariat recalled that in this respect, the proposed observer scheme notes that *'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'*.

<sup>9</sup> The Secretariat noted that the RMP needs the position that the catch is taken in. It further noted that portable GPS can be set up to record position continuously and that these data could be sent by email to the Secretariat, for example, at the end of every day if desired.

whaling resumed, a whole range of Flag States would become engaged in this activity and that IUU issues would have to be dealt with. It further believed that no requirement for comprehensive VMS would give the impression of a second-best approach to management of whaling. It believed that IWC should follow the example of NEAFC, NAFO and CCAMLR and require a combined national system and centralised system (see section 2.4 of the technical group's report). New Zealand believed that the technical group's report demonstrated that VMS on all boats would be the best approach. It did not believe on board inspection to be sufficient in terms of verification and reliability and noted that observers do not work 24 hours per day and may become ill and unable to work. The UK associated themselves with the remarks of Australia and New Zealand. It also considered that VMS would be useful in cases where there are very limited catch limits (i.e. VMS would help to ensure catch limits were not exceeded). Monaco questioned why IWC should deprive itself of a cost-effective system. It noted that a VMS system is neutral and believed that a VMS system combined with an international observer would be optimal. Germany, Italy, Spain and Brazil also supported that VMS be required for all vessels.

Denmark urged the Working Group to analyse requirements in the context of IWC (not other fisheries organisations) and to return to the Chair's proposal. Responding to a remark from Australia, Japan suggested that the FFA has a centralised VMS system as it is not cost-effective in that organisation to have observers. It remained to be convinced why such an approach is necessary for IWC. It had heard different reasons given for why real-time reporting is necessary (i.e., for safety purposes, to verify position of vessels and position where whales are taken, and for enforcement), but sought clarification about which were really important in the context of IWC (e.g. it could understand why real-time reporting is needed for safety purposes, but believed that this aspect is mainly a national issue).

The Chair noted that although there was not consensus on this matter, a large number of members supported the requirement for VMS on all boats, not just for management purposes but also for safety. Given this, he questioned whether, in order to make progress, the meeting could agree that national VMS systems should be required. However, those supporting a VMS requirement preferred that a combined national system and centralised system should be established, believing it important that position data be reported to the Secretariat in real-time. In response to a question from the Secretariat regarding what it would be expected to do with the data that arrived in real time, Australia noted that in CCAMLR, the Secretariat simply stores the data but has rules on access.

The outcome of the discussions was that the Working Group noted that the following options now exist:

- (1) Chair's proposal - see IWC/D04/RMS SDG 5, Annex F;
- (2) Establishment of a combined national/centralised VMS system, with VMS being required on all boats.

It was agreed that the SDG should consolidate the text in IWC/D04/RMS SDG5 Annex F to reflect these options. The starting point for option 2 should be Paragraph 21 of Annex F. It was also agreed that the SDG should begin the development of technical specifications in the light of the report from the VMS technical group.

### **3.5 Additional catch verification**

In his proposed package of elements for the RMS, the Chair had proposed that the following three measures related to additional catch verification be included:

- national diagnostic registers and market sampling to agreed standards and a procedure to allow checking of samples against the registers;
- a Resolution urging countries to institute national legislation prohibiting the import of whale products from non-IWC countries as well as from IWC countries that are non-whaling;
- a system of national catch documentation up to the point of entry/landing.

#### *3.5.1 DNA registers/market sampling*

##### **RECAP ON OUTCOME OF WORKING GROUP DISCUSSIONS IN BORGHOLM (SEE PART 1, SECTION 4.4.2) AND SUBSEQUENT INTERSESSIONAL WORK**

In Borgholm, while some members continued to express a preference for a central DNA register managed by IWC or some other appropriate body, there was a willingness to consider a system of national registers as proposed by the Chair providing adequate international oversight could be ensured.

The Working Group agreed to establish a technical specialist group to explore the matter further (see Part I, Annex I.E for terms of reference). This group comprised the USA (convenor), Belgium, Iceland, Japan, Netherlands, New Zealand, Sweden and the Secretariat. Its report was made available as document IWC/M05/RMSWG 5 and is included here as Annex II.E. A presentation on the SGDNA's report was given by the Secretariat.

The Specialist Group on the DNA register/market sampling scheme (SGDNA) developed recommendations for the specifications for the establishment and maintenance of diagnostic DNA registers. It considered three general scenarios for DNA register systems and a further three alternatives for the design of market sampling schemes (MSS), i.e.:

#### DNA registers:

*Scenario 1DNA* - national systems, including a national tissue archive and a national DNA register controlled and maintained by a member nation or under contract to a member nation, with requirement for reporting of infractions to IWC;

*Scenario 2DNA* - national systems with some level of international oversight, e.g.  
(a) national systems with conditions for technical audit by IWC (e.g., submission by IWC of samples for double-blind comparisons; see Item 8.1)  
(b) national systems with technical audit by IWC and electronic copies of DNA profiles held by IWC  
(c) national systems with technical audit by IWC, electronic copies of DNA profiles held by IWC and duplicate samples of tissue held by the IWC;

*Scenario 3DNA* – a centralised, international system (IWC based) with central tissue archive and central register of DNA profiles derived centrally.

Market sampling schemes:

*Scenario 1MSS* - national MSS only, with no international oversight;

*Scenario 2MSS* - national MSS with international oversight;

*Scenario 3MSS* - IWC-operated MSS.

