



**International
Whaling
Commission**

Chair's Report of the 5th Special Meeting

14 OCTOBER 2002

**The Red House
135 Station Road, Impington
Cambridge CB4 9NP
United Kingdom**

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1. INTRODUCTORY ITEMS

1.1 Date and place

The 5th Special Meeting of the International Whaling Commission (IWC) took place on 14 October 2002 at the DeVere University Arms Hotel, Cambridge, UK, under the Chairmanship of Prof. Bo Fernholm (Sweden). A list of delegates and observers attending the meeting is provided in Annex A.

1.2 Welcome and meeting arrangements

The Chair welcomed delegates to the meeting. He explained that the Special Meeting was being held at the request of the USA and the Russian Federation to address a proposed Schedule amendment regarding the aboriginal subsistence hunt of bowhead whales from the Bering-Chukchi-Beaufort Seas stock and that he had granted the request following consultation with Contracting Governments. He noted that the initial purpose of meeting in Cambridge was for a private meeting of Commissioners/Alternate Commissioners to discuss the Revised Management Scheme (RMS) and hoped that the business of the Special Meeting could be dealt with efficiently in order to proceed quickly to the RMS meeting.

Referring to its opening statement, Norway considered that the Special Meeting had been called in contravention of the Rules of Procedure F.2.(d) which states that a provisional agenda should be circulated at least 100 days in advance. It noted that it would participate in this Special Meeting, but wished to alert the Chair to the possibility that the Norwegian government might wish to reserve its position as to the validity of any decisions the meeting might make. In response, the Chair referred to the circulation to Contracting Governments of letters from the Norwegian and New Zealand Commissioners on this issue, and his own letter referring to the ambiguity of the Rules of Procedure. He indicated that he intended to ask the Secretary to try to clarify the rules pertaining to Special Meetings and to develop a paper for review at the next Annual Meeting.

1.3 Opening statements, credentials, voting rights and Iceland's adherence

1.3.1 Credentials and voting rights

The Secretary reported that the credentials of most Contracting Governments were in order; that one or two may have some technical deficiencies; and that since some had arrived only immediately prior to the meeting, the Secretariat had not had sufficient time to vet them properly. She noted therefore that there might be a few issues outstanding regarding credentials. The Secretary also reported that voting rights were suspended for Argentina, Costa Rica, India, Italy (but see below), Kenya, Morocco and Senegal, and that when voting commenced, she would call on the Solomon Islands first.

In view of the need to further examine some credentials, the Chair established a credentials committee comprising Australia, Japan and the Secretary. The meeting adjourned to allow the committee to meet. On resumption, the Secretary reported that the credentials of all Contracting Governments participating in the meeting were acceptable. She also reported that during the break, the financial contribution of Italy had been received and that Italy's voting rights had therefore been restored.

1.3.2 Adherence of Iceland

The Chair referred to the Secretariat's Circular Communication of 11 October, informing Contracting Governments that on 10 October 2002, Iceland had deposited an instrument of adherence to the Convention. He invited the USA as Depository Government to provide an update on this adherence.

The USA confirmed the date of deposition of an instrument of adherence to the Convention and reported that the instrument of adherence states that Iceland:

'adheres to the aforesaid Convention and Protocol with a reservation with respect to paragraph 10(e) of the Schedule attached to the Convention'

and further states that:

'Notwithstanding this, the Government of Iceland will not authorise whaling for commercial purposes by Icelandic vessels before 2006 and, thereafter, will not authorise such whaling while progress is being made in negotiations within the IWC on the RMS. This does not apply, however, in case of the so-called moratorium on whaling for commercial purposes, contained in paragraph 10(e) of the Schedule not being lifted within a reasonable time after the completion of the RMS.'

'Under no circumstances will whaling for commercial purposes be authorised without a sound scientific basis and an effective management and enforcement scheme.'

The USA also reported that the instrument of adherence states that the reservation is an integral part of the instrument.

Since the Commission had acted on this matter previously, the USA as Depository Government had notified the Secretariat of the receipt of Iceland's instrument of adherence and provided copies of Iceland's Diplomatic Note and information on its instrument of adherence. The USA in its role as Depository, did not express an opinion on the status of Iceland's membership pending consideration of the matter by the Commission. It considered that its approach constituted the most neutral course of action given all the circumstances of this case.

The Chair noted that the Commission would need to decide on whether the instrument of adherence is acceptable. He recalled the two procedures that had been followed by the Commission when discussing previous reservations by Iceland, i.e. one at IWC/53 in London and one at IWC/54 in Shimonoseki¹. Considering that a new instrument of adherence had been deposited by Iceland, it was the Chair's opinion that the procedure followed in London should be followed again on this occasion, i.e. to address the competency issue first.

On a point of order, Australia indicated that it considered Iceland to be an observer. It noted that the decision at IWC/53 was that the Commission would not accept a reservation to paragraph 10(e) and that this had been upheld at IWC/54. Australia considered that the latest instrument of adherence did not change this position since it contained the same reservation and an accompanying additional declaration of the same nature. Australia considered there were no grounds to do anything other than to reaffirm the previous ruling and was asking for consistency in the approach to this issue. It was mindful of the importance of this issue for the general good health of multilateral environment and natural resource management agreements in which the capacity to enter/re-enter Conventions with reservations to critical parts would be important.

