

Annex I

Report of the Infractions Sub-committee

Wednesday 14 July 2004, Sorrento, Italy

1. INTRODUCTORY ITEMS

The meeting took place at the Hilton Sorrento Palace Hotel, Sorrento, Italy on 14 July 2004. A list of participants is given in Appendix 1. The Infractions Sub-committee considers matters and documents relating to the International Observer Scheme and Infractions insofar as they involve monitoring of compliance with the Schedule and penalties for infractions thereof (*Rep. int. Whal. Commn.* 29: 22).

1.1 Appointment of Chair

Sung Kwon Soh (Korea) was elected Chair.

1.2 Appointment of Rapporteur

Cherry Allison (Secretariat) was appointed rapporteur.

1.3 Review of documents

The following documents were available to the sub-committee.

IWC/56/Inf

1. Revised Draft Agenda
2. Secretariat: Expanded Revised Draft Agenda
3. Secretariat: National Legislation Details Supplied to the IWC
4. [Draft] Secretariat: Summary of Infraction Reports Received by the Commission in 2003
5. Quota monitoring on minke and fin whale hunting in Greenland, 2003

2. ADOPTION OF THE AGENDA

The Chair noted that in the past some delegations, including Norway and Japan, had referred to the terms of reference of this Sub-committee and had stated their belief that Item 7.1, covering stockpiles of whale products and trade questions, was outside the scope of the Convention. Consequently, they had proposed that this item be deleted. Other delegations, including the USA and New Zealand had not agreed with this view. Nevertheless, as in previous years, it was agreed that an exchange of views might be useful and the draft agenda was adopted unchanged (Appendix 2).

3. INFRACTIONS REPORTS FROM CONTRACTING GOVERNMENTS, 2003

The Secretariat introduced IWC/56/Inf 3, the draft summary of infraction reports received by the Commission in 2003, which is given as Appendix 3 to this report.

The USA, on behalf of the Alaska Eskimo Whaling Commission, reported that 35 bowhead whales were landed in 2003, with 6 struck and lost. As explained in previous years, the weather and ice conditions play a significant role in determining the efficiency of the spring hunts. The USA reported two infractions in 2003, which occurred during an

aboriginal subsistence hunt, when a female bowhead whale accompanied by a calf was taken. The female was landed whilst the status of the calf was unknown. The taking of cow-calf pairs is prohibited in Eskimo hunting tradition, and also under the regulations both of this Commission and of the AEWC Management plan. The AEWC has primary enforcement responsibility under a cooperative agreement with the Government of the USA. Following a hearing, the AEWC Commissioners concluded that the crew had not acted with proper caution and rescinded the bowhead subsistence captain's registration for two years. Further details are given in Appendix 3.

The Republic of Korea reported that the Ministry of Maritime Affairs and Fisheries and the marine police of Korea had exposed five illegal catches of minke whales in 2003 and had taken judicial and administrative measures as listed in Appendix 3. Four of the cases were deliberate, the catches being taken covertly with a spear by small fishing vessels and the fifth case was that of a dead whale found floating with spearheads stuck into it. The Korean authorities perceive these incidents to be a result of poachers trying to make money. The Government of Korea does not think poaching to be a major problem since all suspect poachers are listed and their movements watched by the police. The by-catch reporting system has proved useful in discriminating between illegal catches and by-catches. In addition, the authorities have continued to strengthen public awareness of poaching activities through the mass media. The Government of Korea will continue its efforts to bring an end to these illegal activities.

Switzerland asked whether it was legal for small harpoons to be carried on fishing vessels, as were reported to have been used in three of the infractions reported by The Republic of Korea. Korea replied that it was not permitted to carry harpoons on fishing vessels.

4. SURVEILLANCE OF WHALING OPERATIONS

The Infractions Reports submitted by the USA, the Russian Federation and St. Vincent and the Grenadines stated that 100% of their catches were under direct national inspection. Denmark (Greenland) reported on quota monitoring in IWC/56/Inf 5.

