

Annex H

Report of the Infractions Sub-committee

9 June 2006, St. Kitts and Nevis

Terms of reference: 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. INTRODUCTORY ITEMS

A list of participants is given in Appendix 1.

1.1 Appointment of Chair

Lorenzo Rojas-Bracho (Mexico) 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/58/Inf	1	Revised Draft Agenda
	2	Secretariat: Annotated Draft Agenda
	3	Secretariat: National Legislation Details Supplied to the IWC
	4	Draft Secretariat: Summary of Infraction Reports Received by the Commission in 2005
	5	Quota monitoring on minke and fin whale hunting in Greenland, 2005
	6	Proposal by Austria and the Secretariat for a revised form for reporting infractions

2. ADOPTION OF THE AGENDA

The Chair noted that in the past some delegations, including Norway, Japan and Iceland, 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. Similar views were expressed this year. 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, 2005

3.1 Reports for 2005

The Secretariat introduced IWC/58/Inf 3, the draft summary of infraction reports received by the Commission in 2005, which is given as Appendix 3 to this report.

The UK recalled that last year Denmark had voluntarily announced it would reduce its annual fin whale quota for West Greenland from 19 whales, as listed in the Schedule, to 10. The UK expressed great concern that despite this assurance, Denmark had reported a catch of 12 fin whales plus one that was struck and lost, and questioned why the catches in excess of 10 whales had not been reported as infractions.

Denmark replied that, as can be seen in the Chair's report of IWC/57 (*Ann. Rep. Int. Whaling Comm. 2005:16*), the Greenland Home Rule Government had said it was willing to make a voluntary reduction in its fin whale quota to 10 individuals per year for the years 2006 and 2007. Hence the catch in 2005 was not subject to this reduction.

In response to a second question from the UK, Denmark confirmed that a report (on the NAMMCO website) about a northern bottlenose whale concerned a stranded whale which had had to be killed.

3.2 Follow-up on earlier reports

Last year, the Sub-committee noted that some infractions may not be fully resolved during the meeting to which they were reported and agreed to include an item on future agendas to bring such matters forward to the following year. The Secretariat introduced table 3 of IWC/58/Inf 3, the draft summary of additional information on infraction reports received by the Commission in previous years, which is given as Appendix 4 to this report.

Austria presented the proposal from Austria and the Secretariat in IWC/58/Inf 5 for a revised form for reporting infractions to help identify and follow up unresolved cases, as given in Appendix 5. It was noted that the form simplifies reporting and provides a means for transmitting information to the Commission but Governments may choose whether or not to make use of it.

The existing form for reporting infractions from the most recent season has been modified so that each infraction is numbered to enable collation of additional information from previous seasons and a new column added to indicate whether the investigation is complete. A new table has been included for reporting further information on infractions from previous seasons. The revised style format has been used in Appendices 3 and 4. It is suggested that, in future, the revised form be made available on the web and that a circular be sent annually to all Contracting Governments requesting information on infractions and advising that they may use the form from the web.

Australia noted that the regulations of some countries allow animals bycaught in fishing operations to be killed in cases that could not be considered as euthanasia. It considered these incidents to be infractions against the Convention and questioned how such infractions could be reported using the revised forms. The Secretariat noted that in such cases, the nations concerned have not considered the incidents to be infractions and hence they have not been reported to the Sub-committee. Japan confirmed that its domestic legislation allowed the killing of bycaught animals and these were not infractions. It further stated that the distinction between mercy killing of stranded animals and animals trapped in nets is not clear and moreover that ship strikes might also be considered infractions under such a definition. It noted that previous discussions on this issue had not resulted in agreement that bycatches are an infraction.

Denmark supported the proposal of the Secretariat on the use of the revised form and noted that it did not wish the concept of an infraction to be widened.

New Zealand concurred with Japan in that domestic law should be respected, but observed that the domestic law of nations must also conform to international law. It considered that such issues demonstrated the deficiency of enforcement measures of the IWC convention.