Mexico endorsed the comments of Australia. It considered that the meeting should follow the procedure used in Shimonoseki and not that used in London. Mexico asked whether the USA as Depository considered the new instrument of adherence to contain a different reservation to those contained in instruments of adherence deposited prior to the London and Shimonoseki meetings. Brazil also supported Australia's comments and, like Mexico, considered that clarification was needed on the extent to which the new instrument of adherence differs from earlier ones to justify a new decision from the Commission. Ireland considered that the matter had already been decided in London. Germany, Spain, Chile, UK and the Netherlands associated themselves with these earlier remarks. The Netherlands believed that it is an important legal matter when a country, as in the case of Iceland, has accepted the provision of Schedule paragraph 10(e) while being a member of IWC, leaves IWC and then returns with a reservation to a provision it had previously accepted. New Zealand believed that the procedure followed in Shimonoseki should be taken. It noted that it would welcome Iceland as a member but only on the same basis as all others, i.e. without any reservations other than those entered within the strict provisions of the Convention. New Zealand also stated: (1) its willingness to work constructively and co-operatively with all to resolve this issue; and (2) the importance it attached to processes for resolving differences that preserved the effectiveness and integrity of the IWC. Argentina considered that the discussion on Iceland's adherence should be held under the item on 'Other Matters' since it was not included on the agenda.

Denmark and Sweden agreed with the Chair's view that a new instrument of adherence had been deposited and supported his proposal on how to proceed. Norway disagreed with Australia, considered Iceland to be a member and while supporting the Chair's proposal as a way to move forward, noted that its position is that the Commission has no competence to decide on this matter. Referring to Article X of the Convention, Iceland considered it was clear that there is a new instrument of adherence. It noted that Contracting Governments having a problem with this could raise their concerns and that this would then lead the meeting to address whether the Commission has the competence to address this issue. Iceland's position was that the Commission does not have competence and that under international law it is up to individual States to object, as has happened with previous reservations. Antigua and Barbuda supported this view and accepted Iceland's membership. It considered that this matter had gone on for too long without reaching a conclusion. It supported the view that the meeting deliberate immediately on the question of competence, and that if this could not be resolved, proposed that the IWC urgently seek competent and neutral legal advice on the matter. Japan, Sweden, Dominica, the Republic of Guinea, the Russian Federation, Benin, St. Lucia and the Republic of Korea associated themselves with the remarks of Denmark and others.

¹ At IWC/53, Iceland's membership was determined by the following Chair's rulings: (1) the Commission has the competence to determine the legal status of Iceland's reservation (19 votes in favour, 18 against, one abstention); (2) the Commission does not accept Iceland's reservation regarding paragraph 10(e) of the Schedule (19 votes in support, none against); (3) Iceland is invited to assist as an observer (18 votes in support, 16 against, 3 abstentions).

At IWC/54, the Chair noted that since the new instrument of adherence contained the same reservation as the previous year, the status of Iceland's membership remained governed by last year's decisions. He felt bound by these decisions unless and until the Commission decided otherwise. He therefore ruled that the status of Iceland was as agreed at IWC/53. His ruling was carried (25 votes in support and 20 against).

Norway considered that Article X, items 3 and 4 of the Convention provided the legal obligation to accept Iceland's membership. In addition to legal considerations, Norway thought it also necessary to look at the practical consequences for the Commission of the continued, and in its view, unlawful refusal to let Iceland assume its rightful place as a full-fledged member of the IWC. It considered that the lack of a timely and just solution to this situation: (1) has a detrimental effect on the Commission's working atmosphere and on its ability to conduct its business in an orderly way; and (2) is damaging to the reputation and credibility of the Commission itself.

Since there was no consensus on how to treat the matter either procedurally or legally, the Chair ruled that the procedure used at IWC/53 in London should be followed (see footnote 1).

On a point of order, Mexico noted that the meeting was dealing with two separate issues, one being the issue of competency and the other the issue of Iceland's adherence. Mexico considered they should be dealt with separately. In its view, the decision on competency taken in London was applicable to any adherence, not just that of Iceland and that therefore the Commission should now address the issue of Iceland's membership.

Australia requested a ruling on its earlier point of order regarding its view that Iceland should be treated as an observer. The Chair noted that after consultation with the Secretariat and the Vice Chair, he considered that Australia's point of order was not appropriate since the invitation to Iceland to assist as an observer was always disputed. He explained that he was trying to decide on the procedure to be followed at this meeting, and that to this end he had ruled on a procedural matter, i.e. that he intended to follow the procedure used in London since he considered Iceland's latest instrument of adherence to be a new instrument. He added that his ruling could, of course, be challenged. Australia reiterated its view that a decision on competence had already been taken in London and that in Shimonoseki, Iceland's status as an observer was confirmed. It again asked for confirmation of its point of order, i.e. that Iceland's status remains the same since there is no substantial change in its new instrument of adherence. The Chair indicated that he would not rule on Australia's point of order, and repeated his earlier ruling, i.e. that he would follow the London procedure. Norway recalled that the Chair had made his ruling, restated it, and indicated that he would proceed unless his ruling was challenged. As no such challenge had been forthcoming, Norway considered that the Chair should proceed. Mexico indicated that there had been no ruling on its earlier point of order. The Chair believed that no ruling was necessary in this case since, as suggested by Mexico, he intended to treat the issues of competency and adherence separately. In response to a request by the Chair to comment on how it viewed the latest instrument of adherence from Iceland, the USA, as Depository, reiterated its earlier remarks that it had circulated the instrument of adherence without expressing an opinion. Finally, while indicating that it would welcome Iceland as a member without its reservation, Brazil challenged the Chair's ruling because in its view there was nothing new in the substance of the adherence and it considered that the issue of competency had already been decided. Iceland wished to correct the Chair's description of the London procedure. It considered that the London procedure did not necessarily start with voting on the competence issue, since at that meeting, Iceland was treated as a member until a Contracting Government moved to have it treated otherwise. Iceland considered the same applied to this meeting. It noted that the Chair had been treating Iceland as a new member, that it was listed as a member government and that it had paid its financial contribution as requested.