The SGDNA also considered a variety of mechanisms for providing transparency/audit/oversight with respect to DNA registers and market sampling systems and technical advantages and disadvantages of alternatives for tissue archive(s) (see sections 8 and 9 of SGDNA report).

**DISCUSSION AND INSTRUCTIONS TO THE SECOND MEETING OF THE SDG**

New Zealand commended the SGDNA report but stated that it did not believe that it is possible to choose between the various options because of a number of difficulties. It had received comments/questions in the following areas from its member of the SGDNA:

- calibration of microsatellites – New Zealand wished to hear more about calibration experiments and error rates between laboratories and the implications of these;
- if national DNA registers are used, New Zealand believed that the key issue will be if they can communicate with each other;
- given the range of options for combined registers and market sampling schemes, New Zealand asked which would be the most appropriate approach. It noted that the SGDNA had not discussed this.
- New Zealand believed that it would be logical for the Sub-committee on DNA to address the design of market sampling schemes, but questioned whether sub-committee members involved in the development of existing registers are providing adequate information;
- Catch documentation – New Zealand supported strongly a link between DNA profiling and catch documentation.

New Zealand believed that the SGDNA report identified a number of difficulties in establishing a robust and reliable DNA register/market sampling scheme and suggested that it is premature to try to do so. It believed the Scientific Committee should be asked to do more work on the above issues. Some other members supported this view, adding a third option to the two identified in Borgholm (i.e. that it was premature to choose one or the other).

The Secretariat agreed that New Zealand had identified a number of the issues that had been raised in the report. However, it cautioned against too much pessimism. It pointed out that the SGDNA had made considerable progress in a number of areas and in particular had developed quite precise recommendations for specifications for DNA registers and principles for the development of market sampling approaches. While it agreed that calibration is an extremely important issue, as had been identified by the SGDNA, the group had also outlined options for which this would be a lesser problem as well as noting that calibration can be achieved (there is a paper that is *in press* in a major journal on just this issue). It also noted the extensive co-operation given to the SGDNA by the scientists from Japan and Iceland (the Icelandic representative undertakes the genetic analysis for the Norwegian register) as well as e-mail information from a Norwegian scientist. Finally, it stressed that in the IWC-context, if a whale is not in a DNA register, it would be an illegal whale and an infraction by default. This will make any system intrinsically conservative. The SGDNA had also outlined how further progress can be made.

As a result of the discussions, the Working Group noted that the following options now exist:

- (1) centralised system;
- (2) national systems with international oversight;
- (3) premature to decide on which option would be most appropriate.

It was agreed that the SDG should use IWC/M05/RMS WG 5 as a basis for developing text for options (1) and (2), noting that the Working Group was not in a position to recommend any single option at this time. It was further agreed that the SDG should also begin to develop technical specifications based on the specialist group report, given that many of these are not dependent on the specific options chosen.

### 3.5.2 Discouraging IUU whaling

#### RECAP ON OUTCOME OF WORKING GROUP DISCUSSIONS IN BORGHOLM (SEE PART I, SECTION 4.4.3)

In Borgholm, some Working Group members supported the proposed Resolution approach, while others thought that the requirement for national legislation to deter IUU whaling should form part of the RMS text itself within the Schedule. The SDG was therefore requested to develop appropriate Schedule text. In doing so, the SDG recognised that some re-wording of the initial proposed Resolution text was necessary. Draft Schedule text and an amended draft Resolution are provided in Annexes G and H of the SDG report.

#### DISCUSSION AND INSTRUCTIONS TO THE SECOND MEETING OF THE SDG

Commenting on the revised draft Resolution, Japan noted that its position is that there is no evidence that IUU whaling is currently a problem or would become so if commercial whaling resumed. It would, however, consider accepting a new Resolution agreeing that Contracting Governments will institute national legislation restricting importation of whale products to those derived from legally-caught whales by IWC member countries (which Japan already has) depending on the balance of the overall RMS 'package'. Japan noted that it has some objections to the wording of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> preambular paragraphs in the revised draft Resolution.

Commenting on draft Schedule text paragraph 30, the USA expressed concern that this would be in conflict with WTO rules. It therefore provided alternative wording for consideration by the Working Group.

As there was no agreement regarding whether the matter of discouraging IUU whaling should be addressed through a Resolution or via the Schedule, the Working Group noted that the following options exist:

- (1) Draft Resolution - see IWC/D04/RMS SDG 5, Annex H
- (2) Schedule text – as proposed by the USA;
- (3) As (2) but replacing the word *Schedule* with the word *Convention*.

It was agreed that the SDG should consolidate the text in IWC/D04/RMS SDG5 Annexes F and G to reflect these options.

### 3.5.3 Catch documentation system

#### RECAP ON OUTCOME OF WORKING GROUP DISCUSSIONS IN BORGHOLM (SEE PART I, SECTION 4.4.3) AND SUBSEQUENT INTERSESSIONAL WORK

In Borgholm, while some Working Group members supported the Chair's proposal for national documentation, others considered that there should be an IWC scheme along the lines of that in place in CCAMLR. Some did not believe additional documentation is necessary given CITES requirements and existing national requirements for catch certification. Of those believing some form of documentation would be useful, there appeared to be agreement that it should begin from the point of harvest. However, there was disagreement on how far down the supply chain any documentation should go e.g. to the point of entry/landing, to the wholesaler, or to the retailer.