Norway expressed concern that the proposed scheme was bureaucratic and that it was unnecessary to have such a form. The UK commented that the form encouraged provision of information on infractions in more detail than has sometimes been provided in the past and in that spirit it accepted the proposal.

After discussion the revised form was adopted by the Sub-committee.

4. SURVEILLANCE OF WHALING OPERATIONS

The Infractions Reports submitted by the USA and the Russian Federation stated that 100% of their catches were under direct national inspection. Denmark (Greenland) stated that their catches were subjected to a random check.

Denmark introduced their document IWC/58/INF 5, giving details of quota monitoring of minke and fin whale hunting in Greenland in 2005. It drew attention to a new executive order on the hunt of large whales which came into effect in 2005 and which is summarised in appendix 1 of IWC/58/INF 5. Denmark stated its intention to provide the Secretariat with a full copy of the new regulations in the near future.

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, sex and the length and sex of any foetus if present is collected for between 60-97% 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, the killing method and numbers struck and lost is collected for between 96-100% of the catch depending on the item and of the length and sex of any foetus if present for 75% of the catch. Biological samples are collected for about 54% of animals.

Russian Federation: Information on date, time, species, position, length, sex, the length and sex of any foetus if 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 and length is collected for 100% of the catch. Information on sex is collected for 50% of the catch.

Norway: the required information has been submitted to the Secretariat as noted in the Scientific Committee report (IWC/58/Rep 1).

6. SUBMISSION OF NATIONAL LAWS AND REGULATIONS

A summary of national legislation supplied to the Commission is given in Table 1. New information had been provided in the past year by Belgium, Mexico and Sweden.

Japan noted that, as shown in Table 1, the date of its most recent national legislation was 1983. However, changes have been made more recently to domestic legislation concerning the treatment of bycaught and stranded animals and it intended to forward a copy of this to the IWC.

In response to a question from Argentina, the Secretariat clarified that the dates in the table referred to the date of the legislation and not the date of submission to the IWC.

Austria observed that all EU members were subject to EU legislation and encouraged all EU members who have not yet done so, to submit national legislation on whale issues.

Table 1
National Legislation details supplied to the IWC¹

Country	Date of most recent material	Country	Date of most recent material
Antigua & Barbuda	None	Mali	None
Argentina	2003	Mauritania	None
Australia	2000	Mexico	2006
Austria	1998	Monaco	None
Belgium	2002	Mongolia	None
Belize	None	Morocco	None
Benin	None	Nauru	None
Brazil	1987	Netherlands, The	2002
Cameroon	None	New Zealand	1992
Chile	1983	Nicaragua	None
China, People's Republic of	1983	Norway	2000
Costa Rica	None	Oman	1981
Cote D'Ivoire	None	Palau, Republic of	None
Czech Republic	None	Panama	None
Denmark (including Greenland)	1998	Peru	1984
Dominica	None	Portugal	2004
Ecuador	None	Russian Federation	1998
Finland	1983	San Marino	None
France	1994	Saint Kitts & Nevis	None
Gabon	None	Saint Lucia	1984
Gambia	None	Saint Vincent & The Grenadines	2003
Germany	1982	Senegal	None
Grenada	None	Slovak Republic	None
Guinea	None	Solomon Islands	None
Hungary	None	South Africa	1998
Iceland	1985	Spain	1987
India	1981	Suriname	None
Ireland	2000	Sweden	2004
Italy	None	Switzerland	1986
Japan	1983	Togo	None
Kiribati	None	Tuvalu	None
Kenya	None	UK	1996
Korea, Republic of	1996	USA	2004
Luxembourg	None		

NOTES:

- Up to the beginning of May 2006. Dates in the table refer to the date of the material not the date of submission. Countries which have recently joined the IWC are not included in the above table as they have not yet had an opportunity to submit legislation. These members are: Cambodia, Guatemala, Israel and the Republic of the Marshall Islands.
- Member states of the European Union are subject also to relevant regulations established by the European Commission. The date of the most recent EU legislation supplied to the International Whaling Commission is 2004.

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.