The challenge to the Chair's ruling was then put to a vote. There were 21 votes in support of the challenge and 16 against. The Chair's ruling was therefore defeated. Antigua and Barbuda explained that it had supported the challenge to the Chair's ruling because the latest instrument of adherence from Iceland has nothing to do with what happened in London and thus the procedure followed in London did not apply. It considered that the Commission should have immediately addressed whether it has competence to decide on Iceland's membership. Dominica had supported the challenge for the same reason.

The UK suggested that the consequence of the defeat of the Chair's ruling was that the Commission should follow the procedure used in Shimonoseki and made a formal proposal to this effect. The Chair proposed to put this to a vote immediately. Norway challenged the ruling of putting the UK's proposal to a vote immediately on the grounds that the Commission did not have the competence to make a decision on such a matter. Norway's challenge to the Chair's ruling was defeated when put to a vote, there being 18 votes in support of the challenge and 18 against².

The Chair then ruled as he had in Shimonoseki, i.e. that since Iceland's new instrument of adherence contained the same reservation, but with an additional declaration: (1) the position remains governed by the decisions at IWC/53 and IWC/54 (IWC has competence to determine the legal status of Iceland's reservation; the

² According to the Commission's Rules of Debate C.1, 'a Commissioner may appeal against any ruling of the Chair. The appeal shall be immediately put to a vote and the Chair's ruling shall stand unless a majority of Commissioners present and voting otherwise decide'.

Commission does not accept Iceland's reservation; and Iceland is invited to assist as an observer); and (2) as Chair he felt bound by these decisions unless and until the Commission decides otherwise.

Antigua and Barbuda challenged this ruling. It did not believe that the Commission should be voting on a procedure used at the last meeting, but rather on the competence of the Commission to decide on Iceland's membership. However, the Chair indicated that the competency issue had already been voted on and the issue now was his ruling that the procedure used in Shimonoseki should again be followed. Norway did not agree that there had been a vote on competence, only on procedures. Dominica considered the Chair's ruling to be illegal. Given the Chair's ruling, the UK considered that it was implicit in any votes taken in respect to it, that Iceland should have no vote since the Chair's ruling stands until it is defeated. It asked for clarification on this matter. The Chair agreed with the UK's view and asked the Secretary to proceed with a vote on Antigua and Barbuda's challenge to his ruling. He indicated that Iceland would not be called on to vote in accordance with the procedure followed in Shimonoseki.

On a point of order, Antigua and Barbuda questioned why, when the meeting had not yet accepted the Shimonoseki decision, Iceland would not be allowed to vote. Sweden strongly took the view that until the IWC had made a definitive decision, Iceland, by virtue of its new instrument of adherence is entitled to participate in the vote. Antigua and Barbuda believed that before voting on the challenge to the Chair's ruling there must first be a vote on whether Iceland would be able to participate in that vote. Acknowledging that Iceland had been allowed to participate in the voting so far, the Chair considered that it might therefore be fair to allow them to participate in this vote as well. Australia commented that the Chair had made a ruling that Iceland is an observer in view of past decisions, that this ruling had been challenged, that therefore Iceland should not be allowed to participate in the vote on the challenge and that the Commission should proceed immediately to a vote. Iceland questioned whether Australia was challenging the Chair's ruling that Iceland would have the right to vote, in which case there would need to be a vote on that. Ireland noted that the Chair had made a ruling that the previous decision regarding Iceland stands and that since this ruling had been challenged it should go to a vote. The meeting was adjourned for lunch.

On returning to the meeting, the Chair summarised the status of discussions prior to the break, i.e. that he had ruled along the lines he had in Shimonoseki, that this ruling had been challenged and that it should therefore be put to a vote. He noted, however, that different views had been expressed on whether Iceland should be allowed to participate in such a vote and that a decision on this needed to be taken. Noting that having listened to the different views expressed, he ruled that Iceland should be allowed to participate in the vote. Mexico challenged this ruling. Iceland, Norway and Sweden again raised the issue of competency. Sweden re-iterated its view that Iceland is a fully-fledged IWC member with all voting rights. It considered that the issue of competency should be dealt with first. In response, the Chair indicated that he had already tried to do this with his first ruling, which was defeated. Ireland understood that the meeting had earlier addressed the question of how to proceed, and that the Chair had ruled that the decisions taken at IWC/53 and 54 would be upheld. Ireland considered that the issue of competency had been dealt with at that time, and that the Chair had now made another ruling that should be put to a vote. Denmark agreed with the Chair that the first vote was to follow the same procedure used at IWC/53 in London, i.e. to vote first on competence and then, depending on the outcome, perhaps proceed to a vote on substance. Denmark noted with regret that this ruling had been defeated. It further noted the subsequent rulings and challenges and believed that the best course of action was for governments to be co-operative and to proceed with a series of votes that would lead the meeting out of the problem. The Republic of Guinea questioned whether, if the meeting votes on the right of Iceland to participate in the voting, what would happen to the votes taken previously. The Chair indicated that these votes would stand.

Mexico's challenge to the Chair's ruling that Iceland be allowed to vote was defeated when finally put to a vote, there being 18 votes in support of the challenge and 18 against. Sweden explained that it had abstained since in its view, Iceland has the right to vote until the Commission decides otherwise.

The Chair then asked the Secretary to proceed with the vote on the challenge made by Antigua and Barbuda to his ruling that the decisions at IWC/53 and 54 be upheld. On a point of clarification, Iceland pointed out that this vote involved the issue of competence and that anyone supporting the Chair's ruling also supported the view that the Commission has the competence to decide the issue of Iceland's membership. Antigua and Barbuda supported this view. On being put to a vote, the challenge to the Chair's ruling was upheld, there being 19 votes in support and 18 against. Sweden, who voted in support of the challenge to the Chair's ruling, noted that there had been a number of procedural votes and explained that throughout it had voted according to its legal analysis of the situation. It made a formal declaration regarding Iceland's reservation that included the view that the reservation raised serious doubts as to Iceland's commitment to the object and purpose of the Convention. It would therefore consider seriously making a formal objection regarding Iceland's reservation to Schedule paragraph 10(e).

