

Annex E

Report of the Small Working Group (SWG) on the Future of the International Whaling Commission

Prepared for the Commission on 18 May 2009

BACKGROUND

At its 60th meeting in June 2008 in Santiago, Chile, the International Whaling Commission created the Small Working Group on the Future of the International Whaling Commission (SWG), charged with assisting the Commission to arrive at a consensus solution to the main issues it faces and thus to enable it to best fulfill its role with respect to the conservation of whale stocks and the management of whaling. The primary task of the SWG, chaired by Mr Alvaro de Soto, was to make every effort to develop a package or packages for consensus solutions regarding the future of the IWC for review by the Commission.

The SWG has held three meetings: at St Petersburg, Florida, USA in September 2008; at Cambridge, United Kingdom in December 2008; and at Rome, Italy in March 2009. The SWG Chairman has submitted progress reports on all three meetings. This is the report of the SWG to the Commission due by 18 May 2009.

The SWG had before it 33 elements or issues identified as being of importance by members of the IWC. At its first meeting the SWG adopted a method of work on the understanding that *'nothing is agreed until everything is agreed'*. A distinction was made between:

- (a) controversial issues that need to be addressed in the short term, i.e. those that if not addressed in the short term may fail to alter the status quo or even result in an irreparable break in the system via the withdrawal of governments from the Convention; and
- (b) issues which are non controversial or less controversial and which, if left unresolved, would not prevent a package being agreed concerning category (a) *provided* that a mechanism exist or can be established to address them. The latter are primarily but not exclusively scientific and administrative issues.

The lists of issues and how they are broken down into the two categories are set out in Annexes 6 and 7 of IWC/M09/4¹. The division into these categories should be understood primarily as a methodological step without which the SWG's work might have proved unwieldy (see Progress report on the September 2008 meeting, i.e. IWC/S08/Rep 1).

Category (b) issues were further divided into: (1) items referred to the Scientific Committee; and (2) items of a mainly administrative or financial nature.

As regards (1), the Chairman of the Scientific Committee and the Head of Science were asked to elaborate on these items and a paper was produced for the Rome intersessional meeting (see document IWC/M09/6,

included here for completeness as Annex D). This paper demonstrated that these items are already included in the Scientific Committee's work programme. Items in category (2) were discussed by the SWG in Rome (see Annex F of the Progress report of the Rome SWG, i.e. IWC/M09/Rep 1).

CHAIRS' SUGGESTIONS

Having thus organised its work, the SWG was able to concentrate efforts on a core package of issues on the future of the IWC and how they might be combined. Following extensive discussion and consultation, an attempt was made to reflect the outlines of a package for consideration by the Commission as a whole. This took the form of a paper titled 'Chairs' Suggestions on the Future of the IWC' (Appendix 1 of IWC/M09/4). The Chairs' Suggestions contain a two-stage approach to defining the future course of the IWC. The Chairs of the IWC and the SWG, who took responsibility for the 'Suggestions' paper, expressed the view that it pointed in the direction of what might be an overall solution to the core issues.

The Chairs singled out three issues out of the 13 assigned to category (a) for which it has proven particularly important and difficult to identify a single way forward, namely:

- (1) Japanese small-type coastal whaling;
- (2) special permit whaling; and
- (3) sanctuaries.

They are inter-related in that it will not be possible to reach agreement on (1) without agreement on (2) and *vice versa*. The question of *where* regulations would apply (i.e. sanctuaries) cuts across both.

The membership of the SWG is by and large in agreement with the Chairs' view that these three category (a) issues are the key issues. Further exploration and discussion will be required to determine the appropriate way forward in the context of a package or packages. The Chairs' view is that the best way to tackle them is in two stages. The *first stage* would consist of short-term solutions which would be put in place for a 5-year period, to be known as the 'interim period.' It would be understood that the solutions to these issues would be *ad hoc* and short term in nature and that these solutions would not be construed as signifying agreement by any party with each of its details. The impact of the conservation and management measures proposed by the Chairs for the interim period, in addition to reducing the number of whales killed, would have the overarching purpose of strengthening the conservation and management mandates of the IWC.

During the interim period, long-term solutions relating to the governance and future functioning of the IWC would

¹See Annex B for list of documents relevant to meetings of the SWG.

be developed so that they can be put in place at the end of the five years. The *second stage* would begin with the expiry of the short-term solutions and the entry into force of the long-term solutions.

ACHIEVEMENTS THUS FAR

The categorisation and narrowing down of issues are significant achievements in the work of the SWG, as is the agreement that has emerged on the possible value of a two-stage approach. However, given the complexity and the sensitivity of the issues involved, it should not come as a surprise that it has thus far not been possible to secure agreement on key specifics of the 'Chairs' suggestions.' The inter-relatedness of the three issues singled out cannot be overemphasized; hence the importance of the principle that nothing is agreed until everything is agreed.

While agreement on specifics of the core package is still pending², considerable work has also been done in other aspects of the SWG's mandate, as reflected in the Progress report presented by the SWG Chairman following the Rome meeting (see IWC/M09/Rep 1). It is on this basis that Commission members will find attached to this report agreements on three issues: (i) a *work plan* for consideration and action on the issues that would be before the IWC during the interim period (Annex E); (ii) *guidance on category (b)* issues including elaboration of how these issues will be advanced beyond IWC/61 (Annex F); and (iii) a *request for the Scientific Committee to provide a draft, non-binding work plan and timeline to fully assess the Japanese small-type coastal whaling proposal* (Annex G with background information in Annex D).