7.2 Definition of a bowhead calf

Following a report by the USA last year of a possible take of a bowhead calf (see *Ann. Rep. Int. Whaling Comm.* 2005:110), the Commission requested the Scientific Committee to provide a definition of a bowhead calf based on its length. The Chair of the Scientific Committee reported on the Scientific Committee's work in this regard. Calves are typically born in May at a length of about 4 to 5m and grow quickly in the first summer. There is a pause in growth of body length shortly after weaning. Therefore, lengths of calves in autumn can overlap with whales that are in their second or even third summers. Baleen length, however, does not appear to overlap. Thus, body length and especially baleen length should be used in combination to assess whether a landed whale is a calf. A landed whale should be considered a calf when its length is 7.5m or shorter and its baleen is less than 60cm.

Following a question from Grenada, the Chair of the Scientific Committee confirmed that very rarely 2nd and 3rd summer animals may still be nursing. He also noted that calves may stray from mothers for long periods of time in the autumn. Grenada observed that the difficulty of defining a calf has come up in the past in respect to other whaling operations, that lactation is the criterion used in the Schedule and that it was not possible to estimate baleen length before the whale was killed. The Scientific Committee Chair agreed that the criteria could be used to define whether a landed whale is a calf but were not practical for assessing calves at sea. This may mean that very occasionally (<1% based on the last ten year's data) a calf may be taken inadvertently.

7.3 Other

No other matters were raised.

8. ADOPTION OF REPORT

The report was adopted 'by post' on 14 June 2006.

Appendix 1

LIST OF PARTICIPANTS

Antigua & Barbuda

Tricia Lovell

Argentina

Miguel Iniguez

Australia

Conall O'Connell

Virginia Mudie

Gillian Slocum

Zena Armstrong

Pam Eiser

Phillip Tracey

Austria

Andrea Nouak

Michael Stachowitsch

Belgium

Koen Van Waerebeek

Brazil

Régis Pinto de Lima

José Truda Palazzo Jr.

Chile

Elsa Cabrera

Czech Republic

Pavla Hycova

Denmark

Ole Samsing

Leif Fontaine

Ole Heinrich

Amalie Jessen

Maj Friis Munk

Fernando Ugarte

Germany

Marlies Reimann

Grenada

Frank Hester

Iceland

Ásta Einarsdóttir

Japan

Joji Morishita (AC)

Jiro Hyugaji

Ryoichi Nakamura

Republic of Korea

Chiguk Ahn

Zang Geun Kim

Hyun-Jin Park

Luxembourg

Pierre Gallego

Mexico

Lorenzo Rojas-Bracho (Chair)

New Zealand

Geoffrey Palmer

Michael Donoghue

Al Gillespie

Indra Prasad

Phillipa Brakes

Norway

Halvard P. Johansen

Hild Ynnesdal

Egil Ole Øen

Portugal

Marina Sequeira

Maria José Pitta Gros

Russian Federation

Valentin Ilyashenko

Rudolf Borodin

Olga Ipatova (I)

Saint Kitts and Nevis

Joseph Simmonds

Saint Lucia

Jeannine Rambally

St Vincent and The Grenadines

Sophia Punnett

Lucine Edwards

South Africa

Herman Oosthuizen

Luyanda Anthony

Spain

Carmen Asencio

Renaud De Stephanis

Sweden

Bo Fernholm

Switzerland

Bruno Mainini

UK

Richard Cowan

Trevor Perfect

Ruth Thirkettle

James Gray

Alice Lacourt

Jenny Lonsdale

Mark Simmonds

USA

William Hogarth

Doug DeMaster

Cheri McCarty

Roger Eckert

Emily Lindow

Harry Brower Jr

Bob Brownell

Rollie Schmitt

Craig George

Secretariat

Cherry Allison (Rapporteur)

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, 2005
 - 3.1 Reports for 2005
 - 3.2 Follow-up on earlier reports
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 Definition of a bowhead calf
 - 7.3 Other
8. Adoption of the report

Appendix 3

SUMMARY OF INFRACTIONS REPORTS RECEIVED BY THE COMMISSION IN 2005

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/58/Rep 1). Catch and associated data for commercial and scientific permit catches were submitted to the IWC Secretariat (IWC/58/Rep 1). Norway reported no infractions from her commercial whaling operations. Aboriginal subsistence catches and infractions are summarised in Table 1.