In view of the outcome of the vote, Ireland noted that the Commission had voted to accept Iceland as a member with its reservation. It indicated that it would submit a formal objection on a bilateral basis. It welcomed Iceland as a member and recommended that the meeting proceed to the rest of its business. Brazil regretted the outcome and several points in the procedures followed. It accepted that there was no other possibility but to proceed via a series of votes, but it considered it incorrect to allow Iceland to vote in a vote that was basically upholding previous decisions. As such, it considered that the outcome of the vote had been seriously undermined since Iceland was voting in its own interest. Norway considered this normal. Mexico associated itself with the views of Brazil. It also challenged the right of Iceland to vote on the Chair's ruling and considered it illegal. However, Mexico noted that a decision had been taken on this issue and that it would abide by it. It wished to put on the record Mexico's objection to Iceland's reservation.

Australia also registered its objection to Iceland's reservation and to Iceland being allowed to vote on the matter. Monaco indicated that it had voted consistently against Iceland adhering with its reservation and noted that it would object formally on a bilateral basis. However, it indicated that it would abide by the collective decision of the Commission and welcomed Iceland as a member. New Zealand regretted the decision that had just been made and considered that this had opened up a procedure that would enable countries once bound by a treaty to leave the organisation then to return making reservations to whatever they find objectionable. The implications not only for the integrity of the International Convention for the Regulation of Whaling, but for all multilateral environmental agreements was of grave concern to New Zealand. It associated itself with the views of Brazil, Mexico, Australia and others and would take appropriate steps to register its objection to the procedures taken. It wished to place on record its concern and objection to the fact that Iceland was allowed to vote on these particular issues at this meeting, while recognising that a decision was made to the contrary. Italy objected strongly to the adherence of Iceland with a reservation and to Iceland being allowed to participate in a vote involving itself. The UK indicated that it would be bound by the decision but considered it unfortunate that Iceland had been allowed to vote. It noted that it would object formally to Iceland's reservation. Recognising the decision by the Commission and Iceland as a member, the UK hoped to work constructively with Iceland. The Netherlands welcomed Iceland with whom it hoped to work co-operatively. It noted however that it would object formally to Iceland's reservation, and associated itself with the views of New Zealand concerning the implications for multilateral agreements. Because of this, the Netherlands proposed that a legal committee should look into this matter for future reference. France indicated that it would object formally to Iceland's reservation. The USA noted that its difficulty was not with Iceland but with its reservation and the precedent it sets. However, now that the Commission had taken this decision, it expected that Iceland would be a constructive participant in IWC discussions. The USA looked forward to working with Iceland in a positive manner, particularly on the Revised Management Scheme. It hoped that Iceland would not authorise whaling unless and until the IWC lifts the moratorium on commercial whaling.

Dominica welcomed Iceland back to the IWC and congratulated the Commission in reversing some decisions it had taken at IWC/53 and 54 that in its view were illegal. It again stressed that in its view, the Commission never had the competency to decide on the status of Iceland's membership. St. Lucia associated itself with these remarks. Norway commented that since IWC/53, the Commission had been faced with an unusually destructive and embarrassing situation, threatening to make IWC even more dysfunctional than before. It was therefore happy to be able to congratulate the Commission for extricating itself from this situation and looked forward to the Commission being able to conduct its business in a normal and orderly way. Japan expressed similar sentiments. Denmark welcomed Iceland as a member and indicated it would not object to its reservation. Antigua and Barbuda thanked countries for supporting its challenge to the Chair's ruling and noted that the organisation had reverted to the rule of international law. China noted that it had always supported Iceland as a full member with its reservation. Morocco protested against the way the whole Iceland issue had been handled from the start and remarked that the Commission needed to change the way such matters are handled.

While Iceland acknowledged the sovereign right of countries to object to its reservation on a unilateral basis, it urged countries not to do so since it did not consider the reservation to be against the object and purpose of the Convention.

2. ADOPTION OF THE AGENDA

The Chair noted that in addition to addressing the Schedule amendment proposed by the USA and Russian Federation regarding the aboriginal subsistence hunt of bowhead whales from the Bering-Chukchi-Beaufort Seas stock, he had also agreed to the request from Japan to include on the agenda an item related to Japanese coastal whaling.

Mexico indicated that it had agreed to the Special Meeting to resolve the issue of catch limits for the USA/Russian Federation aboriginal subsistence hunt, an item outstanding from IWC/54. It was surprised that the Chair had agreed to the request of Japan and could not agree to the inclusion of an item on Japanese coastal whaling on the agenda. It therefore reserved its right not to be bound or to recognise any decisions taken by the Commission on this issue.

Referring to a motion it had submitted (IWC/SPEC.02/5) proposing that agenda items 3 (aboriginal subsistence catch limits) and 4 (interim allocation for Japanese coastal whaling) be amalgamated, Norway informed the meeting that after consultations with the Chair and several delegations it had decided to withdraw it in a spirit of constructive co-operation.

The Netherlands indicated that under item 5 (other matters) it wished to introduce a proposal on future work on how the Commission might deal with legal issues.

There being no further comments, the agenda was adopted (Annex B).

3. ABORIGINAL SUBSISTENCE WHALING CATCH LIMITS

3.1 Proposed Schedule amendment

Prior to addressing the proposed Schedule amendment the USA and the Russian Federation made the following introductory statements:

USA

'The United States and the Russian Federation would like to sincerely thank all IWC member countries, the Chairman of the Commission, and the IWC Secretariat for making possible this Special Meeting of the IWC to consider the joint United States/Russian request for an aboriginal subsistence quota for bowhead whales for Alaskan Eskimos and Chukotkan Natives.