Advice on (iii) is provided following the authority delegated by the IWC at its intersessional meeting. Appendix 7 was prepared by a small group to assist the Scientific Committee in providing advice on a workplan and timeline to assess Japan's proposal. However, as stated in Appendix 7, it does not represent any agreement by the SWG or the Commission on the appropriate conservation and user objectives that might apply should the Commission decide to approve a quota at some point in the future. In addition, Appendix 7 requests the Scientific Committee to provide advice on the timeline and work plan for the completion of a full RMP implementation review for western North Pacific common minke whales.

Any advice that may be provided by the Scientific Committee will of course not be binding; as has been stated throughout the process, nothing is agreed until everything

is agreed. Japanese small-type coastal whaling is one element in a potential package(s) of measures to resolve IWC's problems that is currently under discussion. Consequently, the requesting of advice from the Scientific Committee is **only** to obtain further background information on one aspect of one potential element of a package or packages to assist in Commission discussions. Accordingly, the Commission can expect a proposed Scientific Committee work plan for the period prior to IWC/62 for consideration by the Commission in Madeira in the context of the Commission's broader consideration of a potential package and the possible user and conservation objectives for Japan's proposal.

Whalewatching was considered as an important element that will be included in the package in an appropriate way.

The Intersessional Correspondence Group on Scientific Committee issues was established at IWC/60. It reported to the Rome intersessional Commission meeting (IWC/M09/5). The Scientific and Finance and Administration Committees were separately requested to review the issues at Madeira on the occasion of IWC/61 and to forward their recommendations to the Commission with a view to establishing a small group in Madeira to continue the work (see pp. 9 and 10 of IWC/61/7rev).

THE WAY AHEAD

The SWG has fallen short of the stated goal of agreeing on a package or packages on the future of the IWC for the Commission's review within the time allotted to it. However, significant concrete results have emerged as outlined above and in the annexes to this report in connection with the SWG's work and the sense of urgency that has been developed. The general agreement on the approach to be taken in order to bridge the remaining gaps on the central issues which must form the core of a package is also an important milestone that should not be underestimated. The practical progress achieved must be coupled with the greatly improved atmosphere and the spirit of respectful dialogue which now prevails. This diplomatic method of doing the Commission's business must be retained. It is against this background and to keep up the momentum that has been gained, that the SWG recommends to the IWC that, when it meets at Madeira, it should direct that the efforts underway should be continued for a further year and decisions taken at IWC/62.

²Two SWG members, while appreciative of the work undertaken to develop a package solution for the future of the IWC, expressed concern that too much focus has been given in the short-term to addressing specific whaling activities (Japanese coastal whaling) rather than: the commercial whaling moratorium and general rules on the management of whaling; provisions for objections and reservations; and the purpose of the Convention.

Annex A**LIST OF COUNTRIES WHO HAVE ATTENDED ONE OR MORE MEETINGS OF THE SWG**

Antigua and Barbuda	Czech Republic	New Zealand
Argentina	Denmark	Norway
Australia	Germany	Palau, Republic of
Benin	Guinea, Republic of	Panama
Brazil	France	Peru
Cambodia	Iceland	St Kitts and Nevis
Cameroon	Italy	St Lucia
Chile	Japan	South Africa
China	Korea, Republic of	Sweden
Costa Rica	Mexico	USA
Côte d'Ivoire	Netherlands	UK

Annex B**LIST OF DOCUMENTS RELEVANT TO MEETINGS OF THE SWG****SWG MEETING, FLORIDA, USA,
SEPTEMBER 2008****IWC/S08/SWG**

- 1 Draft agenda
- 2 List of documents
- 3 An overview of the elements/issues identified as being of importance to one or more Contracting Governments in relation to the future of the IWC (prepared by the Secretariat)
- 4rev Input from Contracting Governments on the 33 elements/issues identified as being of importance to one or more Contracting Governments in relation to the future of the IWC (prepared by the Secretariat)
- 5 Progress report on the work of the Intersessional Correspondence Group on Scientific Committee Issues
- 5 Addendum: input from Denmark

**SWG MEETING, CAMBRIDGE, UK,
DECEMBER 2008****IWC/S08/Rep**

- 1 Progress Report on the September 2008 meeting of the Small Working Group (SWG) on the Future of the International Whaling Commission, presented by Alvaro de Soto, SWG Chairman, St. Petersburg, Florida, USA

IWC/D08/SWG

- 1 Draft agenda
- 2 List of participants
- 3 List of documents
- 4 Draft Report of the Intersessional Correspondence Group on Scientific Committee Issues

SWG MEETING, ROME, ITALY, MARCH 2009**IWC/M09/**

- 4 Report on the Small Working Group (SWG) on the Future of the International Whaling Commission, Presented by Alvaro de Soto, SWG Chairman (includes Chairs' Suggestions on the Future of IWC)
- 5 Report of the Intersessional Correspondence Group on Scientific Committee Issues
- 6 Further elaboration on the work of the Scientific Committee with respect to Category (b) items
- 7rev Directions for further work of the SWG

