

Annex I

Report of the Infractions Sub-committee

Tuesday 14 June 2005, Ulsan, Korea

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

Sung Kwon Soh, Republic of 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/57/Inf1 Revised Draft Agenda

IWC/57/Inf2 Secretariat: Annotated Draft Agenda

IWC/57/Inf3 Secretariat: National Legislation details supplied to the IWC

IWC/57/Inf4 Draft Secretariat: Summary of Infraction Reports Received by the Commission in 2004

IWC/57/Inf5 Quota monitoring on minke and fin whale hunting in Greenland, 2004

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, 2004

The Secretariat introduced IWC/57/Inf3, the draft summary of infraction reports received by the Commission in 2004, which is given as Appendix 3 to this report.

The Republic of Korea sincerely regretted the reported incidents of illegal catches by its nationals in 2004, particularly in view of its role as host government this year. Following the identification of illegal hunting by poachers from 2000 to 2002, the Ministry of Maritime Affairs and Fisheries and the marine police of Korea have strengthened their intensive efforts to monitor and investigate suspected poachers, vessels and their movements, and also to enhance public awareness of poaching activities through the mass

media. As a result of these measures, four incidents were identified in 2004 in which eight minke whales had been caught illegally. The Government of Korea will continue its strong effort to bring an end to these illegal activities.

Denmark also expressed its regret for the illegal take of one humpback in Upernavik, Greenland in 2004. Details are given in Appendix 3.

The USA was pleased that Korea had imposed severe penalties on those responsible for illegal catching as it was important that severe punishments were adopted in order to deter further infractions. It hoped these measures would lead to a reduction in the number of infractions reported next year. This view was endorsed by the UK.

Sweden noted that, despite the stringent measures imposed, the number of infractions reported by Korea had increased each year since 2000. Korea believed that the publicity given to the incident in 2000 had attracted poachers to the hunt, particularly in view of the high prices that can be realised for whale meat. However, it believed that the extensive efforts that it was making to eliminate illegal whaling activities, including severe punishments for anyone convicted of taking, selling or transporting illegal whales, would soon bring an end to this illegal activity.

The UK asked Korea if it was possible to provide information as to the killing methods used in the illegal hunt and the probable times to death. Korea responded that as these were illegal operations, they were carried out covertly and so it was not possible to provide such information. The UK noted that although this type of operation could not be monitored, nevertheless it might be possible to ascertain the probable killing methods used.

Argentina expressed concern over 4 humpback whales, 212 minke, 1 north Pacific right and 1 Bryde's whale listed in last year's IWC/56 Scientific Committee report as being caught in fishing gear in Japan and Korea in 2003. Argentina asked if a whale is found alive in fishing gear, whether any effort was made to release the whale, or if as in the case in Japan, are Korean fishermen allowed to kill the whale to protect their fishing gear. Korea responded that such bycaught animals are not allowed to be killed. No statistics are available on this matter, but most bycaught animals are found dead.

The USA reported the possible take of a bowhead calf, a 6.7m male taken in September 2004 which was found to contain milk in its stomach. The whale had not been accompanied by a cow. The USA requested that the Scientific Committee provide a definition of a bowhead calf based on its length. The Chair **agreed** to forward this request to the Commission.

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.

Table 1
National legislation details supplied to the IWC¹

Country	Date of most recent material	Country	Date of most recent material
Antigua and Barbuda	None	Mali	None
Argentina	2005 ⁴	Mauritania	None
Australia	2000	Mexico	1982
Austria	1998	Monaco	None
Belgium	None	Mongolia	None
Belize	None	Morocco	None
Benin	None	Netherlands, The	2002
Brazil	1987	New Zealand	1992
Chile	1983	Nicaragua	None
China, People's Republic of	1983	Norway	2000
Costa Rica	None	Oman	1984
Côte d'Ivoire	None	Palau, Republic of	None
Czech Republic	None	Panama	None
Denmark (including Greenland)	1998	Peru	1984
Dominica	None	Portugal	2004
Finland	1983	Russian Federation	1998
France	1994	Saint Kitts and Nevis	None
Gabon	None	Saint Lucia	1984
Germany	1982	Saint Vincent and The Grenadines	2003
Grenada	None	San Marino	None
Guinea, Republic of	None	Senegal	None
Hungary	None	Slovak Republic	None
Iceland	1985	Solomon Islands	None
India	1981	South Africa	1998
Ireland	2000	Spain	1987
Italy	None	Suriname	None
Japan	1983	Sweden	1987
Kenya	None	Switzerland	1986
Kiribati	None	Tuvalu	None
Korea, Republic of	1996	UK	1996
Luxembourg	None	USA	2004