We believe that the critical, documented subsistence needs of the native groups in our countries to hunt bowhead whales are a compelling reason to revisit the bowhead whale quota issue. The subsistence and cultural survival of these groups depend on the continued ability to hunt bowhead whales. Alaskan Eskimos and Chukotkan Natives have hunted the bowhead whale for thousands of years, and even today a major portion of their protein needs are met by whale meat. Whaling underlies the total way of life in these communities, and the survival of their culture depends on the continuation of this activity.

On behalf of our people we were extremely disappointed at the outcome of the deliberations on the bowhead quota issue at the 54th Annual Meeting. Following that outcome, we have worked with many IWC member nations and believe that this meeting will provide an opportunity for the Commission to adopt by consensus a bowhead whale quota for these native people.

Despite consensus views of the Scientific Committee that the bowhead stock has grown significantly since the last century, is still increasing and an annual catch limit of up to 102 is sustainable, questions have been raised about bowhead science. The United States would like to reaffirm its long-standing commitment to abide by the advice of the Scientific Committee and particularly the results of the new assessment planned for 2004. The proposed amendment, especially 3iii, reflects the US commitment to abide by the Commission's annual review of the provision in light of the Scientific Committee's advice, and to modify the hunt accordingly. The United States understands that this pledge to respect the advice of the Scientific Committee eases concerns expressed at the 54th Annual Meeting. The United States and Russia greatly appreciate the opportunity to work with IWC members to resolve their concerns, and therefore urges the Commission to adopt by consensus the proposed Schedule amendment.'

Russian Federation

'We have spent a lot of time (before lunch) discussing details of procedure. I am not going to spend more time discussing the needs of native peoples of Chukotka. The USA has explained this problem fully.

The Russian delegation wishes to inform you about the visit of a Japanese delegation to Chukotka in September 2002 and to thank the Japanese government for making this visit possible.

The delegation saw for themselves that there are no fruit growing in the north of my country and that the whaling season is going to start in the Spring so the peoples of Chukotka cannot wait for the Berlin session which will take place in June 2003.

As a result of this visit we have reached a shared understanding with Japan in regard to joint scientific research and technical assistance from Japan to the whalers of Chukotka which will be used to make bowhead harvesting even more successful. I would like to thank the Japanese government for that.

Since the Shimonoseki meeting, we have had many bilateral and multilateral consultations which resulted in understanding that the issue of aboriginal whaling in general and the issue of bowhead whaling in particular which we are discussing today must be solved on the basis of consensus.

In order to save time the Russian delegation requests that this meeting should not discuss the USA-Russian proposal but accept it on the basis of consensus, and that distinguished members of delegations take the floor only if they do not agree to the possibility of a consensus on the question of whether people should eat or starve.'

The USA and Russian Federation then proposed the following Schedule amendment:

Replace paragraph 13(b)(1) of the Schedule with the following:

“(1) The taking of bowhead whales from the Bering-Chukchi-Beaufort Seas stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that:

- (i) For the years 2003, 2004, 2005, 2006, and 2007, the number of bowhead whales landed shall not exceed 280. For each of these years the number of bowhead whales struck shall not exceed 67, except that any unused portion of a strike quota from any year (including 15 unused strikes from the 1998-2002 quota) shall be carried forward and added to the strike quotas of any subsequent years, provided that no more than 15 strikes shall be added to the strike quota for any one year.
- (ii) It is forbidden to strike, take or kill calves or any bowhead whale accompanied by a calf.
- (iii) This provision shall be reviewed annually by the Commission in light of the advice of the Scientific Committee.”

3.2 Commission discussions and action arising

Denmark fully supported adoption of the proposed Schedule amendment by consensus.

Japan noted that its policy is to support aboriginal subsistence whaling in principle, but explained that at IWC/54, it had opposed renewal of the bowhead quota in view of concerns over the status of the stock and possible problems with a 5-year block quota. While the current proposal was also for a 5-year block quota, Japan recognised the commitment of the USA to review the provision on an annual basis and to abide by the advice of the Scientific Committee and particularly the results of the new stock assessment planned for 2004. While Japan appreciated the USA statement to a certain extent, it considered that the statement did not respond to the questions it raised in Shimonoseki. Japan would not block consensus on the proposed amendment, but would not be able to join it. It hoped that this issue would be discussed fully by the Scientific Committee next year.

Antigua and Barbuda indicated that during IWC/54, it had hoped that an amendment could have been made to the USA/Russian Federation proposal to address the concerns it had expressed over the status of the bowhead stock. It hoped that a workable compromise could be reached at this meeting. While it commended the efforts and statements of the USA and the Russian Federation, it wished to see some of the sentiments reflected in the Schedule amendment. Dominica and St. Lucia supported this view.

Norway recalled that it had voted in favour of an identical proposed Schedule amendment at Shimonoseki. It further recalled that the Convention does not recognise the concept of aboriginal subsistence whaling and considers that the Commission's practice of distinguishing between commercial and subsistence whaling is artificial, illogical and morally wrong. It fully supports whaling when done in a sustainable way. While Norway reiterated its earlier comments regarding calling the Special Meeting to overturn decisions reached in Shimonoseki, it appreciated the needs of the native peoples of the USA and the Russian Federation. It indicated that it would support the consensus adoption of the proposed Schedule amendment, but reserved the right to come back to the meeting with compromise proposals, as appropriate, if consensus was not reached.

The Republic of Guinea requested all delegations present to take advantage of the goodwill being expressed to try to find a global solution for all those affected by the moratorium.