Table 2 gives details of the infractions reported in the 2005 season and Table 3 gives details of follow up action on infractions from previous seasons.

Table 1. Summary of Aboriginal subsistence catches and infractions reported for the 2005 season.

Country	Species	Males	Females	Total landed	Struck and lost	Total Strikes	Infractions/Comments
Denmark							
West Greenland	Fin	1	11	12	1	13	1 ¹
Greenland	Minke	34	134	173 ²	3	176	1 ³
East Greenland	Minke	3	1	4	0	4	None
St Vincent and The Grenadines							
	Humpback	1	0	1	0	1	None
	Bryde's			1		1	1 ⁴
USA							
	Bowhead	25	28	55 ⁵	13	68	None
Russian Federation							
	Gray	45	70	115	9	124	None
	Bowhead	1	1	2	0	2	None
Republic of Korea							
	Minke			3			3 ⁶

¹ Unreported struck and lost whale; see table 2 infraction 2005.1.

² Includes 5 animals of unknown sex.

³ Use of illegal size bullets; see table 2 infractions 2005.2.

⁴ See table 2 infraction 2005.3.

⁵ Includes 2 animals of unknown sex (including 1 whale which was abandoned during towing because of hazardous conditions).

⁶ See table 2 infractions 2005.4, 2005.5 and 2005.6.

Table 2. List of infractions from the 2005 season

Ref.	Nation	Species	Sex	Length	Date	Infraction (specify)	Explanation	Penalty/Action	Investigation complete?
2005.1	Greenland /Denmark	Fin	Unk.	Unk.	Summer 05	Unreported struck and lost whale	A dead fin whale was seen in Maniitsoq in September with a harpoon embedded on its flank.	The incident was reported to the police and is under investigation.	No
2005.2	Greenland /Denmark	Minke	Unk.	Unk.	Unk. (before May 2005)	Use of illegal bullet size	Minimum calibre allowed for use on minke whales is 30.06 (7.62 mm). .22 (5.6 mm) calibre bullets were found in minke whale meat bought in the open market in Nuuk in May.	The incident was reported to the police on 8 th July 2005. It is unlikely that the police will discover when the bullets were fired or by whom.	
2005.3	St Vincent and the Grenadines	Bryde's	Unk.	38'6"	June 2005	No quota	A whale of a species not allowed under the regulations was taken	Suspension of License.	Yes
2005.4	Korea	Minke	Unk.	3m	17 Mar 2005	No quota	Whale caught by a fishing vessel with a permit for coastal gillnet fisheries and transportation. The take was done covertly at about 20 nm off Ulgideungdae light-house, Ulsan with a small harpoon.	The meat was confiscated. 3 violators were given 6 months imprisonment and 2 years probation. The license of the fishing vessel was revoked.	Yes
2005.5	Korea	Minke	Unk.	Unk.	1 Apr 2005	No quota	Whale caught by 4 fishing vessels with permits for 3 gillnet fisheries and 1 pot fishery. The take was done covertly at about 30 nm off Bangoejin port, Ulsan with a small harpoon.	The meat was confiscated. 10 violators (including a trade broker) were given 6 months imprisonment and 2 years probation. The vessel licenses for the 3 gill net fisheries were revoked and the license for the coastal pot fishery suspended for 20 days of fishing operation.	Yes
2005.6	Korea	Minke	Unk.	4m	2 June 2005	No quota	Whale caught by a fishing vessel with a permit for coastal gillnet fisheries. The take was done covertly at about 10 nm off Guryongpo port, Ulsan with a small harpoon.	The meat was confiscated. 2 violators were fined 2 million won (about US\$2,000). The license of the fishing vessel was revoked.	Yes

