

Chair's Report of the meeting of the RMS Small Drafting Group

Borgholm, Sweden, 1-3 December 2004

1. INTRODUCTION (covering agenda items 1-4, 6, and 8)

The Small Drafting Group (SDG) met from 1-3 December 2004, immediately following the meeting of the RMS Working Group. It was chaired by Mike Tillman (USA). The agenda and terms of reference for the SDG are given in Annex A, the list of participants in Annex B and the list of documents in Annex C.

The SDG based its work on document IWC/N04/RMSWG 15 rev – ‘*Summary of the outcome of discussions on elements for an RMS package, including instructions from the RMS Working Group to the SDG*’. In reviewing these instructions, the SDG noted that the RMS Working Group had identified a number of issues that the SDG should not consider, at least at its first meeting. These included: VMS (vessel monitoring systems); international observers for cetacean sightings surveys; whaling under special permit; animal welfare issues; sanctuaries; and the use and development of Protocol(s) to the Convention with respect to a variety of issues. The SDG stressed that the lack of consideration of these items at this stage is not a reflection of their importance, but rather reflects: (1) the need to await the outcome of a number of technical specialist groups established by the RMS Working Group (i.e. on VMS, DNA registers, animal welfare) or work of members of the Scientific Committee (i.e. draft Code of Conduct for whaling under special permit); (2) lack of guidance and/or information to address them adequately (e.g. international observers for sighting surveys, sanctuaries); or (3) that they are considered beyond its terms of reference (e.g. the development of a Protocol).

It was agreed that the outcome of the SDG meeting would be reported via a Chair's Report developed after the meeting. Nicky Grandy and Greg Donovan (Secretariat) were appointed as rapporteurs.

2. DEVELOPMENT OF DRAFT SCHEDULE TEXT (covering agenda item 5)

The SDG developed draft Schedule text for the following:

| | see Annex: | page |
|---------------------------------------------------------------------------------------------------------------------------------------|------------|------|
| Statement of Principal for the supervision and control scheme | D | 5 |
| Incorporating the RMP into the Schedule, including a geographical phase-in of commercial whaling | E | 7 |
| National inspection and international observer scheme | F | 14 |
| Additional catch verification | G | 18 |
| <ul style="list-style-type: none"> • Draft Resolution on Measures to deter illegal, unreported and unregulated whaling | H | 20 |
| Compliance | I | 21 |
| Apportioning RMS costs among Contracting Governments | J | 22 |
| Relationship between adoption of the RMS and lifting paragraph 10(e) | K | 24 |

In each of the Annexes, the relevant instructions from the RMS Working Group (IWC/N04/RMSWG 15rev) are repeated. These are followed by proposals for draft Schedule text, including options and/or a call for further policy guidance as appropriate. In the draft Schedule text proposed, text not in square brackets represents text of which a certain level of ‘agreement’ has been reached. Text within square brackets represents areas where issues clearly remain to be resolved.

In drafting Schedule text, the SDG drew heavily on text already developed by the RMS Expert Drafting Group and earlier meetings of the RMS Working Group, and in particular on a draft Schedule prepared by the Secretariat that collated the status of draft RMS text up to IWC/56 (i.e. Document IWC/D04/RMS SDG 4). For illustrative purposes (and to see how SDG proposals might fit into the Schedule as a whole), the paragraph numbering of draft Schedule text in the various Annexes corresponds to the numbering in Document IWC/D04/RMS SDG 4.

3. OTHER ISSUES (covering agenda item 6)

In considering its relationship with the technical specialist groups established by the RMS Working Group, the SDG agreed that the technical groups would report to the RMS Working Group who would then give instructions as appropriate to the SDG.

The SDG recognised 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 (see Annex A). Nevertheless, the SDG considered that it would be sensible when developing draft RMS Schedule 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. It 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 once such a text is available to check for inconsistencies and any potential legal issues. The SDG wishes to draw these considerations to the attention of the RMS Working Group.

4. NEXT MEETING (covering agenda item 7)

The next SDG meeting will take place immediately following the next meeting of the RMS Working Group scheduled to take place from Wednesday 30 March to Friday 1 April in Copenhagen. The SDG agreed that it should set aside four days for its next meeting and will therefore meet from Saturday 2 April to Tuesday 5 April.

ANNEX A

Agenda for the First Meeting of the RMS Small Drafting Group, Strand Hotel, Borgholm, Sweden, 1-3 December 2004

1. INTRODUCTORY REMARKS
2. REPORTING ARRANGEMENTS AND APPOINTMENT OF RAPPORTEURS
3. REVIEW OF DOCUMENTS
4. INSTRUCTIONS FROM THE RMS WORKING GROUP
 - 4.1 Review of instructions and proposal on how to tackle them
 - 4.2 Discussion
5. DRAFTING TEXT AS INSTRUCTED
6. OTHER ISSUES (the relationship between the SDG and the technical specialist groups established by the RMS Working Group)
7. NEXT MEETING
8. REVIEW OF RMS TEXT DEVELOPED AND CONFIRMATION OF REPORTING MECHANISM

Terms of Reference

Resolution 2006-6 on Completion of the RMS indicates that the Terms of Reference of the SDG are to:

1. prepare a consolidated draft text for the replacement of parts of Chapters V and VI of the current Schedule.
2. prepare consolidated draft text on other related issues in the RMS package.
3. utilise the Chair's proposal (IWC/56/26) and his statement (IWC/56/28), as a framework for this work.
4. rearrange, revise and renumber paragraphs in the draft text for Chapters V and VI as appropriate but not to attempt to merge them with other parts of the Schedule.

ANNEX B

List of Participants in the SDG

Argentina

Eduardo Iglesias
Miguel Iniguez

Denmark

Kate Sanderson

Dominica

Lloyd Pascal

Iceland

Stefan Asmundsson
Asta Einarsdottir

Japan

Joji Morishita
Dan Goodman
Yasuo Iino

Netherlands

Annemarie van der Heijden

New Zealand

Geoffrey Palmer
Jim McLay
Rosemary Paterson.

South Africa

Herman Oosthuizen
Chris Badenhorst

Sweden

Stellan Hamrin
Thomas Lyrholm

UK

Richard Cowan
Geoff Jasinski

USA

Michael Tillman (Chair)
Jean-Pierre Ple
Roger Eckert

Secretariat

Nicky Grandy
Greg Donovan

Note that the Republic of Guinea, also a member of the SDG, was unable to attend

ANNEX C
List of Documents

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|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| IWC/D04/RMS SDG | 1 Draft Agenda 2 Draft List of Documents 3 Schedule of the International Convention for the Regulation of Whaling (October 2004 version) 4 Status on revision of the Schedule based on discussions to date |
| IWC/N04/RMSWG | 13 Elements of an RMS 'Package (submitted by Australia) 14 Statement of principles (submitted by St. Kitts and Nevis, Republic of Guinea, Gabon, Nicaragua, Dominica, Antigua and Barbuda) 15rev Summary of outcome of discussions on elements for an RMS package, including instructions from the RMS Working Group to the SDG |
| Resolution 2004-6 | Resolution on Completion of the Revised Management Scheme |
| IWC/56/ | 26 Chair's Proposals for a Way Forward on the RMS 28 Statement from Henrik Fischer, Chair of the Commission, to the Private Meeting of Commissioners/Alternate Commissioners on the 16 th July 2004 |
| IWC/54/RMS | 1 Report of the Revised Management Scheme Expert Drafting Group |
| IWC/54/ | 7 Report of the Revised Management Scheme Working Group 35 Proposed Schedule amendment for adoption of the RMS |
| Background documents | |
| IWC/53/ | 9 Report of the Revised Management Scheme Working Group: Appendix 4 Revised Schedule text from Document IWC/53/RMS 4 annotated with comments received during the meeting |
| IWC/53/RMS | 4 Proposed revisions to and re-organisation of the Schedule to the International Convention for the Regulation of Whaling |
| IWC/55/COMMS | 2 Commissioners' meeting on the RMS (October 2002) – Chair's Confidential Aide Memoire 3 Report of the RMS Working Group on Catch Verification 4 Report of the RMS Working Group on Costs |
| IWC/55/COMMS | 9 Second Commissioners' meeting on the RMS (at IWC/55 in Berlin) – Chair's Confidential Aide Memoire |

ANNEX D

**Incorporation into the Schedule of the various versions of text for a Statement of Principle
for the Revised Management Scheme**

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.