Following questions from New Zealand and the UK concerning internal legal requirements in Denmark for collection of DNA samples and actions in the event of the samples not being provided, Denmark reported that it was mandatory to supply samples, and that it had written to all municipal authorities in Greenland to inform them of this fact.

New Zealand considered that failure to collect samples should be reported as an Infraction since Article IX of the Convention requires each Contracting Government to 'take appropriate measures to ensure the application of the provisions of this Convention and the punishment of infractions against the said provisions in operations carried

out by persons or by vessels under its jurisdiction' and Para 29b of the Schedule requires samples to be collected.

Denmark did not agree with New Zealand's interpretation, as Para 29b refers to small type whaling and not to aboriginal subsistence whaling. Denmark will try to take appropriate measures to ensure samples are collected in the future, but it considered that missing samples are not infractions in the sense of Article IX of the Convention. In addition, it would help if the hunters knew the samples would be put to good use, as at present many samples seem to be stored in freezers but not analysed. The Department of Fishing and Hunting will continue its efforts to collect samples.

New Zealand reiterated its opinion that collection of samples is obligatory under Para 29b of the Schedule and that failure to do so is an offence that should be reported as an infraction, particularly in view of the definition of 'small type whaling' in the Schedule and the strong language used by the Scientific Committee to express its concerns on this matter.

Following a suggestion from the Chair, New Zealand and Denmark agreed to discuss this matter further on a bilateral basis.

The UK noted that a bowhead whale was reported to have been killed in Greenland on 25 April 2004¹.

Australia expressed concern that since a new law had been enacted by Japan in 2001 allowing whales caught in nets to be killed, that the numbers of bycatch in Japan had increased dramatically, from 29 in 2000 to 79 in 2001, 109 in 2002 and to 125 in 2003. They cautioned that this could be considered an active hunt. Japan considered the question was not relevant to the Infractions sub-committee. Rather, the Scientific Committee is the right forum for such discussions and Japan had provided information on bycatch to that Committee. It would respond directly to Australia on this issue if asked.

The UK noted that other countries e.g. Iceland and Korea also have significant levels of bycatch. It recognised that some other countries have a different opinion as to whether bycatch should be regarded as an infraction. However, the UK believed that everyone should agree that numbers of by caught whales should be taken off any quota and, since the quota was zero, bycatch constituted an infraction.

5. CHECKLIST OF INFORMATION REQUIRED OR REQUESTED UNDER SECTION VI OF THE SCHEDULE

This Checklist was developed as an administrative aid to the Sub-committee in helping it to determine whether obligations under Section VI of the Schedule were being met. It is not compulsory for Contracting Governments to fill in the Checklist although, of course, they do have to fulfil their obligations under this Section of the Schedule.

The available information is summarised below:

Denmark: Information on date, position, species, length and sex is collected for between 83-100% of the catch,

depending on the item. Other biological data and information on killing methods and struck and lost animals are also collected.

USA: Information on date, species, position, length, sex, whether a foetus is present, killing method and numbers struck and lost is collected for between 97-100% of the catch depending on the item. Biological samples are collected for about 50% of animals.

Russian Federation: Information on date, species, position, length, sex, whether a foetus is present, killing method and numbers struck and lost is collected for 100% of the catch.

St. Vincent and the Grenadines: Information on date, species, position, length, sex, killing method and numbers struck and lost is collected for 100% of the catch.

Norway: the required information has been submitted to the Secretariat as noted in the Scientific Committee report (IWC/56/Rep 1).

6. SUBMISSION OF NATIONAL LAWS AND REGULATIONS

A summary of national legislation supplied to the Commission is given in Table 1. The UK and the USA applauded St. Vincent and the Grenadines for adopting domestic legislation that governs the aboriginal take of humpback whales. Australia expressed similar sentiments and enquired whether the regulations met the requirements of Schedule Para 13b(4). The Secretariat believed that they do and noted that the regulations were available if Australia wished to confirm this.