The Working Group requested the SDG to develop draft Schedule text for:

- (1) National documentation schemes – with the 3 options of endpoint;
- (2) IWC-operated scheme – with the 3 options of endpoint, building on CITES requirements and CCAMLR's scheme.

The SDG did develop draft text (see Annex G of SDG report) but they also recognised that a specific proposal for an IWC-operated scheme needed to be developed. New Zealand and Sweden, in consultation with the Secretariat, agreed to develop a proposal for review by the Working Group at its second meeting. An outline for such a scheme was developed (see document IWC/M05/RMSWG 9) that combined a catch documentation scheme with barcoding/labelling. The authors stressed that more detail is needed. With respect to national documentation schemes, the Secretariat developed some *pro-forma* for review by the group. These were made available as document IWC/M05/RMSWG 7. These two documents are attached to this report as Annexes II.F and G respectively.

#### DISCUSSION AND INSTRUCTIONS TO THE SECOND MEETING OF THE SDG

There was little discussion of this issue, the main focus being the difference between national schemes and an IWC-operated scheme. The former would be entirely nationally run with no reporting to IWC. The latter would use

documentation/barcoding agreed by IWC but issued by Contracting Governments and with an obligation to report to the Commission via the Secretariat. There was no resolution of how far down the supply chain any documentation or barcode system should go.

The Working Group noted that the following options exist:

- (1) national system as proposed by the Chair - see IWC/D04/RMS SDG 5, Annex G Para 30A;
- (2) an IWC-operated system - see IWC/D04/RMS SDG 5, Annex G Para 30B.

It was agreed that the SDG should consolidate the text in IWC/D04/RMS SDG5 Annex G to reflect these options, taking into account the proposal from New Zealand and Sweden. New Zealand had suggested that a technical group be established but this was not pursued further within the Working Group.

### 3.6 Compliance

#### 3.6.1 *Recap on outcome of Working Group discussions in Borgholm (see Part 1, Section 4.5)*

In Borgholm, some members continued to give broad support for the Chair's proposal, but it was recognised that some further duties may need to be added (e.g. review of DNA registers/market sampling if they are included in the RMS 'package'). They noted that the Chair's proposal itself had been based on very broad agreement within the Commission. Other members however were very critical of the Chair's proposal, judging it to be insufficient to ensure compliance. These members considered it imperative (1) to have a system that would be in their opinion defensible to the wider public, (2) that the Commission should have some leverage in the way quotas are managed, (3) that the Commission should have power to impose sanctions and (4) that a legally-binding dispute settlement mechanism should be established through development of a Protocol to the Convention. One member thought that the discussion was confusing compliance and dispute settlement and that within the Chair's proposal there is an effective system for compliance and that a dispute settlement mechanism should be looked at separately.

In view of the discussions, the Working Group identified the following two options:

- (1) the Chair's proposal – recognising that this may need some modification if the duties of the Compliance Review Committee change. The SDG was requested to develop appropriate text – see Annex I of SDG report.
- (2) development of a Protocol to (a) establish a dispute settlement mechanism and (b) to give power to the Commission as a body to set penalties – the Working Group noted that this was not an issue for either itself or for the SDG.

#### 3.6.2 *Discussion and instructions to the second meeting of the SDG*

With respect to the draft Schedule text, Japan believed that there is an inconsistency in the use of the words 'infractions' and 'infringements'. It also considered that there is some redundancy in sub-paragraphs 31(b)(xii) and 31(c) (see IWC/D04/RMS SDG 5, Annex I) and suggested that they could be combined.

Australia considered that the role of the Compliance Review Committee (CRC) as drafted in Annex I of the SDG report did not provide the strength of compliance mechanism it was seeking. It identified a number of shortcomings, including requirements for reporting and follow-up of infractions and in particular the fact that Contracting Governments are not bound by any recommendations that the CRC may make. Australia did not consider the CRC to be an improvement over the existing Infractions Sub-committee and believed that the Commission should have the power to impose penalties for non-compliance. The UK made similar comments. Monaco commented that the Commission needed to receive details of any infractions and the nature of penalties imposed if it was to be considered credible. Others stated that it should not be possible for whalers to receive financial benefits from infractions.

The Chair noted that some of the issues being raised were already covered by the Convention itself and so did not need to be duplicated in the Schedule. He drew attention to Article IX of the Convention in relation to the reporting and handling of infractions:

#### Article IX

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

He noted that the imposition of penalties is the responsibility of individual Contracting Governments. Spain accepted that this is the current situation, but noted that it is standard practice in other fisheries organisations to establish a list of serious infractions. New Zealand supported Australia's remarks and informed the Working Group that it had drafted and circulated to Commissioners a discussion document regarding a Protocol to amend the Convention to *inter alia* (a) establish a dispute settlement mechanism and (b) give power to the Commission as a body to set penalties.

Iceland indicated that it was not aware of any international resource management organisation that dictates to its members how they should deal with infractions and that generally penalties are decided by sovereign governments. Sweden and the Netherlands agreed. The Netherlands suggested that given it is the responsibility of national governments to impose penalties, the Working Group should focus its discussions on the role Commission should have and drew attention to the discussions at IWC/55 in Berlin and the broad agreement reached there. St Kitts and Nevis made similar comments.