The Republic of Palau reported that at IWC/54 it had supported fair and equal treatment of the joint USA/Russian Federation proposal and the Japanese request regarding community-based whaling. It still held this position and felt that this meeting was a good time to revisit these issues and hopefully to deal favourably with them both.

Responding to the comments of Antigua and Barbuda and others, the USA emphasised its commitment to science as expressed in the second, third and fourth sentences of the last paragraph of its statement (see above). It noted that as requested at IWC/54, the affected parties had worked with Japan and had kept other members informed. Noting also that the parties had been asked to subscribe to the precautionary approach, the USA pointed out that even though the Scientific Committee had indicated that an annual take of 102 whales would be sustainable, the USA and the Russian Federation were only requesting an annual take of 56 whales. The USA urged the Commission to give due consideration to both its statement and that of the Russian Federation.

Following a proposal by Antigua and Barbuda to add an additional sub-paragraph to reflect a commitment to scientific advice, the following Schedule amendment was adopted by consensus:

Replace paragraph 13(b)(1) of the Schedule with the following:

“(1) The taking of bowhead whales from the Bering-Chukchi-Beaufort Seas stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that:

- (i) For the years 2003, 2004, 2005, 2006, and 2007, the number of bowhead whales landed shall not exceed 280. For each of these years the number of bowhead whales struck shall not exceed 67, except that any unused portion of a strike quota from any year (including 15 unused strikes from the 1998-2002 quota) shall be carried forward and added to the strike quotas of any subsequent years, provided that no more than 15 strikes shall be added to the strike quota for any one year.
- (ii) It is forbidden to strike, take or kill calves or any bowhead whale accompanied by a calf.
- (iii) This provision shall be reviewed annually by the Commission in light of the advice of the Scientific Committee.
- (iv) The findings and recommendations of the Scientific Committee’s in-depth assessment for 2004 shall be binding on the parties involved and they shall modify the hunt accordingly.”

The Chair noted that there may be a need to clarify the wording of sub-paragraph (iv) and that this could perhaps be done at the next Annual Meeting.

4. INTERIM RELIEF ALLOCATION FOR JAPANESE COASTAL WHALING

4.1 Draft Resolution proposed by Japan

Japan recalled that although IWC had specifically recognised the socio-economic and cultural needs of the four community-based whaling communities in Japan and had resolved to work expeditiously to alleviate the distress to these communities resulting from the cessation of minke whaling, its request for an interim relief allocation of 50 minke whales to alleviate this distress had been denied for the last 15 years.

In its latest draft Resolution, Japan was asking the Commission to:

- Reaffirm its commitment to work expeditiously to alleviate the distress caused by the cessation of minke whaling to the communities of Taiji, Wada, Ayukawa and Abashiri and to agree that the most effective way of doing this would be to establish as soon as possible an appropriate catch quota for minke whales consistent with paragraph 10(e) of the Schedule;
- Welcome the Japanese government’s effort to prepare an Action Plan that will stipulate terms and conditions for the catch and distribution of the products;
- Decide that the establishment of an appropriate catch quota for minke whales for the four community-based whaling communities should be based on scientific advice of the Scientific Committee that such quota is sustainable; and
- Further decide that an appropriate amendment to the Schedule and an Action Plan to establish an appropriate catch quota of minke whales exclusively for the communities of Taiji, Wada, Ayukawa and Abashiri be considered at the 55th Annual Meeting of the IWC.

Japan considered that it had made a big effort to break the impasse on this issue and noting the delicate balance within which the work had been done, requested that its Resolution be adopted by consensus.

It noted for the record that its position regarding the commercial whaling moratorium remains unchanged.

4.2 Commission discussions and action arising

Norway, Denmark, the Republic of Guinea, the USA, the Russian Federation, Antigua and Barbuda, the Republic of Palau, Morocco, Benin, Iceland, Solomon Islands, St. Kitts and Nevis, St. Lucia and China all spoke in support of the Resolution. The USA indicated that it could support the Resolution since it addresses its two major concerns, i.e. that Japan must satisfy the provisions of paragraph 10(e) and that the Scientific Committee must advise the Commission that the catch from this stock of minke whales is sustainable. The USA considered that Japan's draft Resolution showed a marked change and a positive movement towards presenting a proposal acceptable to a broad range of the Commission. The USA understood that issues remained to be resolved, but that these could be addressed at IWC/55. It noted that its final position would depend on the adequacy of Japan's Action Plan and proposed Schedule amendment.

Mexico, Germany, the UK, Austria, Australia, New Zealand, Brazil, Italy, Sweden and Switzerland could not support the draft Resolution. Mexico had three major objections: (1) that the proposal was not consistent with paragraph 10(e); (2) that it establishes, de facto, a new category of whaling; and (3) it prejudices the agenda and decisions at IWC/55. It therefore asked Japan to withdraw the Resolution and to resubmit it in Berlin. Other countries made similar remarks. The UK added that Japan had already taken steps to alleviate the suffering of the community-based whaling communities by allocating a special permit catch of 50 minke whales as part of JARPN II. In its view, the only quota consistent with paragraph 10(e) of the Schedule is zero. New Zealand considered that the Resolution had defects that, in its view, could not be remedied. It noted that the Resolution: (1) asks the Commission to welcome Japan's efforts to prepare an Action Plan, although two previous Action Plans had been rejected principally because they failed to address the commercial aspects of the proposed hunt, and (2) did not indicate how any new Action Plan would rectify this defect. New Zealand considered that despite the considerable uncertainty in the document, the Commission was being asked to make a formal decision that it will consider an appropriate amendment to the Schedule. It considered this language as close to being directory as is possible. Its view was that any proposal should be considered on the basis of its merits when presented and not before. Switzerland could not support the establishment of a new whaling category, but could consider a quota if allocated under an aboriginal subsistence whaling regime.