7. OTHER MATTERS

7.1 Reports from Contracting Governments on availability, sources and trade in whale products

The Commission has adopted a number of Resolutions inviting Contracting Governments to report on the availability, sources and trade in whale products:

- 1994-7 on international trade in whale meat and products
- 1995-7 on improving mechanisms to prevent illegal trade in whale meat
- 1996-3 on improving mechanisms to restrict trade and prevent illegal trade in whale meat.
- 1997-2 on improved monitoring of whale product stockpiles.
- 1998-8 *inter alia* reaffirmed the need for Contracting Governments to observe fully the above Resolutions addressing trade questions, in particular with regard to the problem of illegal trade in whale products, and urged all governments to provide the information specified in previous resolutions.

No reports were received by the Secretariat on these resolutions and no comments were made during the meeting.

¹ Denmark responded to a first question, which related to 2003, and said that no bowhead had been killed in 2003. It did not respond to the question of 2004 during the meeting, but subsequently reported that a bowhead whale had been seen in fishing nets in 2004 but that it had not been killed.

Table 1
National legislation details supplied to the IWC.¹

Country	Date of most recent material	Country	Date of most recent material
Antigua & Barbuda	None	Monaco	None
Argentina	1984	Mongolia	None
Australia	2000	Morocco	None
Austria	1998	Netherlands, The	1978
Benin	None	New Zealand	1992
Brazil	1987	Norway	2000
Canada	1983	Oman	1981
Chile	1983	Palau, Republic of	None
China, People's Republic of	1983	Panama	None
Costa Rica	None	Peru	1984
Denmark (including Greenland)	1998	Portugal	None
Dominica	None	Russian Federation	1998
Ecuador	None	San Marino	None
Finland	1983	Saint Kitts & Nevis	None
France	1994	Saint Lucia	1984
Gabon	None	Saint Vincent & the Grenadines	2003
Germany	1982	Senegal	None
Grenada	None	Seychelles	1981
Guinea	None	Solomon Islands	None
Iceland	1985	South Africa	1998
India	1981	Spain	1987
Ireland	2000	Sweden	1987
Italy	None	Switzerland	1983
Japan	1983	Tonga	None
Kenya	None	UK	1981
Korea, Republic of	1985	USA	1995
Mexico	2001		

¹Up to the middle of June 2004. Dates in the table refer to the date of the material not the date of submission. ²Member states of the European Economic Community are subject also to relevant regulations established by the Commission of the European Community. The date of the most recent EEC legislation supplied to the International Whaling Commission is 1983. ³Information on which pieces of legislation have been provided by the member countries is available on request from the Secretariat.

7.2 Other

The UK referred to six Northern bottlenose whales killed in the Faroe Islands in 2002 and noted that the Scientific Committee had expressed concern over the status of this stock in the 1970s. The UK asked a series of questions requesting details of the incidents. It noted that this species is included in the Schedule (Table 3) with a zero catch limit, and believed that the killing of these whales constituted an infraction.

Denmark responded that six whales had died as a result of stranding and that such events were not infractions. Denmark has provided information on similar events on a bilateral basis on many occasions in the past and would be happy to do so again.

The UK repeated that, because the species is in the Schedule, the reasons for the kills need to be documented.

Australia notified the sub-committee of an alleged incident that occurred in 2004 in which a whale of unknown species was caught by an Australian fishing vessel, and the vessel returned to port with whale meat on board. The allegation has been referred to the Australian Federal Police for investigation. Australia will inform the IWC of the outcome of this matter once further details are available

No other issues were raised under this item.

8. ADOPTION OF REPORT

The report was adopted 'by post' on 18 July 2004.