In response to Iceland, the UK noted that ICCAT may impose trade sanctions and that it, and other fisheries bodies prohibit the landing/transshipment/import of fish caught illegally. It suggested that it would be worthwhile to explore what measures the Commission may be able to take legitimately within the context of the current Convention. Australia, Argentina and New Zealand agreed to work with the UK on this matter and to develop a paper for review by the Working Group in Ulsan. Japan did not believe that the Commission would be in a position to impose penalties unless the Convention is changed.

Following the above discussions, the Working Group noted that the following options now exist:

- (1) the Chair's Proposal as modified at the Borgholm meeting - see IWC/D04/RMS SDG5, Annex I;
- (2) a 'stricter' version that allows the Commission to impose sanctions on non-compliant parties (the UK, Australia, Argentina and New Zealand will provide a paper in Ulsan);
- (3) a Protocol amendment (outside the scope of the RMS Working Group but New Zealand noted that it will present something directly to the appropriate body on this issue).

Given that the text for (1) has been developed and that any text for (2) cannot be developed until the Ulsan meeting, it was agreed that the SDG need undertake no further work on this issue.

### 3.7 Costs

#### 3.7.1 *Recap on outcome of Working Group discussions in Borgholm (see Part 1, Section 4.6)*

In Borgholm, discussion focused on how costs of international observers should be covered. Some members continued to support the Chair's proposal that such costs should be paid by the Commission in accordance with a Financial Contributions Scheme. Others however proposed that such costs should be borne by whaling countries alone (it would be up to individual governments to determine if they wished to pursue cost recovery from the industry). Reference was also made to earlier proposals submitted to IWC/53 in London via the RMS Working Group.

The SDG was therefore requested to develop draft text for two options:

- (1) the Chair's proposal;
- (2) proposals introduced at IWC/53.

Draft Schedule text for the different options is provided in Annex J of the SDG report.

During the SDG discussions, it was suggested that the Secretariat ask its auditors to review the text in the last option referring to '*UK Generally Accepted Accountancy Practice*' and to comment on whether it is appropriate in this context. This was done, the result being that reference to GAAP is probably not relevant in this context as IWC's accounts specifically state that they do not necessarily comply with GAAP in all areas and particularly in relation to depreciation of capital equipment. However the SDG did wish to draw the Working Group's attention to the need for further policy guidance regarding placement of text referring to apportioning RMS costs, i.e. should this be in the Schedule or in the Financial Regulations? The Chair's proposal had not been clear on this matter.

#### 3.7.2 *Discussion and instructions to the second meeting of the SDG*

The Chair noted that the apportioning of costs is difficult to address at this stage in the process since there was clearly no consensus on what a package of RMS measures might contain.

The Working Group agreed that detailed discussion of this item should be postponed until more details of the final RMS elements are available. It therefore noted that the following options exist:

- (1) the Chair's proposal - see IWC/D04/RMS SDG 5, Annex J;
- (2) all costs borne by whaling countries and considered as part of membership contribution - see IWC/D04/RMS SDG 5, Annex J;

- (3) all costs borne by whaling countries through factor in contributions formula - see IWC/D04/RMS SDG 5, Annex J;
- (4) costs divided (administrative – Commission; operating – whaling countries; capital – GAAP) - see IWC/D04/RMS SDG 5, Annex J.

It was agreed that minor modifications should be made to option (4) with respect to GAAP.

### **3.8 Measures for lifting Para 10(e)**

#### *3.8.1 Recap on outcome of Working Group discussions in Borgholm (see Part 1, Section 4.7)*

In Borgholm, there was continued strong support from some members for the Chair's proposal to link adoption of an RMS and the lifting of paragraph 10(e). Some took the view that the moratorium should be lifted simultaneously with adoption of an RMS to avoid the situation where Contracting Governments would essentially be required to give up their right under the Convention to object to Schedule amendments (as is the situation with the Chair's preferred approach). These members recognised the difficulties of developing a suitable mechanism, but felt that the options in document IWC/N04/RMSWG 12 provided a starting point. Some members, while not supporting simultaneous lifting of paragraph 10(e), indicated that they were attracted by a phased approach to lifting the moratorium on a stock-by-stock basis and suggested that this approach be explored. These members believed that a phased approach to lifting paragraph 10(e) would help build confidence within the Commission and the general public in IWC's ability to manage whaling. Others could not support any link between RMS adoption and lifting of paragraph 10(e) and believed that the Chair of the Commission had not given sufficient justification for such an approach.

Given these different views expressed, the Working Group requested the SDG to develop draft Schedule text for the following three options:

- (1) The Chair's proposal for linking adoption of the RMS with lifting 10(e), taking into account options discussed in IWC/N04/RMSWG 12;
- (2) The suggestion that 10(e) should not be removed in a single step and that a phased-out approach would be more appropriate. In this approach exemptions from the moratorium would be gradually introduced for certain stocks for certain conditions, for example by adding a sub-paragraph 10(f) specifically stating '*notwithstanding the provision in 10(e), catch limits are allowed for.....*'.
- (3) No link between completion of the RMS and paragraph 10(e).

Annex K of the SDG report provided some approaches on how to address (1) and (2) above.