OTHER DOCUMENTS**IWC/M09/Rep**

- 1 Progress report on the Small Working Group (SWG) on the Future of the International Whaling Commission, Presented by Alvaro de Soto, SWG Chairman, after the SWG meeting in Rome, 11-13 March 2009

IWC/61/

- 7rev Chair's Report of the Intersessional Meeting of the Commission on the Future of IWC, FAO Headquarters, Rome, 9-11 March 2009

Annex C

(DOCUMENT IWC/M09/6)

[See Annex D, annex E for text]

Annex D

REPORT OF THE WORKING GROUP TO EXAMINE ISSUES RELATED TO THE PROVISION OF SCIENTIFIC ADVICE WITH RESPECT TO POSSIBLE PACKAGES

Members: Doug DeMaster (USA), Mike Donoghue (New Zealand), Greg Donovan (Secretariat), Nick Gales (Australia), Joji Morishita (Japan), Lorenzo Rojas-Bracho (Mexico).

1. Introduction

The focus of the Working Group was to identify matters upon which the Scientific Committee would require policy advice in order to allow it to be able to provide scientific advice.

Appendix 1 provides a fuller discussion of the background to these issues.

2. Japanese small-type coastal whaling for common minke whales

(A) Data availability

The Scientific Committee will require data on *inter alia* stock structure, abundance and catch history to provide advice on catch limits. These data will need to be made available for all hypothesised populations. It should be recognised that stock structure and abundance issues are the most critical. Data will be required for management and thus will fall under Procedure A of the Data Availability Agreement (DAA), which means that the data used in analyses will be made available to the Scientific Committee with appropriate safeguards in place to ensure that they are only used in the context of Scientific Committee work. Given the importance of stock structure information, the Group **requests** the SWG to ask the Scientific Committee to review the DAA with respect to tissue samples and DNA itself as well as to provision of sequenced data.

(B) Methods for providing management advice and evaluating whether catch limits are acceptable

The Group assumes that catch limits, should they be set, will be on the basis of scientific advice. There are several possible general methods that the Scientific Committee could use within its simulation modelling evaluation framework. In all cases the Committee would inform the Commission of a summary of the status of knowledge and available samples/data on whale populations likely to be impacted by small type coastal whaling (STCW) as part of its provision of advice (see Table).

If requested it may be possible to develop interim advice for the 5-year period *if conservation objectives are specified*. For example, potential objectives could include:

- (a) populations should be allowed to increase (with a specified level of certainty) if below a particular target level;
- (b) populations should not decrease (with a specified level of certainty) below current abundance; or
- (c) population trajectories should not be significantly different over a longer period (say 25 years) if the catches were reduced to zero after the interim period expires or if the catches were zero throughout the period.

The Scientific Committee would inform the Commission that it would not be able to provide it with interim advice if it believed the uncertainty surrounding key data precluded this.

The Commission needs to instruct the Committee on how it would like management advice provided. Implications with respect to **timelines** and the **need to provide objectives** are given in the Table. Options include:

- (1) Undertake a full RMP Implementation Review.
- (2) Use existing 2003 Implementation* to provide advice until full review undertaken.
- (3) Provide, if deemed possible by the Committee, some kind of ad hoc interim advice until management procedure advice (either the RMP or case-specific).
- (4) Develop a new, case specific approach.

With respect to interim advice or case-specific advice, the Commission would need to provide information on pre-specified catch levels should that be the approach taken for user objectives.

(C) Practical implications if more than the target population are taken

It should be noted that individual animals from a common minke whale population are identified based on genetic analysis. For example J-stock animals can be assigned with about 90% probability. This has implications for monitoring catch limits and examples are given in Appendix 1. The Commission would need to specify one or more mechanisms to ensure that catch limits were not exceeded (e.g. stop all catches once a certain number of J-stock animals have been taken) – a system to obtain and analyse genetic samples in near real time may be required. Proposed mechanisms would need to be tested in a simulation framework to ensure that conservation objectives are met.

*Note that if the 2003 Implementation approach is used, the division of opinions on stock structure hypotheses may remain.

	RMP	Case specific for Japanese STCW	AWMP (for comparison)
Objectives (conservation)	No catches allowed if population below 54% of unexploited size.	Would need to be specified.	'Minimum' level at which catch=0 Don't increase extinction risk Move towards specified target level (usually around 60% of unexploited level).
Objectives (user)	Stability of catches. Highest sustainable yield.	Would need to be specified.	Allow catches to meet specified need.
Input data	Catches, abundance, stock structure, time/area knowledge of expected whaling operations and whale populations.	At least catches, abundance, stock structure time/area knowledge of expected whaling operations and whale populations.	At least catches, abundance, stock structure, time/area knowledge of expected whaling operations and whale populations.
Timeline	If the 2003 <i>Implementation</i> * is used, this could occur at Madeira. If full <i>Review</i> occurs then would take at least until 2010 meeting.	Developing a new procedure would probably take at least three years based upon experience with AWMP.	N/A
Other comments	If Commission decides J-stock (or other non-target populations should they occur) is not considered within RMP objectives (since not direct target of whaling) then decision on conservation objective(s) for J-stock would be needed.		N/A

*Note that if the 2003 *Implementation* approach is used, the division of opinions on stock structure hypotheses may remain.