Outcome of SDG discussions:

The following proposed text addresses the RMS Working Group request. Given the lack of consensus in the RMS Working Group, all options can be considered to be in square brackets. The SDG noted that a consolidated list of items should and could be prepared from the proposals in the 3 versions of paragraph (b) of Option 2, but that this requires policy discussions. Note that this whole section is in square brackets, representing Option (4), i.e. no text on principles in the Schedule.

| V. SUPERVISION AND CONTROL | |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | [Statement of principle |
| | <u>Option (1):</u> |
| 17. | [(a). The purpose of this Chapter is to set out the basic requirements for a robust supervision and control scheme for all whaling activity undertaken in accordance with this Schedule (other than aboriginal subsistence whaling) to ensure compliance with the provisions of the Convention.] |
| | <u>Option (2): Proposal A</u> |
| | [(a) The provisions of this Chapter V shall apply to all whaling activity undertaken in accordance with this Schedule (other than Aboriginal Subsistence whaling) and which is undertaken by vessels authorised by Contracting Governments. |
| | (b) The requirements of this Chapter V are based on – |
| | (i) the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks. |
| | (ii) current best international practice of other relevant international regimes; |
| | (iii) The need to ensure that the only perishable whale products deemed to have been legitimately taken are derived from whales taken in accordance with the provisions of the Revised Management Scheme; |
| | (iv) Provisions for an effective Inspection and International Observer Scheme that fully addresses, inter alia, the issues of under-reporting and mis-reporting of catches; |
| | (v) Arrangements to ensure that the total catches over time are within the limits set under the Revised Management Scheme; and |
| | (vi) The need to provide appropriate oversight and review to ensure the compliance of all whaling operations with agreed conservation measures and with the provisions of the Schedule and with the provisions of the Revised Management Scheme.] |

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| | <p><u>Option (2): Proposal B</u></p> <p>[(a) The provisions of this Chapter V shall apply to all whaling activity undertaken in accordance with this Schedule (other than Aboriginal Subsistence whaling) and which is undertaken by vessels authorised by Contracting Governments.</p> <p>(b) The requirements of this Chapter V are based on:</p> <ul style="list-style-type: none"> (i) the importance of continuous scientific research to determine species interaction and the impact of whale population on other marine species; (ii) the requirements and importance of global food security especially in developing countries and rural and coastal areas of developing countries; (iii) the need to provide food from the natural marine environment to reduce the negative impact on human health possible from manufactured food; (iv) a recognition that the nutritional needs of coastal states may in part be met by the use of marine living resources within their jurisdiction in accordance with Agenda 21; (v) the sovereign rights of coastal states to determine policies and mechanisms for the sustainable use of marine living resources within their exclusive economic zone in accordance with the United Nations Convention on Law of the Sea; (vi) the co-ordinating role of international organisations such as the IWC taking into consideration coastal states' rights to the sustainable use of highly migratory species; (vii) the special rights of developing countries to the sustainable use of cetacean resources for domestic consumption and international trade; (viii) special consideration of developing countries for a cost effective Revised Management Scheme.] |
| | <p><u>Option (2): Proposal C</u></p> <p>[(a) The provisions of this Chapter V shall apply to all whaling activity undertaken in accordance with this Schedule (other than Aboriginal Subsistence whaling) and which is undertaken by vessels authorised by Contracting Governments.</p> <p>(b) The requirements of this Chapter V are based on the need to:</p> <ul style="list-style-type: none"> (i) conserve and manage whale stocks; (ii) ensure that measures to conserve and manage whale stocks to enable such stocks to be maintained or restored are based on the best available science; (iii) consider the special requirements of developing states; (iv) apply the precautionary approach with regard to the conservation and management of whale stocks; (v) avoid catch of non-target species; (vi) take into account the interests of artisanal and subsistence fishers; (vii) collect and share data on research and catching activities. (viii) promote and conduct scientific research and develop appropriate technologies in support of conservation and management of whale stocks; (ix) implement and enforce conservation and management measures through effective monitoring, control and surveillance; (x) ensure cooperation among Contracting Governments in sharing information on illegal, unregulated and unreported whaling activity; (xi) ensure a comprehensive and integrated approach by flag, coastal and port states in taking measures to prevent, deter and eliminate illegal, unreported and unregulated whaling activity; (xii) ensure the transparency of measures to prevent, deter and eliminate illegal, unreported and unregulated whaling activity; (xiii) ensure that measures to prevent, deter and eliminate illegal, unreported and unregulated whaling activity are applied in a non-discriminatory manner consistent with relevant international law.] |
| | <p><u>Option (3)</u></p> <p>[(b)/(c). No provision of this Chapter is intended to, nor shall it be deemed or interpreted to be, a restriction on any legitimate trade in any whale product.]]</p> |

ANNEX E

Incorporation into the Schedule of the Revised Management Procedure into the Schedule, including a geographical phase-into commercial whaling

The instructions from the RMS Working Group were as follows:

A. RMP

Consider (1) the RMP as currently adopted by the Commission; and (2) with square brackets concerning the tuning level (see Appendix 2, section 4.4). The SDG was also requested 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.

B. Phased-in approach

Incorporate the Chair's proposal for a phased-in approach to the resumption of commercial whaling (in square brackets as there was no consensus on the Chair's proposal) (see section sentence of paragraph 3).

Outcome of SDG discussions:

The following proposed text addresses the RMS Working Group request. Text related to (1) incorporation of the RMP and setting catch limits under the RMP and (2) a phased-in approach is highlighted.

| II. AREAS | |
|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Management Areas for Commercial Whaling | |
| 3. | Commercial whaling catch limits shall be set by Small Area (or combinations thereof) as defined in the Revised Management Procedure (RMP) specified in Appendix 2. [Notwithstanding the catch limits by Small Area shown in Table 1, 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.] ¹ |

| III. CATCH LIMITS | |
|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Commercial Catch Limits for Baleen Whales | |
| 5. | (a) Commercial whaling shall only be permitted for populations, areas and seasons for which catch limits are in force and shown in Table 1. These catch limits shall have been calculated by the Scientific Committee on the instruction of the Commission in accordance with the RMP specified in Appendix 2. They shall be adjusted downwards to account for [human-induced mortalities as specified in paragraph 5 (b).] [mortalities (whether human-induced or otherwise) as specified in paragraph 5 (b) and 5 (c)]. Commercial catch limits for all populations in all areas and seasons not listed in Table 1 are zero. |
| | (b) [The adjustment to catch limits to account for human-induced mortalities shall be based on an estimate provided by the Scientific Committee of the size of adjustment required to ensure that total removals over time from each population and area do not exceed the limits set by the RMP. Total removals include commercial catches and other human-induced mortalities caused by aboriginal subsistence whaling, scientific whaling, whaling outside the IWC, bycatches and ship strikes, to the extent that these are known or can be reasonably estimated.] |
| | (c) [In the event of a massive die-off (biological and/or human-induced) larger than 1% of a stock or 500 animals – whichever is smaller – the Commission shall order a temporary cessation of catch limits on that stock. A catch limit integrating this event shall immediately be recalculated by the Scientific Committee: it shall remain in effect for the remainder of the catch limit period. Given the magnitude of a die-off, the Commission may determine, by simple majority vote, that catches are prohibited until further notice.] |

¹ This last sentence in brackets replaces the text proposed by Ireland at IWC/53, i.e. 'However, such catches may only be taken within Exclusive Economic Zones or other waters within 200 miles of the coast'.