#### *3.8.2 Discussion and instructions to the second meeting of the SDG*

Japan expressed the view that if there was to be no link between adoption of an RMS and lifting of paragraph 10(e) – a scenario that it clearly did not support – the text of 10(e) should remain unchanged. There being no other comments, the Working Group noted that the following options now exist:

- (1) a footnote to Table of catches – see IWC/D04/RMS SDG 5, Annex K;
- (2) a two-stage approach – see IWC/D04/RMS SDG 5, Annex K;
- (3) retain 10(e) but with gradual exemptions based on Scientific Committee advice – see IWC/D04/RMS SDG 5, Annex K;
- (4) no link.

It was agreed that the SDG should develop draft text based on these options.

### **3.9 Scientific Permits**

#### *3.9.1 Recap on outcome of Working Group discussions in Borgholm (see Part 1, Section 4.8) and subsequent intersessional work*

In Borgholm, some members continued to support the Chair's proposal for a voluntary code of conduct for whaling under scientific permit. For others, the inclusion in the RMS 'package' of a mechanism to restrict/phase out whaling under special permit was important not only for those who could not support any resumption of commercial whaling, but also for those countries that might be able to support a resumption at some point in the future given an appropriate RMS 'package'. Some believed that the possibility to address this issue through the development of a Protocol to amend the Convention, or through some other instrument should be pursued. Other members could not accept any proposal to restrict or remove their rights under Article VIII to conduct whaling for research purposes, and believed that the Commission should work within the framework of the existing Convention to reach agreement on an RMS 'package'.

Given the views expressed, the Working Group agreed to take the following two options forward:

- (1) The Chair's proposal for a Voluntary Code of Conduct for whaling under special permit. An initial draft Code of Conduct was to be developed by the small group within the Scientific Committee identified in the Chair's proposal (i.e. Chair and Vice Chair of Scientific Committee and the Secretariat's Head of Science) for review by the RMS Working Group in Copenhagen.
- (2) Phasing-out of whaling under Special Permit. One of the mechanisms proposed is the development of a Protocol to the Convention.

It was recognised that neither of these options required work from the SDG and that further discussion of a Protocol within the Working Group would not be appropriate.

The Secretariat introduced document IWC/M05/RMSWG 10. This document was provided by the small group within the Scientific Committee referred to above. It represented their preliminary considerations for a Code of Conduct for scientific permit whaling and it is included as Annex II.H to this report. The authors noted that whilst, given Article VIII of the Convention, whatever code that may finally be developed would formally be voluntary, they had developed their draft guidelines on the assumption that all Contracting Governments would agree to follow it. They noted that in addition to a Resolution, this could perhaps be best achieved by Governments also making a formal declaration.

### *3.9.2 Discussion and instructions to the second meeting of the SDG*

Several members thanked the authors for their document which contained a number of interesting and positive ideas. However, a number of Governments stated that a voluntary code of conduct does not provide a sufficient level of assurance.

The USA noted that in its view, resolution of this matter a fundamental to reaching agreement on an RMS 'package'. It believed that in order to gain public acceptance of the resumption of commercial whaling, whaling under special permit must be halted or phased-out and it sought a binding solution.

Brazil, Argentina, the UK, Monaco, New Zealand, Spain, South Africa, Netherlands and Australia also called for a halt or, in some cases, a phase-out of scientific permit whaling via a legally-binding mechanism. New Zealand again referred to its earlier proposal to address this matter through a Protocol to the Convention, but recognised that it was not appropriate for the Working Group discuss this further. Argentina believed that it would be appropriate for the Working Group to discuss development of a Protocol, but in the end this was not pursued.

Japan stressed its wish to finalise an RMS, which is why it supported the Chair's original package proposal. It was therefore prepared to look at the preliminary document as a starting point, although it would need to consult with its scientists. Denmark also continued to support the Chair's proposal and did not understand why a binding agreement is necessary. St. Kitts and Nevis believed the mandate of the Working Group is to negotiate an RMS within the framework of the existing Convention. It considered that if special permit whaling is allowed in the Convention, then the most the group can do is to explore how the Commission might have some control over the form such whaling takes. The Republic of Korea cautioned against prohibiting all takes for research purposes since there may be a need to collect data that cannot be gained using non-lethal techniques.

Given the above discussions, the Working Group noted that the following options now exist:

- (1) the Chair's proposal for a voluntary code of conduct agreed by all parties;
- (2) a binding code of conduct;
- (3) a phase out of scientific permit whaling via a protocol (outside the scope of the RMS Working Group but New Zealand noted that it will present something directly to the appropriate body on this issue).

It was agreed that there was no need for the SDG to try to develop text at this time.

## **3.10 Animal welfare considerations**

### *3.10.1 Recap on outcome of Working Group discussions in Borgholm (see Part I, Section 4.9) and subsequent intersessional work*

In Borgholm, while all members considered animal welfare issues to be important, some did not believe it should be part of the RMS 'package' and should not block progress in this matter. Others stressed that the public's concern in this area must be recognised and considered that the Chair's proposal (see Part I, section 4.9.1) fails to introduce important elements.

The Working Group agreed to take the following four options forward:

- (1) The Chair's proposal (IWC/56/26);
- (2) The Chair's proposal augmented by the requirement in the Schedule for data collection (see Sweden's proposal in its response to the questionnaire in IWC/N04/RMSWG 4 and IWC/54/35);

- (3) The UK's earlier proposal (see text in IWC/54/RMS 1 – the EDG report), and including additional items raised in its response to the questionnaire (see IWC/N04/RMSWG 4);
- (4) No reference to animal welfare.