3. Research under special permit

The Group recognises that there are many policy and scientific aspects related to special permit whaling. It did not attempt to discuss these. In its short discussion it focussed on the fact that if the Commission requires the Scientific Committee to provide advice on the effects of particular catches upon stocks, then it needs to provide more specific advice than e.g. 'pending interim advice on sustainability' as was included on one of the options for the

Chair's summary. This is related, for example, to the need to be more specific about conservation objectives (e.g. see comments on interim advice, above). The Group noted that the Scientific Committee has asked for advice on this matter in the past with respect to consideration of the effects of special permit catches upon stocks.

4. Adoption of report

The report was adopted at 16:08 on 12 March.

Appendix 1

A note on some of the scientific aspects of potential packages for which the Scientific Committee requires advice

Greg Donovan

Background: The need for objectives when asking for advice on 'sustainability' or effects of catches on stocks

Scientists can advise on the implications of catches on stocks but how that advice is provided and the choice of the criteria by which it is interpreted is primarily a 'political' issue – in essence this refers to the 'objectives' of management both in the context of the needs of the user and the status of the resource. Once known, scientists can design procedures to meet objectives and provide advice accordingly.

Examples of objectives

Table 1 summarises the Commission sanctioned objectives for commercial whaling and aboriginal subsistence whaling; these have been incorporated into the RMP and the agreed *Strike Limit Algorithms* (Bowhead and Gray and interim of the AWMP last year - all have been tested for uncertainty using the simulation modelling approach pioneered by the Scientific Committee).

It should be noted that whilst the *objectives* of the two approaches are different and calculated catch limits may be different, the advice is always conservative with respect to conservation implications (e.g. catches of bowhead whales would not be allowed under the RMP if the estimated

protection level of 54% was invoked, but catches do allow the population to increase).

Table 1
Objectives and principles for the RMP and AWMP.

	RMP	AWMP
Resource (priority)	Protection Level 54% In effect maintain at 'target level'	No explicit protection level... 'minimum level' Don't increase extinction risk At least maintain at or move towards 'target level'
User	Stability in catches Highest sustainable yield	Allow catches to meet need 'in perpetuity'
Type	Generic, all baleen whales but ISTs	Case-specific, species and area
Data 'needs'	'Lowest common'	Actual (data rich, intermediate or data poor)

The Commission took the policy decision to ask for a primarily generic approach (the *Catch Limit Algorithm*) for commercial whaling applicable for all species of baleen whales (case specificity does not occur until an individual *Implementation*). By contrast it agreed to a case-specific approach for the AWMP (different *Strike Limit Algorithms* for each fishery) as (a) it was not envisioned that the

number of operations would be large and (b) because it took better account of the quite different situations with respect to available data.

A further consequence of the different objectives is the nature of the way in which the advice is provided. For an RMP *Implementation*, the Scientific Committee would provide the Commission with the advice on the *highest total number* of anthropogenic removals that will allow the objectives to be met giving priority to the conservation objectives – this would include commercial whaling catches and also bycatches, scientific permit catches and ship strikes should any or all of these occur. By contrast, for aboriginal subsistence whaling operations, the Committee is provided with an estimated ‘need’ level by the Commission. It then evaluates this against the objectives, taking into account any other anthropogenic removals that might occur from that population, and provides the Commission with *advice on whether this level of need can be safely met*.

As noted above, the Committee’s preferred approach to giving management advice is via management procedures tested for uncertainty using simulation modelling (either RMP or AWMP) rather than providing *ad hoc* short-term advice.

With respect to the work of the SWG, this document provides information on a number of options that the SWG would need to provide advice to the Scientific Committee on, for illustrative purposes, the information provided in the Chair’s suggestions.

(1) Japanese small type coastal whaling

Aspect 1. *The Chair’s suggestion refers to an ‘interim’ quota for O-stock common minke whales in Japanese coastal waters for a 5-year period and asks the Scientific Committee to provide ‘interim advice’ concerning the total removals of O- and J-stock common minke whales under two scenarios (a) constant catches for 5 years and 0 thereafter; (b) constant catches for 5 years with the same level of catches thereafter.*

The Scientific Committee will need further information on how the ‘interim advice’ should be obtained, and in what form that advice should take. In addition, scenario (b) would not be strictly applicable if an RMP approach is used – RMP simulation testing implies surveys every six years and a feedback mechanism with the CLA setting catches, i.e. not a constant catch.

Scientific background

The Scientific Committee did complete an *Implementation* in 2003. This was a somewhat controversial exercise, took over ten years and did not result in consensus advice but rather a ‘majority’ and ‘minority’ view, largely over differences of view on stock structure hypotheses. As a result of this exercise, the Committee developed new guidelines to carry out *Implementations* and *Implementation Reviews* that have thus far proved successful.

The primary scientific complications surrounding this *Implementation* included (and these are inter-related):

- (1) Catches and bycatches are taken on migration.
- (2) Stock structure – complex hypotheses.
- (3) Abundance of J- and O-stock (really requires full synoptic survey estimates from the full feeding grounds with associated biopsy sampling, at least once

– complicated by possible mixing of O- and J-stock (and perhaps ‘W’).