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| | (d) [Notwithstanding the other provisions of paragraph 5 there shall be a moratorium on the taking, killing or treating of whales, except minke whales, by factory ships or whale catchers attached to factory ships. This moratorium applies to sperm whales, killer whales and baleen whales, except minke whales.] <i>(note: this is current Schedule paragraph 10(d))</i> |
| | (e) [Notwithstanding the other provisions of paragraph 5, catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. This provision will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits.] <i>(note: this is current Schedule paragraph 10(d))</i> |
| VI. INFORMATION REQUIRED | |
| 33. | The following samples and/or information shall be provided: |
| | (a) The length of all animals caught shall be obtained, measured in a straight line parallel to the whale from the tip of the upper jaw to the notch of the flukes. These data shall be reported to the Secretariat at the end of each season and included in the IWC database. |
| | (b) Where possible, both ovaries shall be collected from each female caught. Corpora counts shall be reported to the Secretariat within one year of the close of the season and included in the IWC database. |
| | (c) If sufficiently trained personnel are present, the presence, length and sex of foetuses shall be recorded. If it is not possible for such personnel to be present, these data should still be recorded where possible, and the lack of trained personnel noted. These data shall be forwarded to the Secretariat at the end of the season and included in the IWC database. |
| | (d) Lactation shall be recorded and reported to the Secretariat at the close of the season and included in the IWC database. |
| | (e) At least 5cm ² of skin shall be collected from each whale caught and, where possible, a sample of tissue from the foetus should be collected. Long term archiving of all samples with appropriate identifying information is the responsibility of the harvesting nation. A list of archived samples shall be forwarded to the Secretariat at the end of each season. |
| | Further details are provided in the document ' <i>Guidelines for Data Collection and Analysis under the Revised Management Scheme (RMS) Other than those Required as Direct Input for the Catch Limit Algorithm (CLA)</i> ' dated [insert date: e.g. 1 September 2004] and held by the IWC Secretariat. |

Appendix 2

The Revised Management Procedure (RMP) for Baleen Whales²

1. DEFINITIONS

Regions are non-overlapping major ocean areas. For species found in or migrating to higher latitudes, these will normally be the Arctic and adjacent waters, the North Atlantic and adjacent waters, the North Pacific and adjacent waters, and the Southern Hemisphere. For species confined to lower latitudes, the *Regions* will normally be the Atlantic, Pacific and Indian Oceans. *Regions* can be combined for species where the interchange is not negligible.

Small Areas are disjoint areas small enough to contain whales from only one biological stock, or be such that if whales from different biological stocks are present in the *Small Area*, catching operations would not be able to harvest them in proportions substantially different to their proportions in the *Small Area*.

Medium Areas correspond to known or suspected ranges of distinct biological stocks.

Large Areas coincide with *Regions*, unless evidence exists to support the selection of one or more areas smaller than a *Region* which fully covers the range of some biological stocks of a species and definitely excludes whales from all other biological stocks of that species in the *Region*.

Residual Areas are all geographical areas in a *Region* which are outside any *Small Areas*. *Medium Areas* comprise unions of *Small* and, where identified, *Residual Areas*. *Large Areas* comprise unions of *Medium* and, where identified, *Residual Areas*.

Combination Areas are disjoint unions of *Small Areas* to which the *Catch Limit Algorithm* is applied when *Catch-cascading* is used.

Management Area is a generic term denoting a *Small*, *Medium*, *Large*, *Residual* or *Combination Area*.

Catch Limit Algorithm is the process (described in Section 4) that is used to calculate a catch limit for a *Management Area*.

Years are consecutive periods of 12 months used for the compilation of time series of catches and abundance data for application of the *Catch Limit Algorithm*. Neither this definition, nor any statement following, should be construed as precluding the possibility of a regulation that a catch limit calculated in such an application may be taken only during a certain part of the *Year*.

Catch-cascading is the process by which a catch limit calculated for a *Combination Area* is distributed among the *Small Areas* that make up the *Combination Area* in proportion to the calculated relative abundances in those *Small Areas*. When *Catch-cascading* occurs, the relative abundances for *Small Areas* within the *Combination Area* shall normally be calculated from the same estimates of absolute abundance as were used for the application of the *Catch Limit Algorithm* to the *Combination Area*. The calculated relative abundance in a *Small Area* shall be an appropriate form of weighted average of the available abundance indices for that *Small Area*, with the statistically appropriate weighting, except that each estimate shall also be further weighted by the factor 0.9^n , where n is the number of years that have elapsed between the *Year* to which the estimate refers and the *Year* of the *Catch Limit Calculation*.

Catch-capping is the process by which *Catch Limits* calculated for *Small Areas* are adjusted by reference to those calculated for either *Medium* or *Large Areas* containing those *Small Areas*. It consists of the following rules. If the sum of the catch limits calculated for those *Small Areas* that make up a *Medium* (or *Large*) *Area* exceeds the catch limit calculated for the *Medium* (or *Large*) *Area*, then both the *Small* and *Medium* (or *Large*) *Area* catch limits shall apply in such a way that the maximum catch allowed in each *Small Area* is the appropriate *Small Area* catch limit and the maximum catch allowed in the *Medium* (or *Large*) *Area* is the *Medium* (or *Large*) *Area* catch limit. This definition does not preclude the possibility of applying *Catch-capping* to overlapping *Medium Areas*.

An *Implementation* involves the designation of the *Management Areas* and their boundaries and the selection of *Catch-cascading* and/or *Catch-capping* options for a particular species and *Region*. These designations and/or selections may be changed in a subsequent *Implementation Review*.

² Annotations detailing the practical application of the RMP by the Scientific Committee are included in the document 'Annotations to the Revised Management Procedure (RMP) for Baleen Whales' dated [insert date: e.g. 1 September 2004] and held by the IWC Secretariat

A *Catch Limit Calculation* is the process by which catch limits for a species in a *Region* are calculated for all *Small* (and where appropriate *Medium* or *Large*) *Areas* within that *Region*, as specified in Sections 3.3, 3.4 and 3.5, by application of the *Catch Limit Algorithm* as described in Section 4. This algorithm uses historic catch data and estimates of absolute abundance for each *Management Area* that meet the requirements of Section 3.2.

2. IMPLEMENTATIONS AND IMPLEMENTATION REVIEWS³

Implementations and *Implementation Reviews* are conducted by the Scientific Committee on a *Regional* basis. They involve the delineation of *Small Areas* and, where appropriate, *Medium* and *Large Areas*. A selection between possible options for *Catch-cascading* and/or *Catch-capping* is made during an *Implementation (Review)*, which includes the designation of *Combination Areas* as may be appropriate. This process is described as an *Implementation* on the first occasion it takes place for a species in a *Region*; subsequent revisions are termed *Implementation Reviews*. An *Implementation (Review)* shall take account of the available biological and operational data, including in particular those data pertaining to stock-identity. An *Implementation (Review)* is conducted by species or other suitable taxonomic unit below the species level. Such taxonomic units should be treated separately for the purpose of *Catch Limit Calculations* (see Section 3) where the extent of geographical separation is sufficient to make this feasible. In the following text, 'species' should be taken to refer to taxonomic units below the species level where appropriate.