Appendix 1

LIST OF PARTICIPANTS

Argentina

Raul Comelli
Miguel Iniguez

Australia

Nicola Beynon
Pam Eiser
Connall O'Connell
Stephen Powell

Austria

Andrea Nouak
Michael Stachowitsch

Belize

Beverly Wade

Benin

Sogan Simplicie
Bantole Yaba

Brazil

Marcia Engel
Regis Pinto de Lima
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Denmark

Leif Fontaine
Ole Heinrich
Amalie Jessen
Kim Mathiasen

Maj Friis Munk
Ole Samsing
Kate Sanderson

Dominica

Andrew Magloire
Lloyd Pascal

Finland

Esko Jaakkola

Germany

Peter Bradhering
Marlies Reimann

Grenada

Frank Hester
Justin Rennie

Iceland

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Seiji Ohsumi
Midori Ota
Akiko Tomita

Republic Of Korea

Chang Myeng Byen
Zang Geun Kim
Oh Seung Kwon
Sung Kwon Soh (Chair)

Mexico

Lorenzo Rojas Bracho

Monaco

Frederic Briand

Netherlands

Henk Eggink
Giuseppe Raaphorst
Anne-marie van der Heijden

New Zealand

Chris Anderson
Mike Donoghue
Nigel Fyfe
Al Gillespie
Geoffrey Palmer

Norway

Halvard Johansen
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Russian Federation

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Olga Gogoleva
Valentin Ilyashenko
Olga Ipatova
Ivan Slugin
John Tichotsky

Saint Kitts and Nevis

Joseph Simmonds

Solomon Islands

Sylvester Diake
Paul Maenuu

South Africa

Herman Oosthuizen

Spain

Carmen Asencio

Sweden

Bo Fernholm
Anna Roos

Switzerland

Tom Althaus

UK

Richard Cowan
Geoff Jasinski
Laurence Kell
Jenny Lonsdale
Trevor Perfect
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USA

George Ahmaogak
Nancy Azzam
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Robert Brownell
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Keith Johnson
Thomas Napageak
Jean Pierre Plé
Gary Rankel
Rollie Schmitt
Brad Smith
Michael Tillman
Chris Yates

Secretariat

Cherry Allison
Greg Donovan

Appendix 2

AGENDA

1. Introductory items
 - 1.1 Appointment of Chairman
 - 1.2 Appointment of Rapporteur
 - 1.3 Review of Documents
2. Adoption of the Agenda
3. Infractions reports from contracting governments, 2003
4. Surveillance of whaling operations
5. Checklist of information required or requested under Section VI of the Schedule
6. Submission of national laws and regulations
7. Other matters
 - 7.1 Reports from Contracting Governments on availability, sources and trade in whale products
 - 7.2 Other
8. Adoption of the report

Appendix 3

SUMMARY OF INFRACTIONS REPORTS RECEIVED BY THE COMMISSION IN 2003

Under the terms of the Convention, each Contracting Government is required to transmit to the Commission full details of each infraction of the provisions of the Convention committed by persons and vessels under the jurisdiction of the Government. Note that although lost whales are traditionally reported, they are not intrinsically infractions.

Scientific permit catches were reported to the Scientific Committee (IWC/56/Rep 1). Catch and associated data for commercial and scientific permit catches were submitted to the IWC Secretariat (IWC/56/Rep 1). Norway reported no infractions from her commercial whaling operations. Aboriginal subsistence catches and infractions are summarised in the following table.

Country	Species	Males	Females	Total landed	Struck and lost	Total strikes	Infractions/ comments
Denmark							
West Greenland	Fin	2	4	6	3	9	None
	Minke	58	117	178 ¹	7	185	None
	Humpback			1			1 ³
East Greenland	Minke	1	11	13 ²	1	14	None
St Vincent and The Grenadines							
	Humpback	1	0	1	0	1	None
USA							
	Bowhead	17	17	35 ²	6	41	2 ⁴
Russian Federation							
	Gray	70	56	126	2	128	None
	Bowhead	3	0	3	0	3	None
Republic of Korea							
	Minke			5			5 ⁵

¹Includes 3 animals of unknown sex.