It was agreed that a specialist technical group should be established to further explore the above options (see Part I, section 4.9.3 for terms of reference) before asking the SDG to develop draft Schedule text. The technical group comprised Argentina, Belgium, Germany, Iceland, Germany, New Zealand and the UK. Although the UK had initially offered to convene the group, this proved not to be possible and this role was taken over by New Zealand.

Mike Donoghue (New Zealand) introduced the report from the technical group (i.e. document IWC/M05/RMSWG 8, but included here as Annex II.I), that contained a proposal for the collection of animal welfare data, and a draft Resolution to give effect to the Chair's proposal (Annex II.J).

### *3.10.2 Discussion and instructions to the second meeting of the SDG*

The meeting thanked the technical group for its report. Iceland informed the meeting that it had rather different views than the other members of the group regarding the inclusion of Schedule language on animal welfare issues as part of the RMS. Rather than insisting that its views were captured in the technical group's report, it simply wished to point out that there was no consensus within the group on how the different options are best addressed.

The UK, New Zealand and Australia continued to take the view that the collection of animal welfare data should be obligatory rather than voluntary. As it has on previous occasions, the UK stressed that if the Commission as a body is to sanction the killing of whales, then it has an ethical duty and moral responsibility to have input into the way in which whales are killed.

The Secretariat questioned whether the draft Resolution proposed by the technical group to represent the Chair's proposal actually did so and it suggested that the SDG be requested to review the draft carefully.

Given the above discussions, the RMS Working Group noted that there are now four options as given below.

- (1) The Chair's proposal to include the following text into the Schedule: the hunting of whales shall be undertaken so that the hunted whale does not experience unnecessary suffering and so that people and property are not exposed to danger. In addition it also includes an initiative (perhaps by Resolution) to focus discussions on improving techniques by (a) voluntary reporting of data discussed at Berlin Workshop; (b) voluntary provision of information from existing research programmes (and/or the development of a co-operative research programme) at regular (e.g. triennial) specialist workshops.
- (2) The Chair's proposal augmented by Swedish proposals for Schedule provision for data collection (IWC/N04/RMSWG4 and IWC/54/35).
- (3) The UK proposal (IWC/54/RMS 1) with additional items (see IWC/N04/RMSWG4).
- (4) No reference to animal welfare data.

It was agreed that the SDG should draft text for each of these options and that the report from the technical group (IWC/M05/RMSWG8) could be used as a starting point with respect to a Draft Resolution to implement the Chair's Proposal and the proposed text for Schedule amendments.

## **3.11 Sanctuaries**

### *3.11.1 Recap on outcome of Working Group discussions in Borgholm (see Part I, Section 4.10)*

In Borgholm, there was support for and against including sanctuaries in the RMS 'package'. It was agreed that no action needed to be taken by the SDG at its first meeting.

### *3.11.2 Discussion and instructions to the second meeting of the SDG*

In Copenhagen, opinion was fairly evenly divided between those supporting the inclusion of sanctuaries in the RMS package and those against.

Brazil strongly supported the inclusion of sanctuaries, believing them to be a very important management tool. New Zealand, also a strong supporter, proposed the following draft text for inclusion into the Schedule:

“Nothing in this Schedule shall authorise the taking of whales in any sanctuary designated in accordance with this Convention or under the authority of any other competent international body; nor shall it authorise the taking of whales in a sanctuary declared by any State in respect of any area under its national jurisdiction; nor shall it authorise any whaling activity that is contrary to any marine mammal conservation measure adopted in accordance with international law.”

It believed that there should be an interface between the ICRW and domestic and other international law.

Japan opposed the inclusion of sanctuaries as part of an RMS package for many reasons. In particular, it stressed that no sanctuary language could restrict the rights of Contracting Governments under Article VIII. In commenting on New Zealand's proposed text, it remarked that the regulations of other international bodies cannot be imposed on IWC Contracting Governments via a Schedule amendment. St Kitts and Nevis and the Republic of Guinea believed that sanctuaries would be irrelevant if an RMS was in place. Nicaragua associated itself with these remarks.

Brazil, Monaco and Australia did not agree that sanctuaries would be irrelevant if an RMS was in place and stressed that sanctuaries must be respected.

In light of the above discussions, the Working Group noted that the following options exist:

- (1) existing provisions for Sanctuaries are clear, do not need to be included as part of RMS 'package' and thus do not require any text to be drafted;
- (2) inclusion of text as proposed by New Zealand.

It was agreed that the SDG should draft text to incorporate these options.

#### **4. MECHANISMS FOR ADOPTING AN RMS**

This issue was addressed briefly when the Working Group met in Borgholm (see Part I, Section 3). Two options were considered, i.e.: (1) development of a single draft Schedule RMS that includes all different options by using square brackets that would be voted on paragraph by paragraph; and (2) development of complete text for one or more scenarios/RMS packages that reflect the difference views on what the RMS should contain that the Commission could agree to vote on as a whole. In Borgholm, most support was given to the development of a single text with options in square brackets as appropriate. However, some members drew attention to the fact that such an approach would involve voting paragraph by paragraph and expressed concern that this could lead to an RMS text with internal contradictions.