3. CATCH LIMIT CALCULATIONS

3.1 Scope and period of validity

Catch limits pertain to the first *Year* commencing after their calculation by the Scientific Committee, and for each of the following four *Years*. A catch limit is calculated for each *Small Area* in a *Region* for each of these five *Years*. The five catch limits calculated for each *Management Area* shall be equal, except where adjustments are made under the phaseout rule specified in section 3.4. A *Catch Limit Calculation* involves the (re)calculation of catch limits for all *Small Areas* and, where appropriate, *Medium* or *Large Areas* in the *Region*. At the request of the Commission, the first of these catch limits calculated may alternatively refer to the *Year* in which the calculation takes place, and for each of the following four *Years*.

Where appropriate, a carry-over provision may be attached to the set of five catch limits calculated for a *Small Area*, and shall operate as follows. Where a catch limit for a *Small Area* is not reached in any one *Year*, the shortfall may be added to the catch limit for the same *Small Area* in any of the remaining years of validity of the *Catch Limit Calculation*. Any unused carry-over remaining at the end of the fifth *Year* of validity of the *Catch Limit Calculation*, or at the beginning of the first *Year* of validity of a new *Catch Limit Calculation*, whichever is the sooner, lapses.

3.2 Data requirements

3.2.1 Catch history

Time series of catches by sex shall be compiled for each of the *Management Areas* specified within the region, using the best available information. These catch histories shall cover a period beginning not later than the *Year* of the first recorded or estimated catch and ending with the *Year* preceding the first *Year* for which catch limits are to be calculated.

If there are catches known to have occurred in the *Region*, but the *Small Area* in which they were taken is not known, they shall be assigned to the *Small Area* in which they are considered most likely to have been taken. *Pro rata* allocations are allowed. Where the sex ratio of catches is not accurately known, the best available estimate of the sex ratio shall be used to divide the catches; in the absence of any information, a 50:50 sex ratio shall be assumed. Unspecified catches of whales shall be allocated to species using the best available information on the species composition of the catch. Known or estimated numbers of whales struck and lost shall be added to the catches. If the timing of catches is uncertain, they shall be assigned to *Years* according to the best available information. No catches known to have occurred in the *Region* shall be omitted from the *Catch Limit Calculation* on grounds of uncertainty over their location, timing, sex ratio or other details. All known removals from a *Region* shall be included in the catch series.

3.2.2 Absolute abundance estimates

Absolute abundance data to be used in the calculation of catch limits shall have been obtained by direct methods, such as sightings surveys, and collected and analysed using methods approved by the Scientific Committee. *Management Areas* to which the *Catch Limit Algorithm* is applied should normally be surveyed at intervals not exceeding six years. The methods shall be such as to provide estimates of whale abundance that have acceptable

³ The practical application of *Implementations* and *Implementation Reviews* by the Scientific Committee is detailed in the document 'Requirements And Guidelines For *Implementations*' dated [insert date: e.g. 1 September 2004] and held by the IWC Secretariat
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levels of bias and precision. They shall also permit estimation of the variance of each estimate and of their variance-covariance matrix, or alternative variance-related statistics where appropriate.

Data for any sightings survey to be used to calculate abundance estimates for the purposes of conducting a *Catch Limit Calculation* shall be documented and provided to the Secretariat in computer readable data files before a specified time in advance of the Scientific Committee meeting during which the data are to be used. All such data should be archived by the Secretariat in an appropriate database such that abundance estimates can be calculated for any specified *Small Area*. Data should be in a fully disaggregated form so that estimates can be recalculated appropriately if the boundaries of *Management Areas* are altered. Once lodged with the Secretariat, these data shall be available to accredited scientists as defined in the Scientific Committee's Rules of Procedure.

Estimates of absolute abundance are required for each *Management Area* to which the *Catch Limit Algorithm* is to be applied under the procedures described in Section 3.3. For each such *Management Area*, a time series of absolute abundance estimates shall be calculated, along with an estimate of their variance-covariance matrix, or alternative variance-related statistics where appropriate. The approximate distributional properties of the abundance estimates shall also be determined. Care should be taken to avoid substantially underestimating the variance (or alternative variance-related statistic) of each abundance estimate used for input into the *Catch Limit Algorithm*.

The absolute abundance estimate for a given *Year* should ideally be calculated from data collected in that *Year*. Data collected in different *Years* may be used, for example to account for parts of the area that were not covered in that *Year*, to pool results from surveys conducted over consecutive or nearly consecutive *Years* in order to reduce variance, or to provide estimates of calibration factors, provided that appropriate statistical methods are used.

Data from surveys conducted in different *Years* or at different times of year may only contribute to a single abundance estimate if adequate precautions are taken to avoid substantial double counting of whales due to migration or other factors. In the calculation of an absolute abundance estimate for a *Management Area* in a given *Year*, parts of the Area for which there are no absolute abundance estimates available at any time meeting the above specifications shall be treated as having an absolute abundance of zero.

The absolute abundance estimates should pertain to the total number of whales aged one year and above in the *Management Area*, regardless of any size limits that may be in force or the selectivity or otherwise of any past or present exploitation. Animals aged less than one year shall be excluded where possible.

The only estimates of abundance acceptable for use in the *Catch Limit Algorithm* are those obtained in accordance with the '*Requirements and Guidelines for Conducting Surveys and Analysing Data Within the Revised Management Scheme*' dated [insert date: e.g. 17 March 2004] and held by the IWC Secretariat.

3.3 Options for determination of catch limits

Catch limits shall always be set at the *Small Area* level and they shall be set for each *Small Area* in a *Region*. In addition, where *Catch-capping* is invoked at the *Medium* or *Large Area* level, corresponding catch limits will be set for those *Medium* or *Large Areas*. Catch limits for all *Residual Areas* within a *Region* shall be set at zero.

Catch limits for the total number of whales that may be taken in a season in each *Small Area* will be calculated by:

- (a) application of the *Catch Limit Algorithm* to the *Small Areas* or, where appropriate, to *Combination Areas*, in which case *Catch-cascading* occurs; and
- (b) where appropriate, by adjustment of the *Small Area* catch limits calculated, with or without *Catch-cascading*, under (a) by either
 - (1) application of the *Catch Limit Algorithm* to one or more of the *Medium Areas*, followed by *Catch-capping* of the *Small Area* catch limits; or
 - (2) application of the *Catch Limit Algorithm* to one or more of the *Large Areas*, followed by *Catch-capping* of the *Small Area* catch limits.

Catch limits for the total number of whales that may be taken in a *Year* in *Medium* or *Large Areas*, as required when *Catch-capping* is invoked, will be calculated by application of the *Catch Limit Algorithm* to those *Medium* or *Large Areas*.

The decision for any particular species or *Region* on whether or not *Catch-capping* is to be applied, and if so whether it should be applied at the *Medium* or *Large Area* level, and whether or not *Small Areas* are to be combined for the purposes of *Catch-cascading*, will be made on the basis of biological evidence available to the Scientific Committee, and, where necessary, the results of computer simulation trials conducted by the Scientific

Committee. Where computer simulation trials are carried out, they shall, as far as possible, encompass the full range of plausible hypotheses (regarding, for example, stock identity) consistent with existing biological data.