Ireland was concerned that the overall message of the draft Resolution might create expectations that could not be met. For example, it noted that it would not be possible for Ireland to agree to change paragraph 10(e) before a satisfactory RMS has been adopted. Subject to this understanding, Ireland was willing to consider any proposals Japan may put forward at the next Annual Meeting, and it would not block any consensus that might emerge.

Monaco expressed concern regarding the creation of a new category of whaling and requested clarification on the basis on which any quota would be calculated. In this regard it considered that takes of minke whales under scientific permit must be included. While it recognised that consensus was unlikely to be achieved, Monaco noted that several countries had expressed appreciation of the situation of the four coastal communities and proposed amendments that might address some of the concerns raised (e.g. in relation to the directory tone of the Resolution and to clarify the basis for establishing a quota). Despite these proposed amendments, a number of governments still considered that the fundamental flaws in the Resolution remained.

Antigua and Barbuda considered that after having worked at this meeting to resolve two critical issues (Iceland's membership and the bowhead quota), it was remiss of the Commission not to deal fairly with Japan's Resolution. It noted that the Commission has agreed to move speedily to address the problems of the coastal communities in Japan dependent on whales and believed that double standards were again being employed. The Solomon Islands made a similar remark.

Japan recalled that at IWC/54 it had asked for further deliberations on this issue at the next Commission meeting – hence the draft Resolution submitted. It noted that it is willing to accept advice from the Scientific Committee and that it does not intend to create a new whaling category – its intentions could be better explained in an Action Plan. Japan requested that its initial proposal be put to a vote.

On being put to a vote, there were 16 votes in favour, 19 against and 2 abstentions. The Resolution was therefore not adopted. Japan thanked those countries that gave their support.

5. OTHER MATTERS

5.1 Addressing legal matters

Noting that legal issues regarding both procedures and matters of substance were being raised during plenary meetings of the Commission, and considering the difficulty of addressing legal questions in such large meetings, the Netherlands proposed that a process be developed to better address legal matters when raised at future meetings. It suggested that the Advisory Committee could consider how this might be done, for example by

forming an *ad hoc* group of 5-7 members reflecting the different views within the IWC. Such a group could be asked to prepare a proposal for a process on how to deal with legal questions raised in future and to define this process in a way that could be acceptable for the IWC in general.

Mexico supported the proposal and believed that the meeting should explore it further.

Norway was uncertain as to whether the Netherland's proposal was a constructive approach, considering it perhaps preferable to let the force of deliberations run their natural course without having any prescriptive rules about a process to be followed. It was unsure as to the role of the Advisory Committee in any such activity but reserved its final opinion until it had seen the proposal in writing.

While appreciating the motive for the Netherland's proposal, the UK shared some of Norway's concerns, particularly regarding a possible role for the Advisory Committee. The UK also considered that it would be difficult in practice to determine an exact split between what is a legal question and what is a question of policy and that development of an adequate process would be difficult. It believed that some of the Commission's difficulties over the last year or two were the result of certain ambiguities in the Rules of Procedure, and that in the first instance these should be reviewed critically prior to deciding whether anything more needed to be done.

Antigua and Barbuda welcomed the suggestion from the Netherlands, but in view of the importance of the issue wished to see the proposal in writing. Like Norway and the UK, it did not believe that the Advisory Committee was the appropriate body to advise the Commission on this matter. Recalling an intervention it made earlier in the meeting, Antigua and Barbuda proposed that a neutral legal entity should advise the Commission and wished for this to be considered within the context of the Netherland's proposal.

New Zealand noted the difficult debate regarding the adherence of Iceland with a reservation to paragraph 10(e), a debate that had had substantial legal overtones. It believed that some guidance, advice or assistance on those issues before they had been embarked upon might have been of some assistance to members of the Commission. New Zealand considered that all the Netherlands had proposed was to give some structure to those concerns and that the suggested role of the Advisory Committee was only to formulate a proposal for consideration by the Commission and not to make any final decisions. It reported that a number of other multilateral agreements establish legal committees on occasion, typically to look at specific legal issues as they arise, but that these committees offer advice rather than pre-empt the plenary body itself. In relation to IWC, New Zealand considered that an internal legal committee of this type might provide two streams of advice – a majority and a minority opinion, but that lawyers are familiar in dealing with such a situation. New Zealand noted the widely held view of many members that the Commission is the master of its own legal procedures and it is the master of its own legal interpretation. With this in mind, it believed the Netherland's proposal would ensure that the legal matters would be kept internal but that a process would be available for advising the Commission on what it might do. New Zealand viewed the proposal as a confidence-building measure to move the Commission toward a better way of dealing with complex issues that have legal overtones. It noted the point made by the UK that it will often be difficult to distinguish between legal and political issues, but had some confidence that advice could still be offered to the Commission who could select those aspects of the advice that it considers most useful for its purpose and make its decision accordingly.

Monaco considered that any suggestion that would help the Commission to better deal with procedural or legal issues must be viewed as constructive and welcomed the spirit of the Netherland's proposal pending further clarification.

After listening to the views expressed, the Chair believed that the Netherland's proposal would need to be seen in written form before any agreements could be reached. He therefore asked the Netherland's to further develop its ideas in consultation with interested parties.

Like other speakers, Iceland indicated that it reserved judgement on this matter but that it would be interested to see how it developed. It expressed the wish to be among those countries consulted by the Netherlands.

Denmark considered that what is needed is some kind of description of the type of potential legal problems the Commission may face and how they conflict or are in harmony with international law and international tradition. It did not believe that the Commission should ask external lawyers for solutions or proposals on how it should make a decision that, in Denmark's view is up to the Commission. However, it considered the Netherland's proposal to be an interesting and it found the Chair's proposal on how to proceed acceptable.