²Includes 1 animal of unknown sex

³On 12 August 2003, the wildlife officer in the municipality of Ilulissat reported that a male humpback whale calf of length 9.5m had been wounded in a rifle hunt and could not be rescued. After authorisation from the Department of Fisheries and Hunting the whale was killed by a harpoon vessel and meat, blubber and qiporaq was distributed to institutions in Ilulissat. The incident was reported to the police who informed the department that they consider the incident as unsolved due to lack of possibilities of further investigation.

⁴On approximately May 25, 2003, a female bowhead whale was taken in the Beaufort Sea off Barrow, Alaska, by the crew of an Alaska Eskimo Whaling Commission (AEWC) registered bowhead subsistence captain. On taking the whale, the crew realized it was accompanied by a calf, which then swam away. The USA has elected to report two infractions as the disposition of the calf is unknown. The taking of a whale calf or a cow accompanied by a calf is prohibited by Alaskan Eskimo hunting tradition. Such a taking is also prohibited by the AEWC management plan for the bowhead subsistence hunt and by the regulations of the IWC. The AEWC considers the taking of a whale calf or a cow with a calf to be a very serious infraction. Under the AEWC Management Plan, a captain whose crew takes a calf or a cow accompanied by a calf may have his AEWC registration revoked for up to five whaling seasons or be subject to a fine of up to \$10,000. On May 30, 2003, the Commissioners of the AEWC convened a hearing to receive testimony from the members of the crew and from the members of other crews who were in the vicinity when the whale was taken. While testimony indicated that the taking might have been accidental, the Commissioners concluded that the crew knew a cow/calf pair was in the vicinity and did not act with proper caution under the circumstances. Therefore, the Commissioners voted to rescind the bowhead subsistence captain's registration with the AEWC for two years (four seasons) beginning with the fall 2003 bowhead subsistence hunt. The AEWC also confiscated the baleen taken from the whale and donated it to a local organization that supports Native artists. Under the U.S. Whaling Convention Act, it is illegal for anyone who is not a registered captain with the AEWC, or a member of the crew of a registered captain, to hunt bowhead whales. Anyone attempting to take a bowhead whale without being properly registered with the AEWC, or being a crew member of a registered captain, is subject to penalties under U.S. law.

⁵The Government of the Republic of Korea reported 5 illegal direct catches of minke whales by its nationals in Korean waters in 2003. It identified and confirmed these as infractions. The details are as follows:

- i) A minke whale of length 4m was caught on 23 April 2003 by a fishing vessel permitted for offshore pot fisheries. The take was done covertly with a small harpoon at about 19 nautical miles off the port of Onsan. Penalty: the meat and fishing gear were confiscated, a fine of 7 million won imposed and the fishing licence and seamanship license revoked. The matter is under appeal.
- ii) A minke whale of length 5m was caught on 25 April 2003 by a fishing vessel permitted for offshore gillnet fisheries. The take was done covertly with a small harpoon at about 15 nautical miles off the port of Jungja. The meat was transported by another fishing vessel. Penalty: the meat and fishing gear were confiscated. The fisherman was fined 7 million won and his fishing licence revoked. The transporter was fined 4 million won and his fishing licence and seamanship license revoked
- iii) A minke whale of length 5m was caught on 18 May 2003 by a fishing vessel permitted for offshore driftnet fisheries. The take was done covertly with a small harpoon at about 15 nautical miles off the port of Ulsan. Penalty: the whale carcass and fishing gear were confiscated, a 6 month prison sentence imposed with 2 years probation and the fishing licence and seamanship license revoked.
- iv) A minke whale of length 4.1m was found dead in a drift net on 19 May 2003 about 1 nautical mile off Ulsan city. Four harpoon heads were in the back of the whale and its tail was entangled. The whale carcass and fishing gear were confiscated but investigation failed to find the culprit.
- v) A minke whale of length 8.3m was caught on 24 May 2003, by a fishing vessel permitted for offshore driftnet fisheries, at about 23 nautical miles off Youngduk city. Penalty: the whale carcass and fishing gear were confiscated, an 8 month prison sentence imposed with 2 years probation and the fishing licence revoked.