3.4 Phase-out rule

The catch limits for a *Small Area* calculated under Section 3.3 shall be adjusted downwards when the time series of absolute abundance estimates used for the application of the *Catch Limit Algorithm* to the *Small Area* (or, if *Catch-cascading* has been applied, to the *Combination Area* containing it) does not include an absolute abundance estimate pertaining to a *Year* not more than eight years prior to the *Year* to which the catch limit pertains. Under these circumstances, the catch limit for the *Small Area* shall be reduced by 20% of the unadjusted catch limit for that *Small Area* and *Year* for each year in excess of eight years that has or will have elapsed since the *Year* of the most recent such abundance estimate. This rule shall also be invoked in a *Small Area* included in a *Combination Area* for *Catch-cascading* if the data used for the derivation of absolute abundance estimates for input to the *Catch Limit Algorithm* do not contain any survey effort in that *Small Area* within this eight year period.

3.5 Adjustments for recent sex ratios in the catch

If the proportion, P_f , of female whales in the total catch taken from a *Small Area* in the most recent five *Years* prior to the *Catch Limit Calculation* for which the catch data are available exceeds 50%, the catch limits for the *Small Area* calculated according to the procedure described in sections 3.3 and 3.4 shall be adjusted downwards by the ratio $0.5/P_f$. However, should the Scientific Committee decide it to be more appropriate, this adjustment ratio shall be determined from the proportion of females in the total catch taken from a union of *Small Areas*, and applied to the catch limit for each *Small Area* in the union. Further, the sex ratio adjustment shall be waived if the Scientific Committee agrees that the catches taken in the most recent five *Years* for which the catch data are available are too few to provide a useful indication of the expected future sex ratio of the catch.

4. CATCH LIMIT ALGORITHM

The nominal catch limit for a *Management Area* shall be calculated using the algorithm defined below if at least one estimate of absolute abundance as defined in Section 3.2 is available for the *Area* in question. Otherwise, the nominal catch limit for the *Management Area* shall be zero.

4.1 Input data

The input data for application of the *Catch Limit Algorithm* for any *Management Area* shall include the time series of annual catches as detailed in Section 3.2.1 and the time series of absolute abundance estimates, along with their variance-covariance matrix or other appropriate variance-related statistics and a specification of the distributional form of the absolute abundance estimates, as specified in Section 3.2.2.

4.2 Population model

The following population dynamics model²⁷ shall be used:

$$P_0 = P_T / D_T$$

$$P_{t+1} = P_t - C_t + 1.4184\mu P_t (1 - (P_t / P_0)^2) (0 \leq t < T)$$

where:

P_t is the population size in numbers at the beginning of *Year t*;

C_t is the catch in numbers in *Year t*;

D_T is the ratio of the population size at the beginning of *Year T* to the population size at the beginning of *Year zero*, known as the stock depletion;

Year zero is the first *Year* of the catch series used in the *Catch Limit Calculation* (as specified in Section 3.2.1);

Year T is the first year for which a catch limit is to be calculated in the current *Catch Limit Calculation*;

μ is the productivity parameter.

Provided there have been at least some catches, the population dynamics model is fully determined when the catch series and the values of D_T and μ are specified. If there have been no catches, a nominal catch of one whale in *Year zero* is assumed.

4.3 Fitting of the model

The annual absolute abundance estimate (if there is one) for each *Year t*, is assumed to have expectation bP_t where b is the bias parameter. The joint likelihood function of the parameters b , D_T and μ is determined using the absolute abundance estimates, the variance-covariance matrix of the absolute abundance estimates (or alternative variance-related statistics where appropriate) and information on their distributional form.

Unless there are specific indications to the contrary, the absolute abundance estimates shall be assumed to be lognormally distributed with a variance-covariance matrix of the log estimates to be estimated from the data using methods judged appropriate by the Scientific Committee. In this case, the formula for the likelihood is:

$$\text{Likelihood } (D_T, \mu, b) \propto \exp[-\frac{1}{2}(\mathbf{a} - \mathbf{p} - \beta\mathbf{1})' H (\mathbf{a} - \mathbf{p} - \beta\mathbf{1})]$$

where:

\mathbf{a} is the vector of logarithms of estimates of absolute abundance by season;

\mathbf{p} is the vector of logarithms of the modelled annual population sizes: $p_t = \log(P_t)$;

β is the logarithm of the bias parameter: $\beta = \log(b)$;

$\mathbf{1}$ is a vector of ones;

H is the information matrix of the \mathbf{a} vector. If H is non-singular, $H = V^{-1}$ where V is the variance-covariance matrix of the components of \mathbf{a} .

The stock depletion parameter D_T is assigned a prior probability distribution that is uniform from zero to one, and zero outside this range.

The productivity parameter μ is assigned a prior probability distribution that is uniform from zero to 0.05, and zero outside this range.

The bias parameter b is assigned a prior probability distribution that is uniform from zero to 5/3, and zero outside this range.

The above three prior distributions are treated as independent and combined accordingly to determine the joint prior distribution of the parameters D_T , μ and b .

The joint 'posterior' distribution of the parameters D_T , μ and b is defined as follows:

$$\text{Posterior } (D_T, \mu, b) \propto \text{Prior } (D_T, \mu, b) \cdot \text{Likelihood } (D_T, \mu, b)^s$$

where s , the scale parameter, is set equal to 1/16. The presence of the scale parameter represents an intended deviation from a strictly Bayesian approach.

4.4 The catch control law

The internal catch limit, L_T , is the following function of D_T , μ and P_T :

$$L_T = \begin{cases} 3\mu(D_T - 0.54)P_T & \text{if } D_T > 0.54 \\ 0 & \text{if } D_T \leq 0.54 \end{cases}$$

The marginal posterior distribution of L_T is obtained by integration of the joint posterior distribution of (D_T, μ, b) . This requires that, for each value of L_T , the joint posterior distribution of (D_T, μ, b) is to be integrated over the subset of parameter space that corresponds to that value of L_T . The nominal catch limit is equal to the lower [41.02]⁴ percentile of the marginal posterior distribution of L_T .

4.5 Computation

All steps in the above algorithm for the calculation of the nominal catch limit shall be performed using a computer program validated by the IWC Secretariat and with sufficient numerical accuracy that the calculated nominal catch limit is numerically accurate to within one whale.

⁴ SDG Note: The square brackets around 41.02 are to reflect that some countries did not agree with the tuning level of 0.72 adopted by Commission Resolution in 1994 (the value 41.02 is the direct consequence of that choice of tuning level). If another tuning level is proposed, then the Scientific Committee would have to calculate the resultant lower percentile. Removing 41.02 without inserting an alternative value would leave a meaningless sentence and effectively prevent the Scientific Committee from calculating the nominal catch limit.

ANNEX F

Incorporation into the Schedule of provisions for national inspection and international observation

The RMS Working Group requested that the SDG develop draft Schedule text for the following two 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).