The Netherlands welcomed the constructive remarks made and agreed to work with interested parties to develop a written proposal for review by the Commission.

5.2 Workshop on cetacean-fisheries interaction

Referring to the Scientific Committee's Modelling Workshop on Cetacean-Fishery Interactions held in La Jolla in June, Monaco expressed interest in learning of the outcome of the workshop and requested the Secretariat to complete the report and to distribute its conclusions to Contracting Governments. The Secretariat noted that the workshop report was being finalised by correspondence, but that a summary of the outcome could be made available.

5.3 Report to CITES on progress with the RMS

Following a question from Norway regarding reporting on progress with the RMS to the November 2002 CITES Conference of Parties, the meeting agreed that a report would be prepared by the Chair and Vice-Chair and circulated to Contracting Governments for information prior to the CITES meeting.

5.4 Closure of the meeting

The Chair closed the Special Meeting at 20.00.

Annex A

List of Participants

Antigua and Barbuda

Daven Joseph (C)
Colin Murdoch (AC)

Argentina

Eduardo Iglesias (C)
Miguel Iñiguez

Australia

Conall O'Connell (C)
Robyn Bromley

Austria

Andrea Nouak (C)
Isabel Rauscher

Benin

Bantole Yaba (C)

Brazil

Mr. Nei Futuro Bitencourt (AC)
Jose Truda Plazzo Junior (AC)

Chile

Veronica Rocha (C)

People's Republic of China

Chaohong Luo (C)

Denmark

Henrik Fischer (C)
Einar Lemche (AC)

Dominica

Lloyd Pascal (C)
Andrew Magloire (AC)

Finland

Esko Jaakkola (C)
Risto Rautiainen (AC)

France

Jean-Georges Mandon (C)
Vincent Ridoux

Germany

Marlies Reimann (AC)

Grenada

Claris Charles (C)

Republic of Guinea

Ibrahima Sory Tour (AC)
Amadou Tlivel Diallo (AC)
Sidiki Diane (I)

Iceland

Stefan Ásmundsson (C)
Tomas Heidar (AC)
Kristján Loftsson

Ireland

Michael Canny (C)

Italy

Giuseppe Notarbartolo Di Sciara (C)
Silvia De Bertoldi (AC)

Japan

Minoru Morimoto (C)
Yoshiaki Ito (AC)
Akira Nakamae (AC)
Joji Morishita
Dan Goodman
Yasuo Iino
Akiko Tomita (I)

Republic of Korea

Iloo-soo Kim (AC)
Dong-yeob Yang
Soon-seok Jung (I)

Mexico

Jorge Lomónaco (AC)

Monaco

Frederic Briand (AC)

Morocco

Driss Meski (C)

Netherlands

Giuseppe Raaphorst (C)
Anne Marie van der Heijden (AC)

New Zealand

Jim McLay (C)
Al Gillespie (AC)

Norway

Odd Gunnar Skagestad (C)
Halvard Johansen (AC)

Republic of Palau

Kuniwo Nakamura (C)
Victorio Uherbelau (AC)

Peru

Luis Escalante (AC)
Cecilia Galarreta (I)

Portugal

Marina Sequeira (C)

Russian Federation

Valentin Ilyashenko (C)

Valery Knyazev (AC)

Elena Rockhill (I)

Vladimir Etylin (S)

Evdakiya Etylina (S)

Olga Etylina (S)

Olga Ulturgasheva (S)

Piers Vitebsky (S)

Saint Kitts and Nevis

Raphael Archibald (AC)

Saint Lucia

Cyprian Lansiquot (C)

Vaughan Charles (AC)

San Marino

Dario Galassi (C)

Solomon Islands

Nelson Kile (C)

Sylvester Diake (AC)

Spain

Juan Manuel Velasco (C)

Carlos Expósito (AC)

Sweden

Bo Fernholm (C)

Anders Nyström (AC)

Mattias Falk (AC)

Thomas Lyrholm

Switzerland

Mr. Ivo Sieber (AC)

UK

Richard Cowan (C)

Rob Bowman (AC)

Jill Barrett

USA

Rolland Schmitt (C)

Michael Tillman (AC)

Jean-Pierre Plé

Matthew Paxton

Maggie Ahmaogak

George Ahmaogak, Sr.

Eugene Brower

Edward Itta

Intergovernmental Organisations**IUCN**

Justin Cooke

Non-Governmental Organisations**Campaign Whale**

Andy Ottaway

Environmental Investigation Agency

Jenny Lonsdale

EBCD

Despina Symons

Greenpeace

John Frizell

High North Alliance

Rune Frovik

Juliet Le Breton (I)

Humane Society International

Kitty Block

International Fund for Animal Welfare

Vassili Papastavrou

International League for the Protection of Cetaceans

Leslie Busby

International Ocean Institute

Sidney Holt

IWMC World Conservation Trust

Jacques Berney

Japan Small-Type Whaling Association

Chikao Kimura

TEN

Shigeko Misaki

Werkgroep Zeehond

Geert Drieman

Whale & Dolphin Conservation Society

Sue Fisher

WWF

Cassandra Phillips

(C) = Commissioner

(AC) = Alternate Commissioner

(I) = Interpreter

(S) = Support staff

Annex B

Agenda

1. INTRODUCTORY ITEMS
 - 1.1 Welcome and meeting arrangements
 - 1.2 Opening Statements
 - 1.3 Secretary's report on credentials and voting rights

2. ADOPTION OF THE AGENDA

3. ABORIGINAL SUBSISTENCE WHALING CATCH LIMITS
 - 3.1 Proposed Schedule amendment
 - 3.2 Commission discussions and action arising

4. INTERIM RELIEF ALLOCATION FOR JAPANESE COASTAL WHALING

5. OTHER MATTERS