Appendix 4

LIST OF UNRESOLVED INFRACTIONS FROM THE 2004 SEASON AND FOLLOW-UP ACTIONS

Ref.	Nation	Species	Sex	Length	Date	Infraction (specify)	Explanation	Penalty/Action	Investigation complete?
2003	Greenland /Denmark	Minke	Fem.	Unk.	15 Sep 2003	Use of harpoon without penthrite grenade	A catch report from Qeqertarsuaq was received without information about the harpoon grenade. The case was reported to the police and documentation for purchase and use of the grenade was requested.	It was established that the harpoon did have a penthrite grenade, but was not reported correctly due to a human mistake.	Yes: closed 25 July 05
2004.1	Greenland /Denmark	Humpback	Male	11 m	6 Sept 2004	Illegal rifle strike	A humpback whale which could hardly swim was seen with old bullet wounds. Hunters from the nearest villages killed the whale after authorisation from the Department of Fisheries and Hunting. Meat, blubber and qiporaq were distributed to institutions in nearby villages and Upernavik.	The incident was reported to the police. The Upernavik police closed the investigation on the 11 th of November 2005. Due to lack of evidence, no suspects were found and nobody prosecuted.	Yes: closed 11 Nov 05
2004.2	Korea	4 minke	Unk.	Unk.	Oct –Nov 2004	No quota	4 whales were caught near Pohang city. 2 vessels were involved in the incident and 2 transporters were also arrested.	30kg of meat was confiscated. A 10 month prison sentence and 2 years probation was imposed. The fishing permits of the 2 vessels were suspended.	Yes
2004.5	Korea	Minke	Unk.	4.5m	29 Jul 2004	No quota	A minke whale was caught on 29 July 2004 by three vessels using iron harpoons 12 miles off Ulsan.	A fine of 7 million won was imposed. The fishing permits of the 3 vessels were suspended.	Yes

Appendix 5

REVISED REPORT FOR REPORTING INFRACTIONS



International Whaling Commission

The Red House, 135 Station Road, Impington, Cambridge CB4 9NP, UK
 Tel: +44 (0)1223 233971; Fax: +44 (0)1223 232876
 E-mail: Secretariat@iwcoffice.org; Web site: <http://www.iwcoffice.org>

Report on infractions of the International Convention for the Regulation of Whaling, 1946 and summary information on catches

Please complete this form as fully as possible, preferably electronically and return to Secretariat@iwcoffice.org.

Aboriginal subsistence / commercial whaling

Please complete Tables 1 to 5 as appropriate

Other Infractions

If the infractions being reported are not associated with aboriginal subsistence or commercial whaling, please complete Tables 4 and 5 as appropriate

Contracting Government	
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Table 1.

Whaling activity (e.g. aboriginal subsistence / commercial)	
Season	
Number of <i>Active</i> crews/vessels	

Table 2. Summary of information on inspection and observation:

Percentage of catch under direct national inspection	
Percentage of catch under inspection under an international programme	

Table 3. Summary of information on catches and, if any, infractions:

Species	Total animals landed			Additional animals struck but lost	Catch/strike overrun (give number)	Other infractions (give number)
	Male	Female	Total			

Table 4. Details of any infractions committed this year. Please list whales by species. The action/penalty should be shown individually for each whale.

No.	Species	Sex	Length	Date	Infraction (specify)	Explanation ²	Penalty/Action ³	Investigation complete? ⁴
1								
2								
3								
4								
5								
6								
7								
8								

¹ e.g. Prohibited species; quota overrun; lactating whale and calf; killing method; outside legal size limits.

² Please include location in addition to date and source of initial information.

³ Please include both monetary and non-monetary penalties.

⁴ If investigation is not complete, please indicate anticipated completion date.

Table 5. Details of any unresolved infractions committed in previous years and followup actions. The year and No. should match the year in which the infraction was first reported.

No.	Species	Sex	Length	Date	Infraction (specify)	Explanation ²	Penalty/Action ³	Investigation complete? ⁴

¹ e.g. Prohibited species; quota overrun; lactating whale and calf; killing method; outside legal size limits.

² Please include location in addition to date and source of initial information.

³ Please include both monetary and non-monetary penalties.

⁴ If investigation is not complete, please indicate anticipated completion date.