Outcome of SDG discussions

The following proposed text addresses the RMS Working Group request. The text addressing Option 2 can be found in paragraph 1 of Appendix 3). One member of the SDG commented that he felt that the proposed international observer scheme may be seen to discriminate against scientists/observers from developing countries.

| V. SUPERVISION AND CONTROL | |
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| Practical details for implementing the supervision and control scheme | |
| 18. | The practical details required to implement the supervision and control scheme are given in the document ' <i>Details of the Supervision and Control Scheme of the Revised Management Scheme</i> ' dated <i>day/month/year</i> . ⁵ |
| General requirements | |
| 19. | Whales may only be taken by vessels authorised by Contracting Governments. Primary processing may only be undertaken on vessels or at points of landing authorised by Contracting Governments. [Secondary processing may only take place at processing plants authorised by Contracting Governments.] |
| 20. | At least 3 months before the start of the season, Contracting Governments shall inform the Secretariat of the following information necessary for implementation of the International Observation Scheme (Appendix 3 to this Schedule): <ol style="list-style-type: none"> (a) the location of each point of landing/primary processing site and the authorised dates of operation; (b) the name or identifying code of each vessel, [and its vessel category (as recognised in the International Observer Scheme),] its home port and authorised dates of operation; (c) [the names of authorised secondary processing plants.] Such information shall: remain confidential; is to be made available to Contracting Governments on request; and is to be used only in conjunction with the international observer scheme. |
| 21. ⁶ | [All whaling vessels engaged in whaling operations shall be equipped with an autonomous system which records data that assist in ensuring compliance with the Schedule, as detailed in the International Observer Scheme (Appendix 3). Contracting Governments shall supply copies of the data at the end of each season in a format specified by the Secretariat. Should the Commission deem necessary, it may request that the data be supplied to the Secretariat more frequently.] [In addition, data from certain vessels shall be transmitted in real time to the appropriate international observer, as detailed in Appendix 3.] |
| National Inspection Schemes | |
| 23. | Each Contracting Government under whose jurisdiction whaling operations for commercial purposes are carried out, shall have in place appropriate enforcement legislation and effective administrative frameworks to ensure that the requirements of the Revised Management Scheme are fully met. Copies of the relevant laws and regulations shall be transmitted to the Commission. |

⁵ This document (or possibly documents) will provide the necessary details for implementing, for example, DNA registers/market monitoring, VMS on vessels.

⁶ The text in this paragraph is in square brackets awaiting outcome from the work of the specialist technical group on VMS.

| | |
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| 24. | National inspection schemes shall at least include: (a) provisions ensuring appropriate inspection during the season on each whaling vessel and at each point of landing/primary processing site; (b) provisions authorising national inspectors to check and ensure compliance with the provisions of the Convention and national regulatory measures. |
| 25. | National inspectors shall be appointed and paid by the Contracting Government having jurisdiction over the commercial whaling operations to be inspected and shall receive their instructions from their national authorities. |
| International Observer Scheme | |
| 26. | For the purpose of monitoring compliance with the provisions of the Convention pertaining to commercial whaling operations, the Commission shall appoint observers to whaling operations in accordance with the International Observer Scheme (Appendix 3). |
| 27. | [If, through no fault of the Contracting Government or relevant whaling operation, an observer is not available, the Secretariat <i>[shall/may]</i> , on behalf of the Commission, waive the requirement for an observer to be present.] [Notwithstanding the requirements of paragraph 26, vessel departure, hunting or landing of whales shall neither be delayed nor prevented if, through no fault of the Contracting Government or relevant whaling operation, an observer is not available.] |
| 28. | The Secretariat shall write an annual report for review by the Commission about the functioning of the international observation scheme. The Secretariat shall also provide a list of all alleged infractions. They shall be considered by the Compliance Review Committee. |

Appendix 3

The International Observer Scheme

1. PLACEMENT OF OBSERVERS

One observer appointed by the Commission [shall/may] be present on all vessels undertaking whaling operations and at each point of landing except that [the following applies:

- (a) for vessels that only operate trips of less than 24 hours, carry out no flensing onboard* and for which the legal limit of persons onboard does not exceed the number of crew, VMS data shall be transmitted in real time to the observer at the identified point of landing, using IWC approved equipment;
- (b) for which vessels that are <24m, operate only within waters under the jurisdiction of the Flag State and that can only accommodate one additional person in addition to the crew, the Commission shall appoint an observer who may also be appointed as a National Inspector by a Contracting Government;]
- [(c)] the Commission shall appoint two observers to each factory ship.

2. SELECTION OF OBSERVERS

2.1 Selection process

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

- (1) The Secretariat will put out a call for candidates to apply (including via Contracting Governments, the Scientific Committee and the IWC website). It will develop a standard application form that will include information on the scientific and technical criteria that will be used in the selection process. It will also request information on *inter alia*: language(s) spoken; available dates; previous experience (including time at sea); any known problems with admission to certain countries; references. The Secretariat will draw up list of suitable candidates.
- (2) The list will be circulated to all Contracting Governments with summary of information on each candidate (individual applications may be given to any Commissioner on request).
- (3) Any Contracting Government may veto any candidate.
- (4) Following predetermined guidelines, and after consultation with relevant Contracting Governments over practical arrangements, the Secretariat will decide the placement of observers and will inform the appropriate Contracting Governments at least 30 days prior to the start of whaling operations.

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

2.2 Review of performance

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

3. RESPONSIBILITIES OF OBSERVERS

3.1 Duties

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

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

* apart from slitting of the belly at sea

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

Observers' duties shall include:

- (1) monitoring that whaling operations are carried out in accordance with the provisions of the Convention;
- (2) monitoring that information required under the Schedule is collected, sampled, maintained or processed;
- (3) checking licenses, logbooks and other relevant documents;
- (4) checking equipment used to catch and flense whales;
- (5) checking whaling operation areas on vessels, points of landing/primary processing sites⁷, [and processing plants];
- (6) checking relevant equipment (e.g. VMS transmitters).

3.2 Reporting

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

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

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

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

4. TRAINING OF OBSERVERS

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

5. RESPONSIBILITIES OF THOSE RECEIVING OBSERVERS

5.1 Visas and immigration

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

5.2 Co-operation

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

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

⁷ Secretariat note: Is it necessary to stipulate 'primary processing site' given the text in paragraph 2 of the EDG proposal for Chapter V?
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Annex G

Incorporation in the Schedule of some additional catch verification measures

The instructions from the RMS Working Group were as follows:

Resolution on measures to deter illegal, unreported and unregulated whaling

- (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.

Catch documentation

Consider effectively 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 consideration of text relating to possible DNA register/market sampling schemes will not take place until after the specialist group (SGDNA) established by the RMS Working Group has reported in March 2005.

Outcome of the SDG discussions:

The proposed text on the next page addresses the RMS Working Group instructions. Paragraph 30 below is the suggested text to reflect the operative paragraphs of the draft Resolution concerning measures to deter IUU whaling (see Annex H). Note that the SDG did not consider it necessary to include text in the Schedule for the first operative paragraph of the draft Resolution. It also did not consider it necessary to include text to cover the third operative paragraph since paragraph 31 of the current Schedule dated October 2004 requires Contracting Governments to 'submit to the Commission copies of all its official laws and regulations relating to whales and whaling and changes in such laws and regulations' (or Paragraph 39 of IWC/D04/RMS SDG4).

Paragraphs 30A and 30B reflect text to cover the options for catch documentation, i.e. 30A reflects the Chair's proposal and modified proposal for national catch document schemes (i.e. options 1 and 2 above), while 30B reflects the proposal for an IWC-operated catch document scheme. The text in paragraph 30B was developed jointly by Sweden and New Zealand and does not reflect CITES and CCAMLR document systems explicitly. The SDG also recognised 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.