In addition, although not the target of the *Implementation*, the results also revealed that under several scenarios, the ‘J-stock’ of common minke whales was considerably below the level at which catches would be allowed under the RMP (although significant numbers of bycatches of J-stock animals occur). As a result of the concern over J-stock, the Scientific Committee established an ‘in-depth’ assessment of western North Pacific common minke whales with an emphasis on J-stock – that is not yet complete. J-stock issues are considered further under Aspect 2.

The Scientific Committee should have begun the process for a full *Implementation Review* but agreed to postpone this until: (a) the review of the JARPN II programme was completed (particularly in the light of the work on stock structure occurring within that programme); and (b) the in-depth assessment was completed. The results of (a) will be presented at Madeira and (b) is ongoing.

With respect to *data availability*, if catches were to be allowed then it would seem that protocol (a) of the data availability agreement would need to be followed, as for the RMP and AWMP cases.

Options that could be considered

There are a number of ways in which the Scientific Committee could try to provide advice – but it should be the Commission’s responsibility to instruct the Committee as to its preferred approach.

(1) UNDERTAKE FULL RMP IMPLEMENTATION REVIEW

This could probably not be completed in Madeira – a full review could not be undertaken in one Annual Meeting unless the new data could be easily interpreted and agreed to and did not require any changes to the existing simulation trial structure (or associated work such as ‘conditioning’).

(2) USE EXISTING IMPLEMENTATION TO PROVIDE ADVICE UNTIL FULL REVIEW UNDERTAKEN

This could be undertaken in Madeira. Disagreements on stock structure hypotheses would remain unless new analyses presented at the meeting could be agreed by consensus (the JARPA II review has recommended analyses to re-evaluate the old hypotheses with the new data) – the outcome of such analyses is as yet unknown. New abundance estimates, if agreed by the Committee would be incorporated. The results of the existing *Implementation* would need to be re-examined using the Committee’s guidelines developed after the previous *Implementation*. The ‘with research’ option may be applicable.

(3) PROVIDE SOME KIND OF AD HOC INTERIM ADVICE UNTIL MANAGEMENT PROCEDURE ADVICE (EITHER THE RMP IMPLEMENTATION REVIEW OR SOME YET TO BE SPECIFIED CASE-SPECIFIC APPROACH – SEE 4 BELOW) BECOMES AVAILABLE

This option would require the most advice from the SWG as there are a number of options for providing *ad hoc* advice should the Commission desire it. As outlined earlier, it would need the specification of objectives with respect to both conservation and users. Some examples that have been used or proposed elsewhere with respect to marine living resources are given in Table 2. The difficulties with respect to stock structure hypotheses would remain. *If* the advice provided to the Scientific

Committee related to a *Commission-specified catch level* (similar to the 'need' under the AWMP), this could for example be incorporated into the RMP-simulation approach but with catches set to the specified level for 5 years and then: (a) set by the *CLA* (which could include zero); or (b) set for a further period at the specified level and the long-term trajectories examined for conservation measures compared.

(4) DEVELOP A NEW, CASE SPECIFIC APPROACH

This option would again require advice from the Commission with respect to objectives and would require considerable work. It would certainly not be possible to develop this in Madeira and may even be a challenge to complete the work within three years. The problems related to catches on migration, stock structure and abundance estimates remain.

Table 2

Some possible examples of objectives that have been suggested for marine living resources.

User	Resource
Sufficient for small operation	Prevent extinction
Maximum catch asap	> some %initial
Maximum eventually with some catch now	Current level
Stable catches	Keep at pre- specified target level
Quick return on investment	Return to initial
No effect on fishery (bycatches only)	Keep trend in abundance
	Maximum productivity level

Aspect 2. *J-stock issues- The Chair's suggestions refers to advice on total removals of J-stock animals as well as O-stock animals implying a joint management regime*

Scientific background

Existing information suggests that the J-stock is at levels below which catches would not be allowed under the RMP at least under some scenarios. The lack of good information on the full abundance of J-stock compounds the problems. It should be noted that J-stock animals can *only* be identified (with a 90% probability and this needs to be further examined) from genetic analyses. Thus both for determining abundance and for examining catch composition, genetic samples are required. The implications will also need to be examined by simulation modelling.

Levels of J-stock removals

If any direct (but accidental) catches of J-stock animals was to be allowed then (1) either a different conservation objective would have to be set from that of the RMP for J-stock (e.g. J-stock should still be able to recover) if it is at less than 54% of initial or (2) catches by Japanese STCW would have to stop as soon as a single J-stock animal was taken. If option (2) was chosen then simulation testing would be required to determine what level of removals would still allow the population to increase with some degree of probability.

As the primary intention is that the Japanese STCW only takes minke whales, then the geographical and temporal segregation of J- and O- stock animals needs to be fully investigated to see the extent to which it is possible to develop time/area restrictions to minimise/eliminate direct catches of J-stock. It is expected that these analyses will be presented to the Scientific Committee in Madeira.