¹Up to the middle of June 2005. 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 European Commission. 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. ⁴Information was provided by Argentina on 14th June 2005.

Denmark introduced their document IWC/57/INF5, giving details of quota monitoring of minke and fin whale hunting in Greenland in 2004.

Following a question from Grenada, the Secretariat clarified that St. Vincent and The Grenadines had submitted an Infractions form and that it had not taken any whales in 2004 but had reported that 100% of their catches were under direct national inspection.

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 84-100% 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, the length and sex of any foetus if 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 58% 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.

Norway

The required information has been submitted to the Secretariat as noted in the Scientific Committee report (IWC/57/Rep1).

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 Portugal, the USA and Argentina.

In response to a question from Mexico, the Secretariat clarified that some errors in previous versions of Table 1 had been corrected this year.

The UK questioned why no new legislation had been provided to the Commission by Japan and Iceland since the IWC moratorium on commercial whaling came into effect in 1986, as it would have expected these nations to have enacted laws to implement the moratorium. Iceland noted that there had been no commercial whaling by Iceland since the moratorium came into effect, so it had no new

legislation to report. Japan reported that licences are required in Japan before whaling operations can take place and the moratorium was implemented simply by not issuing such licences. Thus it also had no new legislation to report.

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 Other

Austria noted that some infractions may not be fully resolved during the meeting to which they were reported. The Sub-committee **agreed** to the suggestion to include an item on the Agenda in future to bring such items forward to the following year.

New Zealand expressed its regret at the lack of a binding enforcement mechanism available to the Sub-committee, which could lead to a situation in which infractions are

systematically unpunished. It further stated that if one examined the reports of the Infractions Sub-committee over the past decade or so they demonstrate that Governments presently control the entire IWC compliance process. They unilaterally decide the appropriate threshold for qualification of infractions on a case-by-case basis. Governments can choose not to communicate information on infractions to the Commission. Governments are free to take or not take appropriate action to pursue an infraction. In New Zealand's view this was thoroughly unsatisfactory.

Sweden pointed out that it is not the Convention that is deficient but rather the application of it. Article IX of the Convention states:

1. Each Contracting Government shall 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.
2. No bonus or other remuneration calculated with relation to the results of their work shall be paid to the gunners and crews of whale catchers in respect of any whales the taking of which is forbidden by this Convention.
3. Prosecution for infractions against or contraventions of this Convention shall be instituted by the Government having jurisdiction over the offence.
4. Each Contracting Government shall transmit to the Commission full details of each infraction of the provisions of this Convention by persons or vessels under the jurisdiction of that Government as reported by its inspectors. This information shall include a statement of measures taken for dealing with the infraction and of penalties imposed.

The Russian Federation agreed with New Zealand that infractions need to be condemned and punished, but it underlined that punishment is the affair of the Sovereign state and is not within the competence of the Commission.

Korea reiterated that it regretted the eight whales it had reported as infractions. Its Government was imposing severe punishments on anyone convicted of involvement in the hunt and was making strenuous efforts to reduce illegal catching of whales.

8. ADOPTION OF REPORT

The report was adopted 'by post' on 18 June 2005.