The Chair had hoped that the Working Group would be able to give this matter further consideration at the Copenhagen meeting, but unfortunately there was insufficient time for further substantive discussion.

The Secretariat drew the Group's attention to the view of the SDG, when it met in Borgholm, that while recognising the limitations placed on it by its Terms of Reference regarding those parts of the Schedule for which it is authorised to develop Schedule text, it considered that it would be sensible when developing such text, to at the same time, rearrange the current Schedule to remove the redundancies that have crept in over the years. The SDG considered that document IWC/D04/RMS SDG 4 may be a useful basis. The SDG also agreed that consideration should be given to the merits of a single individual or a very small group reviewing any re-organised and revised Schedule text once such a text is available, to check for inconsistencies and any potential legal issues.

The Chair suggested that Contracting Governments give the matter some thought prior to IWC/57 in Ulsan regarding mechanisms for adopting an RMS and also for rearranging the current Schedule. Australia noted the importance for the RMS Working Group to address the Commission's requests as given in Resolution 2004-6.

#### **5. SPECIALIST TECHNICAL GROUPS AND INSTRUCTIONS**

The Working Group did not give further instructions to the specialist technical groups established in Borgholm. However, the SDG did recommend that further work was needed in a number of areas (see IWC/57/RMS 4).

#### **6. NEXT MEETING OF THE RMS WORKING GROUP AT IWC/57**

The Chair noted that two days have been scheduled at IWC/57 for discussions of the RMS Working Group (i.e. Wednesday and Thursday 15 and 16 June 2005). There was no discussion.

## Annex II.A

### Meeting of the RMS Working Group, Copenhagen, Denmark 30 March – 1 April 2005

#### LIST OF DELEGATES

**Antigua and Barbuda**

Anthony Liverpool

**Argentina**

Eduardo Iglesias  
Miguel Iniguez

**Australia**

Conall O'Connell  
Gillian Slocum  
Pam Eiser

**Belgium**

Alexandre de Lichtervelde

**Brazil**

Maria Teresa Mesquita Pessoa  
Jose Truda Palazzo Jr.

**Chile**

Mariano Fernandez

**Denmark**

Henrik Fischer (Chair)  
Kate Sanderson

**Dominica**

Lloyd Pascal

**France**

Jean-Georges Mandon

**Germany**

Marlies Reimann

**Gabon**

Guy Anicet Rerambyath

**Guinea, Republic of**

Amadou Telivel Diallo  
Sidiki Diane (I)

**Iceland**

Stefán Asmundsson  
Asta Einarsdottir  
Kristjan Loftsson  
Gylfi Geirsson

**Italy**

Riccardo Rigillo  
Caterina Fortuna  
Michele Alessi

**Japan**

Joji Morishita  
Dan Goodman  
Yasuo Iino

**Korea, Republic of**

Sung Kwon Soh  
Chiguk Ahn

**Monaco**

Frederic Briand

**Netherlands**

Giuseppe Raaphorst  
Henk Eggink  
Anne-Marie Van Der Heijden

**New Zealand**

Geoffrey Palmer  
Jim McLay  
Mike Donoghue  
Rosemary Paterson  
Al Gillespie  
Philippa Brakes

**Nicaragua**

Miguel Marengo

**Norway**

Halvard Johansen  
Turid Éusebio  
Anniken Krutnes

**St. Kitts & Nevis**

Daven Joseph

**South Africa**

Herman Oosthuizen  
Chris Badenhorst

**Spain**

Carmen Asencio

**Sweden**

Bo Fernholm  
Thomas Lyrholm

**UK**

Trevor Perfect  
Rob Bowman  
Jim Gray  
Sue Fisher  
Chanaka Wickremasinghe

**USA**

Rolland Schmitt  
Roger Eckert  
Cheri McCarty  
Maggie Hayes  
Kitty Block

**INTERGOVERNMENTAL  
ORGANISATION OBSERVERS  
IUCN**

Justin Cooke

**NON-GOVERNMENTAL  
ORGANISATION OBSERVERS****Animal Care International**

Niki Entrup

**Animal Welfare Institute**

Susan Tomiak

**Campaign Whale**

Andy Ottaway

**Environmental Investigation  
Agency**

Jennifer Lonsdale

**Eurogroup for Animal Welfare**

Virag Kaufer

**Greenpeace International**

John Frizzell

**GSM e.V.**

Birgith Sloth

**Natural Resources Defense  
Council**

Joel Reynolds

**Werkgroep Zeehond**

Geert Drieman

**Whale and Dolphin Conservation  
Society**

Alice Stroud

**WSPA**

Leah Garces

**WWF**

Karen Steuer

(I) Interpreter

## Annex II.B

### Meeting of the Revised Management Scheme Working Group Copenhagen, 30 March to 1 April 2005

#### LIST OF DOCUMENTS

IWC/M05/RMSWG	1	Draft Agenda
	2	Draft list of documents
	3	List of Participants
	4	Written comments received on the Chair's Report of the RMS Small Drafting Group, Borgholm, Sweden, 1-3 December 2004
	5	Report of the Specialist Group on the DNA register/market sampling scheme approach
	6	Report from the VMS Specialist Group Specialist Technical Group
	7	Possible pro-forma for catch documentation as proposed by the Chair in IWC/56/26 (prepared by the Secretariat)
	8	Report from the Animal Welfare Specialist Technical Group
	9	Proposals from New Zealand and Sweden regarding an IWC-operated catch documentation scheme - Outline of the CDS and Barcoding / Labeling Scheme
	10	Some preliminary considerations for a Code of Conduct for Scientific Permit Whaling with respect to the Chair's proposal
	11	Summary of the outcome of discussions on elements for an RMS package, including instructions from the RMS Working Group to the SDG