Practical implications during a catching season

If the management regime is such that there is a 'limit', say x whales on removals of J-stock (e.g. based on option 1 or 2 above) then this will have practical implications and will require decisions from the Commission as to how to implement this. Some options (which would need to be examined by simulation modelling) are:

- (1) assume a bycatch level based on recent Korean and Japanese bycatch levels and subtract this to develop a 'direct' catch limit for J-stock animals – the Japanese catches would have to be monitored as close to real time as possible in terms of genetic analyses and catches stopped when the J-stock limit is reached in either (a) any one season or (b) based on a 5-year total – while still complicated this seems easier to implement than (2) below; and
- (2) obtain as close to real time estimates of all J-stock removals in bycatches from both Korea and Japan and then stop STCW catches when the total removal level is reached – this will require co-operation from Korea and Japan.

Note that under either option a mechanism for obtaining genetic samples, analysing the data and reporting the results will need to be established (the document refers to this being accomplished by the Secretariat but a precise mechanism would need to be developed by a technical group similar to that which examined DNA registers under the RMS discussions).

(2) Research under special permit

The Chair's suggestions include reference to 'all removal levels would be reviewed by the Scientific Committee and consistent with its recommendations' (their option 1(3)), and pending [interim] advice on sustainability from the Scientific Committee (or similar words in Option 2). In both options, it appears that the Committee will be provided with numbers to evaluate rather than have to calculate them.

From the Scientific Committee's review process, as special permit whaling refers to catches made for scientific purposes, the initial focus has been on determining what is the appropriate sample size to meet specified objectives followed by examining the effect of that level of catches on the stocks involved. This is the approach adopted in Annex P. The Chair's suggestions do not appear to consider the sample size issue except perhaps in the comment about experimental design made after the two options are elaborated.

A difficulty that the Scientific Committee has had for many years is that there is no Commission guidance on how to provide the necessary advice on the effects of permit catches on stocks, especially for long-term programmes with no specified end date, although the Committee has requested such advice on a number of occasions. In particular, the question here is what are the appropriate conservation objectives. See the earlier discussion of objectives. Some options that have been suggested include:

- (1) retain the objectives of the RMP;
- (2) populations should be allowed to increase if below the level giving highest sustainable yield; and
- (3) populations should not decrease.

This difficulty has been stressed at the recent JARPN II expert review workshop (SC/61/Rep1) who have again requested advice. As noted earlier, choosing the most appropriate objective is not a scientific matter but a political one.

In any event, the preferred method of the Committee is to undertake simulation modelling that accounts for uncertainty and to examine resultant population trajectories – as a minimum this would include a comparison of trajectories with and without catches and an examination of trends.

It should be noted that the Committee has not undertaken an *Implementation* of Antarctic minke whales for over 15 years. New abundance estimates are expected

in Madeira. Undertaking a full *Implementation Review* could not be undertaken in Madeira as this would require a full re-evaluation of stock structure hypotheses and the development and coding of new trials.

No other Antarctic whales have been considered in an RMP context and in-depth assessments have not been undertaken for fin whales. Some but not all of the Southern Hemisphere humpback whale stocks assessments have been completed. In the North Pacific, the Bryde's whale *Implementation* was completed successfully. In-depth assessments have not occurred for the other species.

The Committee will require instructions on how to provide advice.

Annex E

WORK PLAN FOR CONSIDERATION AND ACTION ON THE ISSUES THAT WOULD BE BEFORE THE COMMISSION DURING THE INTERIM PERIOD

This work plan is without prejudice to differing positions.

Procedures currently exist regarding *small cetaceans* (Element 31), *bycatch* (3) and *animal welfare* (2).

While disagreement remains regarding the competence of the IWC concerning *small cetaceans*, the Scientific Committee has continued to provide advice and this state of affairs may be sufficient to avoid the need for further process at this stage. The issue of small cetaceans may also be addressed by the Conservation Committee and in conservation management plans.

With respect to *bycatch*, all contracting parties are reminded of their reporting obligations under ICRW. The issue of *bycatch* is dealt with by the Scientific Committee and may also be addressed under *conservation management plans* (element 10).

While disagreement remains regarding the competence of the IWC concerning animal welfare, there is an institutionalized IWC working group that has made progress in addressing concerns regarding *animal welfare*, but there are issues that need to be resolved during the interim period related to collection, provision and use of data.

Provision needs to be made for the continuation of this work and appropriate oversight and guidance from the Commission. Everything else remaining equal, they would

not need to be part of a work plan for addressing Stage 2 issues during the interim period.

The remaining issues in Stage 2 (*commercial whaling moratorium* (7), *compliance and monitoring* (8), *purpose of the Convention* (11), *objections and reservations* (21) as well as RMP (24) and RMS (25)) should be dealt with in a group that is as widely representative as possible while not exceeding (10) members. The group should address outstanding issues related to *small cetaceans*, *bycatch* and *animal welfare* not currently being dealt with under existing procedures and might also address outstanding issues not covered within a Stage 1 package. In order to best ensure the effective conservation of whale stocks and the management of all whaling activities, that group should propose a package or packages for the consideration of the Commission no later than one year before the end of the interim period. The group shall provide annual progress reports to the Commission.

The group may set up *ad hoc* expert groups to address aspects of the Stage 2 elements.

Reference was made to the Technical Committee, currently existing only on paper, as a possible venue for dealing with these matters, but it was considered unsuitable because of its open-ended and hence potentially unwieldy character.