| [Verification of catch data] | |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 30. | [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 export is prohibited under Paragraph {asw ⁸ }, including such amendments to their national laws and regulations as are required.] |
| 30A ⁹ . | <p>[As part of the measures to be taken under Paragraph 30, Contracting Governments under whose jurisdiction whales are harvested (except under Paragraph {asw⁸}) and/or that allow utilisation of bycaught or stranded whales, shall implement catch document schemes that monitor progress of whales and whale products from point of capture to point of [entry/landing into the territory of the Contracting Government] [wholesale marketing] [retail sale]. Such schemes shall include the information given in the IWC <i>pro forma</i> dated {insert date e.g. 17 March 2005} and available from the Secretariat.]</p> <p>{Editorial Note: the <i>pro forma</i> being developed by the Secretariat will take into account the FAO harmonised trade document discussions, CITES documentation and the sensitivities regarding trade issues within the IWC, as noted in the Chair's proposal}</p> |
| | <u>OR</u> |
| 30B. | <p>[The Commission shall operate a standardised catch documentation system, in accordance with best international practice, for the collection of catch data in order to certify the authenticity of products from whales caught or obtained under the authority of Contracting Governments in accordance with the provisions of this Schedule (other than aboriginal subsistence whaling). This system shall be capable of monitoring the progress of such products from the point of harvest to the point of [entry/landing into the territory of the Contracting Government] [wholesale marketing] [retail sale]. Each whale captured or otherwise obtained shall be assigned a unique alphanumeric code in conformity with a system to be specified by the Secretariat. This code shall be included with all data on the whale that are required by the Schedule to be submitted to the Commission together with information regarding the authorisation by the Contracting Government for such catch or utilisation] [and/or archived by the Contracting Government*], and shall be entered on all permits issued by the Contracting Government that authorise the sale or export of products from the whale and the unique alphanumeric code shall accompany each product from the earliest possible opportunity after the point of harvest to the point of [entry into the territory of the Contracting Government] [wholesale marketing] [retail sale]. Contracting Governments shall ensure that unique codes are assigned to each whale obtained under their jurisdiction.</p> <p>The requirements of this Paragraph shall not apply whales taken pursuant to Paragraph {asw⁸}.</p> <p>* This provision relates to access to information held in any domestic DNA or similar archive that might be required by this RMS; and could, alternatively, be incorporated into the relevant provisions relating to any DNA register.]</p> |

⁸ This refers to the Schedule paragraph number dealing with aboriginal subsistence whaling. This is paragraph 13 in the current Schedule (October 2004).

⁹ Some members of the group believed that the following, more specific text, better reflected the Chair's proposal:

[Contracting Governments shall, through national legislation, establish a catch documentation scheme in respect of: (1) all whales marketed within their jurisdiction (including bycaught or stranded whales and whales taken under special permit); and (2) all whales taken by vessels authorised to conduct commercial whaling whether their own vessels or those of another Contracting Government). A document shall accompany each whale [and/or any products derived from it] from the point of capture to the point of [landing] [wholesale marketing] [retail sale]. This document shall record at least the following information:

- (i) Date and location of catch, bycatch or stranding;
- (ii) Species;
- (iii) National issuing authority of authorisations for catch or utilisation;
- (iv) License number for that authorisation

And, in the case of catches:

- (v) Place and date of landing
- (vi) Vessel identification]

Annex H
Revised draft Resolution on
measures to deter illegal, unreported and unregulated whaling

The RMS Working Group agreed that the draft Resolution as proposed in IWC/N04/RMSWG 10 be kept in hand. However, 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 to the attention of the RMS Working Group the following revised draft Resolution:

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 28th, 29th and 31st 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.

Annex I

Incorporation into the Schedule of text regarding compliance monitoring

The RMS Working Group requested the SDG to develop draft Schedule text for the Chair's proposal regarding compliance (see IWC/D04/RMS SDG 4). Recognizing the proposal for DNA registers/market sampling as additional catch verification measures, the RMS WG requested that the SDG include in the duties of the Compliance Review Committee, the need to review the operation of such systems. The SDG was also requested to take account of the proposal that one of the tasks that the Compliance Review Committee should do once established is to develop a list of serious infractions and subsequent measures which could, in the case of an infraction, be taken by the Commission.

Outcome of SDG discussions:

The proposed Schedule text to address the RMS Working Group request is shown below. Note that:

- Paragraphs 31(b)(i) and (c) address the matter of development of a list of serious infractions and subsequent measures to be taken.
- Paragraphs 31(b)(viii) and (ix) address the need to review the operation of any DNA registers and market sampling – if established. Note that this text will need to take account of the outcome of deliberations of the specialist technical group on DNA registers and market sampling established under the RMS Working Group.
- Paragraph 31(b)(x) addresses the need for the Compliance Review Committee to review the operation of an IWC catch document scheme – if established.

The SDG noted that it had not received policy guidance from the RMS Working Group regarding participation in the Compliance Review Committee, and wishes to draw this to the attention of the Working Group. In drawing this to the Working Group's attention, the SDG would also remind them that: (1) the RMS Expert Drafting Group agreed that the CRC should be open to all Contracting Governments, noting that this could be reviewed in the light of experience (see IWC/54/RMS 1); and (2) that at the private meeting of Commissioners in Cambridge, the USA in a spirit of compromise, withdrew its request that NGOs should have speaking rights in recognition that all accredited NGOs would have observer status (see IWC/55/COMM 1).

| Oversight |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>31. (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.</p> <p>(b) The Compliance Review Committee shall:</p> <p>(i) [develop and maintain a list of matters that will constitute serious infractions]¹⁰;</p> <p>(ii) 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;</p> <p>(iii) review other reports submitted by Contracting Governments on matters relevant to the Committee, including alleged infractions;</p> <p>(iv) compare the information in (i) and (ii) above and identify any disagreement in the details of an alleged infraction;</p> <p>(v) report its view as to whether an alleged infraction is a violation(s) of the provisions of the Schedule;</p> <p>(vi) review action(s) taken by a Contracting Government in response to violation(s) of the provisions of the Schedule identified above;</p> <p>(vii) review the actions taken, including progress made, by Contracting Governments in response to previous violations considered by the Commission;</p> <p>(viii) [review the operation of the DNA register and tissue archives established pursuant to paragraph X, and make appropriate recommendations;]</p> <p>(ix) [review the results of market surveys conducted pursuant to paragraph Y, paying particular attention to cases where products from individual whales are found that are not included on the DNA register established pursuant to paragraph X.]</p> <p>(x) [review the operation of the catch document system established pursuant to paragraph Z and make appropriate recommendations;]</p> <p>(xi) recommend to the Commission actions to be taken to improve compliance with the provisions of the Schedule;</p> <p>(xii) submit a report to the Commission on its deliberations and recommendations.</p> <p>(c) The Compliance Review Committee shall report on infringements and the seriousness of these infringements to the Commission and advise the Commission what actions, if any, should be taken¹¹.</p> |

¹⁰ This sub-paragraph is within square brackets as there is a difference of opinion of what the Commission can/should do about serious infractions.

¹¹ At its meeting at IWC/55 in 2003, 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 (note minor editorial amendments have been proposed by the SDG). During discussions at the following private meeting of Commissioners, the UK indicated that it would enter a reservation to the effect that any RMS text not providing for the automatic operation of penalties fails to meet the objectives set by IWC, i.e. that the rules are obeyed and seen to be obeyed. During discussions of the SDG, the UK requested that its earlier comments be foot-noted.

Annex J

Incorporation into the Schedule of text apportioning RMS costs among Contracting Governments

The RMS Working Group requested the SDG to develop draft 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 or IWC/D04/SDG 4). In this option, the SDG was asked to take into account any recommendations from the Working Group on Costs that met in Antigua in May 2003 (see IWC/55/COMMS 4).

Outcome of SDG discussions:

Before discussing draft Schedule text, the SDG first drew attention to the somewhat *ad hoc* way in which the Commission deals with rules and regulations relating to its finances. It noted that some aspects are addressed in the Commission's Financial Regulations, while others – such as the description of the financial contribution scheme itself, is simply described in the Chair's Report of an Annual Meeting. There was some discussion as to whether the text relating to apportioning RMS costs should be included in the Schedule or in the Financial Regulations as the Chair's proposal had not been clear on this matter. Some members were strongly of the opinion that this text should be part of the Schedule. As some draft Schedule text had previously developed regarding apportioning RMS costs, it was agreed to use this and to augment as necessary to address the RMS Working Group's instructions. The proposed text, reflecting different options is shown on the next page. It should be noted that:

- on reviewing the report of the Working Group on Costs, it was apparent that while the Working Group put forward options on how costs could be dealt with, it did not make any recommendations;
- additional draft text may be needed depending on the outcome of the discussions and recommendations of the technical specialist group on DNA;
- it was suggested that the Secretariat should ask its auditors to review the text referring to Generally Accepted Accountancy Practice (GAAP) and to comment on whether it is appropriate in this context.