#### Documents from previous meetings:

IWC/N04/RMSWG	16	Chair's report of the RMS Working Group Meeting, Strand Hotel, Borgholm, Sweden, 29 November to 1 December
IWC/D04/RMS SDG	4	Status on revision of the Schedule based on discussions to date (Note: this document was prepared by the Secretariat for the December 2004 meeting of the RMS Small Drafting Group).
IWC/D04/RMS SDG	5	Chair's report of the meeting of the RMS Small Drafting Group, Borgholm, Sweden, 1-3 December 2004
IWC/56/	26	Chair's Proposals for a Way Forward on the RMS
	27	Summary of status of discussions on RMS elements and related issues as of 55 <sup>th</sup> Annual Meeting in Berlin
	28	Statement from Henrik Fischer, Chair of the Commission, to the Private Meeting of Commissioners/Alternate Commissioners on the 16 <sup>th</sup> July 2004
	36	Discussion document: Further Work Required on the RMS based on IWC/56/26
Resolution 2004-6		On completion of the Revised Management Scheme (RMS)
IWC/55/COMMS	3	Report of the RMS Working Group on Catch Verification
	4	Report of the RMS Working Group on Costs
IWC/54/RMS	1	Report of the Revised Management Scheme Expert Drafting Group

## **Annex II.C**

### **Meeting of the Revised Management Scheme Working Group Eigtveds Pakhus, Copenhagen, Denmark, 30 March to 1 April 2005**

#### **AGENDA**

1. INTRODUCTORY ITEMS
  - 1.1 Appointment of Chair
  - 1.2 Introductory remarks and objectives of the meeting
  - 1.3 Reporting
  - 1.4 Review of documents
2. ADOPTION OF THE AGENDA
3. ELEMENTS OF AN RMS PACKAGE
  - 3.1 Statement of principle
    - 3.1.1 Recap on outcome of Working Group discussions in Borgholm and instructions to the SDG
    - 3.1.2 Comments on the SDG report
    - 3.1.3 Reconsideration of options
  - 3.2 Revised Management Procedure (RMP)
    - 3.2.1 Recap on outcome of Working Group discussions in Borgholm and instructions to the SDG
    - 3.2.2 Report on intersessional work (Scientific Committee guidelines/requirements)
    - 3.2.2 Comments on the SDG report and intersessional work
    - 3.2.3 Reconsideration of options
  - 3.3 Phased-in approach to the resumption of commercial whaling
    - 3.3.1 Recap on outcome of Working Group discussions in Borgholm and instructions to the SDG
    - 3.3.2 Comments on the SDG report
  - 3.4 National inspection and observation scheme
    - 3.4.1 Recap on outcome of Working Group discussions in Borgholm and instructions to the SDG
    - 3.4.2 Report on intersessional work (VMS)
    - 3.4.3 Comments on the SDG report and intersessional work
    - 3.4.4 Reconsideration of options
  - 3.5 Additional catch verification
    - 3.5.1 Recap on outcome of Working Group discussions in Borgholm and instructions to the SDG
    - 3.5.2 Report on intersessional work (DNA registers/market sampling, catch documentation)
      - 3.5.3 Comments on the SDG report and intersessional work
      - 3.5.4 Reconsideration of options
  - 3.6 Compliance
    - 3.6.1 Recap on outcome of Working Group discussions in Borgholm and instructions to the SDG
    - 3.6.2 Comments on the SDG report
    - 3.6.3 Reconsideration of options
  - 3.7 Mechanism to apportion costs among Contracting Governments
    - 3.7.1 Recap on outcome of Working Group discussions in Borgholm and instructions to the SDG
    - 3.7.2 Comments on the SDG report
    - 3.7.3 Reconsideration of options

- 3.8 Measures for the lifting of paragraph 10(e)
  - 3.8.1 Recap on outcome of Working Group discussions in Borgholm and instructions to the SDG
  - 3.8.2 Comments on the SDG report
  - 3.8.3 Reconsideration of options
- 3.9 Whaling under special permit
  - 3.9.1 Recap on outcome of Working Group discussions in Borgholm
  - 3.9.2 Report on intersessional work (code of conduct)
  - 3.9.3 Comments on intersessional work
  - 3.9.4 Reconsideration of options
- 3.10 Animal welfare considerations
  - 3.10.1 Recap on outcome of Working Group discussions in Borgholm
  - 3.10.2 Report on intersessional work
  - 3.10.3 Comments on intersessional work
  - 3.10.4 Reconsideration of options
- 3.11 Sanctuaries
  - 3.10.1 Recap on outcome of Working Group discussions in Borgholm
  - 3.10.2 Consideration of possible options
- 4. MECHANISMS FOR ADOPTING AN RMS
- 5. INSTRUCTIONS TO THE SDG
- 6. SPECIALIST TECHNICAL GROUPS AND INSTRUCTIONS
- 7. NEXT MEETING OF THE RMS WORKING GROUP AT IWC/57