Annex F

GUIDANCE ON FURTHERING CATEGORY (B) ISSUES

The Intersessional Meeting of the Commission *inter alia* assigned the SWG to develop 'guidance on category (b) issues including elaboration of how these issues will be advanced beyond IWC/61'.

The intersessional meeting noted that scientific category (b) issues, to a significant extent, are already being addressed by the Scientific Committee (see Annex C). This guidance therefore addresses the following issues:

- 1 – Advisory/Standing Committee or Bureau – need for
- 2 – Animal Welfare
- 4 (e) – Climate change – mitigation actions
- 5 – Civil society – involvement of
- 9 – Conservation Committee
- 10 (b) – Conservation Management Plans
- 13 – Data provision
- 14 – Developments in Ocean Governance
- 16 (b) – Environmental threats
- 17 – Ethics
- 18 – Financial contributions scheme
- 19 – Frequency of meetings
- 20 (d) – Marine Protected Areas
- 22 – Improvements to procedural issues (addressed in Santiago to a certain extent)
- 29 – Secretariat
- 31 – Socio-economic implications
- 32 – Trade restrictions

It is suggested that the issues of 9 – *Conservation Committee*, 13 – *Data provision*, 14 – *Developments in Ocean Governance*, 16 (b) – *Environmental threats* and 20 (d) – *Marine Protected Areas* should be dealt with by a group that is as widely representative as possible. The Group may set up *ad hoc* expert groups to address specific aspects of the issues. Where a need for action is identified but no mechanism recommended, the Commission will decide on the mechanism.

1. Advisory/standing committee or bureau – need for

Depending on the outcome of discussions on the future of the organisation, a revised Advisory/Standing Committee or Bureau with broader participation and responsibilities (e.g. if the Commission were to meet biennially in future) may be required.

It is suggested that the Advisory Committee's Terms of Reference be reviewed. This would be most appropriately done by the F&A Committee and it is suggested that this item be included on its agenda for its meeting at IWC/61 in Madeira.

The review should examine:

- the Advisory Committee's current role and tasks; and
- the roles and responsibilities of advisory bodies/bureaus of a number of other Conventions by building on and updating the review previously done by the Secretariat for the F&A Committee in 2006 (Document IWC/58/F&A 5).

2. Animal welfare

While IWC's competence to address animal welfare issues is a matter of debate (and being handled under category (a)), the Commission addresses animal welfare issues in its

Working Group on Whale Killing Methods and Animal Welfare Issues.

It is noted that in relation to animal welfare there are both technical and policy issues to be considered (e.g. decision support for stranding and/or entanglement incidents).

With respect to technical issues, it is suggested the Terms of Reference for the Working Group on Whale Killing Methods and Animal Welfare Issues be reviewed. It is noted that this Working Group is already addressing whale killing methods and welfare issues related to the euthanasia of stranded animals and that a workshop on welfare issues associated with the entanglement of large whales is planned in the intersessional period after IWC/61.

3. (e) Climate change – mitigation actions

Understanding climate change and its effects on cetaceans is being partially addressed by the Scientific Committee. It is recognised that the IWC is not an appropriate body to recommend mitigation measures. However, it is suggested that any work that is being done on the effects of climate change on cetaceans, should be communicated through appropriate mechanisms, still to be established, to the relevant bodies.

5. Civil society

Recent changes were made to the Commission's Rules of Procedure to allow broader participation by removing the requirement for an NGO to be international in nature before it can become accredited. The fee structure was also changed to be more equitable. At IWC/60 and at the March 2009 Intersessional Meeting of the Commission in Rome, sessions have been held, on a trial basis, in which individual NGOs have been allowed to address the meeting for 5 minutes each.

It is suggested that the Commission establish a mechanism to consider again the level of participation of NGOs through a review and updating of document IWC/58/F&A 3 which compared rules and procedures regarding NGO involvement in decision-making bodies of other IGOs.

9. Conservation Committee

It is noted that there are a range of issues relevant to the conservation and management of whales to be addressed by the Commission. While scientific issues are addressed in the Scientific Committee, the mechanism for dealing with conservation and management issues needs to be considered by the Commission.

It is suggested that the Group consider the issues and develop recommendations on how to proceed.

10. (b) Conservation management plans – the appropriate way to link the work of the Commission and its subsidiary bodies on the scientific and mitigation measure/management actions

It is noted that there is work already being undertaken in the Scientific Committee on the development of Conservation Management Plans and that there is a need to translate scientific advice into appropriate mitigation

measures for consideration by the Commission. This would involve stakeholders.

13. Data provision

It is suggested that this issue be reviewed by the Group.

14. Developments in ocean governance

It is suggested that this issue be reviewed by the Group.

16. (b) Environmental threats – need for co-operation with other bodies that have some regulatory capacity on factors outside whaling

It is suggested that this issue be reviewed by the Group.

17. Ethics

There are no suggestions on how to advance this issue.

18. Financial contributions scheme

It is noted that this topic is already an element of the F&A Committee work programme.

19. Frequency of meetings

It is noted that, given the ongoing nature of discussions on the future of the IWC, there may be implications for the programme of work for the Commission and has not made any recommendation.