The SDG wishes to draw the RMS Working Group's attention to the need for further policy guidance regarding placement of text referring to apportioning RMS costs.

Proposed text:

| National Inspection Schemes | |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 25. | National inspectors shall be appointed and paid by the Contracting Government having jurisdiction over the commercial whaling operations to be inspected and shall receive their instructions from their national authorities. |
| International Observer Scheme | |
| 29. | <p>[All costs of the International Observer Scheme shall [initially] be paid by the Commission.]</p> <p><u>Chair's proposal:</u></p> <p>[The Commission shall recover these costs resulting from the International Observer Scheme through the membership contributions assessed from Contracting Governments under the financial contributions scheme.</p> <p>Costs and other expenditure resulting from the Vessel Monitoring System shall be borne by the Contracting Governments having jurisdiction over the [commercial whaling operations] [vessels] that require a Vessel Monitoring System in accordance with paragraph A.</p> <p>Costs and other expenditure resulting from DNA registers/market sampling schemes as required in accordance with paragraph B shall be borne in the following manner –</p> <ul style="list-style-type: none"> (a) the establishment and operation of these schemes shall be borne by the Contracting Governments that are required to operate them in accordance with paragraph B; (b) costs and expenditure resulting from the review of national DNA registers/market sampling schemes in accordance with paragraph C shall be borne by the Commission, and the Commission shall recover these costs and expenditure through the membership contributions assessed from Contracting Governments under the financial contributions scheme. (c) costs of checking samples against the DNA registers in accordance with paragraph D shall be borne by the Contracting Government requesting the checking.] <p>or – the following alternatives from earlier discussions:</p> <p>[These costs shall be recovered exclusively from the Contracting Government under whose jurisdiction whaling operations are carried out. Such costs shall be considered part of their annual IWC membership contribution.]</p> <p>or</p> <p>[The Commission shall recover these costs resulting from the supervision and control scheme through a factor in the membership contributions assessed from Contracting Governments [under whose jurisdiction whaling operations are carried out].</p> <p>Or</p> <p>[These costs and expenditure resulting from this supervision and control scheme shall be recovered in the following manner –</p> <ul style="list-style-type: none"> (a) core administrative expenditure (including, but not limited to, core Secretariat salaries and expenses) associated with this supervision and control scheme shall be paid by the Commission; (b) operating expenditure for this supervision and control scheme (including, but not limited to, recruitment costs, observers' salaries and expenses, other travel and accommodation expenses, third party contract costs and an appropriate annual share of capital expenditure as set out in subparagraph (c) of this paragraph) shall be recovered exclusively from the Contracting Governments under whose jurisdiction whaling operations are carried out. Such costs shall be considered part of their annual IWC membership contribution; and © capital expenditure (including but not limited to computer equipment and software costs and vessel monitoring systems) shall be amortised in the manner required by the current UK Generally Accepted Accounting Practice (or any succeeding accounting standard) and recovered over time, on an annual basis, as part of operating expenditure, as set out in subparagraph (b) of this paragraph.] |

Annex K

Incorporation into the Schedule of text linking adoption of the RMS with the lifting of Schedule paragraph 10(e)¹²

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).

Background

In his 'proposals for a way forward on the RMS' (IWC/56/26), the Chair of the Commission, 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.'

If the view of some member governments that commercial whaling is always unacceptable is effectively 'non-negotiable', the primary concern expressed with respect to making adoption of the RMS simultaneous with the lifting of paragraph 10(e), has been the possibility that a whaling nation might exercise its right to object to one or more of the RMS provisions and thus be able to whale legally but outside the full provisions of the RMS. The October 2002 private Commissioners' meeting on the RMS noted that practical ways to address this concern should be examined, e.g. the addition of a clause to paragraph 10(e) such that it becomes invalid on a specific day, provided that no objections to the RMS provisions have been received. 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.

IWC/N04/RMSWG 12, prepared by the Secretariat in response to a request by the Chair, explored how this aim could be met. The document however recognised the inherent difficulties of all approaches considered, particularly in the light of the provisions of the Convention (e.g. the objection procedure).

Outcome of SDG discussions:

Approaches to option 1

IWC/N04/RMSWG 12 examined a variety of previously considered and new options in line with the philosophy of the Chair's proposal. A number of problems were identified, particularly with respect to the objection procedure and the need to avoid setting catch limits by nation/operation. The authors considered that the option with the most promise, given a desire to find a solution, was an option that paragraph 10(e) was lifted simultaneously with the adoption of an RMS and that a note was included to the Table of catches that stated that:

'Catches may be taken only by operations under the jurisdiction of Contracting Governments that do not have objections or reservations to the provisions collectively known as the RMS'.

The advantage of this approach is that it addresses the concern expressed by some (see IWC/N04/RMSWG 4) 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. However, as with almost any 'solution', it is vulnerable to Contracting Governments lodging an objection to the footnote itself within the 90-day period following adoption of the RMS.

¹² Note that in this Annex, the numbering in the current Schedule (October 2004) is retained rather than using paragraph numbering as in IWC/D04/RMS SDG 4.

In an exploration of alternatives, the USA suggested consideration of the following two-stage (and thus non simultaneous) approach:

- First adopt the RMS, keeping paragraph 10(e) in place;
- Then after the 90-day period has elapsed with no objections to the RMS, vote to replace paragraph 10(e) with the following text:

‘Notwithstanding the other provisions of paragraph 10, catch limits greater than zero shall only be established in cases where the proposed whaling will be conducted in accordance with all of the provisions collectively known as the Revised Management Scheme.’

However, this approach suffers from at least two potential problems: (1) that even if there are no objections to the RMS paragraphs, there is no guarantee that a sufficient majority will then vote in favour of the revised paragraph 10(e); (2) it fails to address the problems associated with who may object to the RMS paragraphs before invalidating the second step (as discussed in IWC/N04/RMSWG 12).

Approach to option 2

In responses to the questionnaire on the Chair’s proposal, several Contracting Governments suggested that there is no need to remove paragraph 10(e) in a single step and that a phased-out approach of the moratorium would be more appropriate, helping to build public confidence. In this approach, exemptions from the moratorium could be gradually introduced for certain stocks under certain conditions. As noted in IWC/N04/RMSWG 12 and elsewhere, the system for the Scientific Committee to be able to produce advice on catch limits includes a *de facto* ‘phase-in’ approach; however there is a similar degree of symbolism for a number of countries in retaining words similar to present Para 10(e) as there is to others in removing it – even if the ‘effect’ is the same.

Given this, in the SDG, the Netherland’s proposed that the following text could be included in the Schedule to implement this approach:

‘10(f) Notwithstanding the provisions of 10(e), commercial whaling shall be permitted for [species/stock/area] in accordance with catch limits established pursuant to paragraph 10(a) and 10(b).

Option 3

Clearly under this option, paragraph 10(e) would remain in the Schedule, and the SDG did not consider this further. However, while retaining a paragraph that would maintain the commercial whaling moratorium, some consideration should be given as to whether the current wording – particularly that part referring to *‘and by 1990 at the latest.....’* – is in need of modification.