Appendix 1

LIST OF PARTICIPANTS

Antigua & Barbuda
Tricia Lovell

Argentina
Miguel Iñiguez

Australia
Pam Eiser
Conall O'Connell
Gillian Slocum

Austria
Andrea Nouak
Michael Stachowitsch

Belgium
Koen Van Waerebeek

Brazil
Karina Groch
Regis Lima
Jose Palazzo

Chile
Eisa Cabera

Denmark
Henrik Fischer
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Ole Heinrich
Amalie Jessen
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Ole Samsing

Finland
Esko Jaakkola

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Peter Bradhering
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Grenada

Frank Hester
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Italy

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Japan

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Korea, Republic of

Chiguk Ahn
Yeong Gong
Zang Geum Kim
Hyun-Jin Park
Sung Kwon Soh (Chair)
Bun Do Yoon

Luxemburg

Pierre Gallego

Mexico

Lorenzo Rojas-Bracho

New Zealand

Mike Donoghue
Al Gillespie
Geoffrey Palmer

Norway

Halvard P. Johansen
Egil O. Øen
Hanne Østgard
Jorn E. Pedersen

Russian Federation

Rudolf Borodin
Vladimir Etylin
Valentin Ilyashenko
Gennady Inankeuyas
Olga Ipatova
Vlalilen Kavry
Igor Mikhno
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Saint Lucia

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UK

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USA

Roger Eckert
Maggie Hayes
Cheri McCarty
Micah McCarty
Daniel J. Morast
Rolland Schmitten
Diana Weigmann

Secretariat

Cherry Allison (rapporteur)

Appendix 2

AGENDA

1. Introduction 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, 2004
 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
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Appendix 3

SUMMARY OF INFRACTIONS REPORTS RECEIVED BY THE COMMISSION IN 2004

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/57/Rep1). Catch and associated data for commercial and scientific permit catches were submitted to the IWC Secretariat (IWC/57/Rep1). 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	5	6	11	2	13	None
	Minke	44	129	175 ¹	4	179	None
	Humpback			1			1 ²
East Greenland	Minke	4	7	11	0	11	None
St Vincent and The Grenadines							
	Humpback	0	0	0	0	0	None
USA							
	Bowhead	13	22	36 ³	7	43	None
Russian Federation							
	Gray	43	67	110	1	111	None
	Bowhead	1	0	1	0	1	None
Republic of Korea							
	Minke			8			8 ⁴

¹Includes 2 animals of unknown sex.

²On 7 September 2004, a report was received from a cruise ship and the police in Upernavik about a male humpback whale of length 11m that could hardly swim. The wildlife officer from Upernavik was sent for, and observed that the whale had old wounds due to rifle strikes. After authorisation from the Department of Fisheries and Hunting the whale was killed by hunters from the nearest villages and meat, blubber and qiporaq was distributed to institutions in the nearby villages and Upernavik. The incident was reported to the police. The investigation is not complete, but it is considered that the incident will not be solved due to the lack of possibilities of further investigation.

³Includes 1 animal of unknown sex.

⁴The Government of the Republic of Korea reported 8 illegal direct catches of minke whales by its nationals in Korean waters in 2004. It identified and confirmed these as infractions. The details are as follows:

(i) Four minke whales were caught between October and November 2004 near Pohang city. Two vessels were involved in the incident and two transporters were also arrested. Penalty: 30kg of meat were confiscated, a 10 month prison sentence and a fine of 1 million won imposed. In addition the fishing permits of the two vessels were suspended. The matter is under appeal (2005.1.12).

(ii) A minke whale of length 5m was caught on 14 March 2004 by a vessel using iron harpoons in waters 1 mile off Ulsan. Penalty: all money (35 million won) from meat sales was confiscated and a 6 month prison sentence imposed with 2 years probation. In addition the fishing licence and seamanship license were revoked and the fishing permit cancelled.

(iii) Two minke whales of length 5.1m and 4.2m were caught on 23 July 2004 and transported 12 miles off Ulsan. Penalty: all money (46 million won) from meat sales was confiscated and a 6 month prison sentence imposed with 2 years probation. In addition the fishing licence and seamanship license were suspended and the fishing permit suspended.

(iv) A minke whale of length 4.5m was caught on 29 July 2004 by three vessels using iron harpoons 12 miles off Ulsan. Penalty: a fine of 7 million won was imposed. Administrative punishments for the 3 vessels concerned is in progress. The matter is under appeal.