20.(d) Marine Protected Areas

It is suggested that this issue be reviewed by the Group.

29. Secretariat

The outcome of discussions on the future of the IWC may have an impact on the role of and expertise required in the Secretariat. However, it is believed premature to address this issue until the discussions on IWC's future are further progressed.

31. Socio-economic issues

The significance of these issues is recognised, but no immediate action is required.

32. Trade

No recommendations are made on this issue.

Annex G

REQUEST FOR ADVICE FROM THE SCIENTIFIC COMMITTEE IN RELATION TO JAPANESE SMALL-TYPE COASTAL WHALING

The primary task of the Scientific Committee in Madeira with respect to its evaluation of the Japanese proposal will be to develop a work plan and timetable (including at least one intersessional workshop) for it to be able to provide advice to the Commission on the effects of the proposed catches by the 2010 Annual Meeting. In the normal manner, the work plan will be included in the Scientific Committee report for approval or otherwise by the Commission in Madeira.

Background

The need for advice from the Scientific Committee with respect to any proposals for Japanese small-type coastal whaling has been recognised. An important component of the process for providing the advice is the review by the Scientific Committee of the scientific information developed by Japan as supporting material for its proposal for a take of 150 common minke whales by its small-type coastal whaling operations for a five-year interim period.

Any advice that may be provided by the Scientific Committee will of course not be binding; as has been stated throughout the process, nothing is agreed until everything is agreed. Japanese small-type coastal whaling is one element in a potential package(s) of measures to resolve IWC's problems that is currently under discussion. Consequently, the requesting of advice from the Scientific Committee is only to obtain further background information on one aspect of one potential element of a package or packages to assist in Commission discussions.

Request for advice

The Scientific Committee is instructed to:

- (1) review the Data Availability Agreement with respect to tissue samples, DNA and sequenced data; and
- (2) develop plans to complete a full *Implementation Review* for western North Pacific common minke whales as soon as possible and certainly before the end of any interim period.

The Scientific Committee, beginning at its meeting in Madeira, will assess and provide its advice on Japan's proposal for an interim 5-year catch limit of 150 O-stock common minke whales for its small type coastal whaling operations and on the scientific analysis provided to support its proposal. Final scientific advice on the effects of the proposed catches³ on stocks that may be impacted (at least J- and O-stock) will need to be available by the 2010 Annual Meeting. The documentation supporting the proposal will be made available to the Scientific Committee **at least three weeks** before the start of the 2009 meeting. Data used for the analysis will be made available to the Scientific Committee in accordance with Procedure A of the DAA; these data will be made available by **15 May 2009**. The software used for modelling purposes will be made available to the IWC Secretariat by **15 May 2009**. Fully evaluating the effects of anthropogenic removals on the stocks will involve considerable work and will require at least one intersessional workshop. The report and recommendations from the Expert Workshop to Review the Ongoing JARPN II Programme (SC/61/Rep1) with respect to issues of stock structure and effects of

³In conjunction with other anthropogenic removals arising out of bycatches and special permit whaling.

catches on the stocks will form an important component relevant to the discussions of the Japanese proposal.

The Japanese proposal must at least incorporate the following:

- (1) A statement of the ‘user objectives’ chosen by the proposers for the 5-year interim period and any scenarios proposed for the period after the interim period (recognising that final decisions on user objectives are the responsibility of the Commission);
- (2) Proposals for ‘conservation objectives’ for O- and J-stock animals using the discussion paper (Annex D) as a guide; (recognising that final decisions on conservation objectives are the responsibility of the Commission);
- (3) Details of the method(s) used to support the proposal and to evaluate proposed catch limits, including:
 - (a) use of a simulation modelling framework to take into account uncertainty in stock structure and the numbers of anthropogenic removals from each stock, with due reference to the discussion of the effects of JARPN II catches on western North Pacific common minke whales given in SC/61/Rep1;
 - (b) a full discussion of the temporal and geographical distribution of stocks that may be impacted by the proposed catches (at least J- and O-stocks), in particular with reference to the proposed measure to refrain from catching within 10 n.miles of the coast in order to minimise takes of J-stock animals;
 - (c) consideration of the uncertainty in stock structure using the 2003 *Implementation Simulation Trials* as a guide although taking into account analyses of new data and with due reference to the discussion of stock structure given in SC/61/Rep1; and
 - (d) presentation of results in such a form⁴ as to allow comparison of stock trajectories (for a period of at least 30 years) with and without catches during the interim period for stocks that may be impacted by the catches (at least J- and O-stocks).

The provision of such trajectories will allow the ultimate evaluation of the results for a number of potential conservation objectives (see Annex D) – as noted above it is a Commission responsibility to decide on final user and conservation objectives.

At this stage, it is not appropriate for the Scientific Committee to use the CLA to calculate catch limits in the provision of advice on this interim proposal. However, the Scientific Committee should complete a full *Implementation Review* as soon as possible and certainly before the end of any interim period. A decision on the appropriate long-term management regime for Japanese small-type coastal whaling will need to be taken by the Commission before the end of any interim period.

⁴Where relevant, the summary tables and graphs used to present the results of recent *Implementation Simulation Trials* (e.g. western North Pacific Bryde’s whales) provide a useful guide.