

## Annex T

### Report of the Data Availability Working Group

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The Committee has noted that the question of data availability is a complex and sensitive one. A balance must be struck between the needs of the Committee and the rights of the scientists who have invested considerable time and effort in collecting the data. A number of issues were raised in our discussions last year with respect to this issue, particularly in the context of the RMP process. Although some progress was made, consensus was not reached. It was agreed that we should try and reach either a consensus recommendation or a limited number of options to consider at this meeting (IWC, 2003, 14).

#### Experience during the past year

Correspondence between applicants and the Institute for Cetacean Research from two cases last year were examined – one involving an individual scientist from the Scientific Committee and one involving a working group established by the Scientific Committee. General features of these applications provided useful background information to the Working Group's discussions.

#### Towards a consensus view

All members of the Working Group agreed that the following three principles must be taken into account if a fair data availability solution was to be found, even if there are differences of opinion as to their relative importance:

- (1) Data represent a significant temporal and financial investment by scientists and research institutes – use of their data by others should be accompanied by appropriate safeguards;
- (2) The right of first publication is a generally accepted scientific norm;
- (3) If important management decisions are to be made, they should be based on a full scientific review of both data quality and analysis that can be independently verified.

The approach below has been agreed by all members of the Working Group. The only remaining issue is whether the data are held by the Secretariat or by the data owner. Most members favoured the former but agreed that the most important issue was that once an application is approved, the data are sent promptly to the successful applicant(s) – i.e. normally within two weeks (see Procedure A (2) below).

#### THE RECOMMENDED APPROACH

Issues of data availability affect different categories of the Committee's work. What follows concerns data that the Scientific Committee believes is particularly important to its work. Requests of a more academic or general scientific nature should be dealt with on a bilateral basis.

*Procedure A* is the process for obtaining access to data for analyses that are needed to provide the best management advice on catch limits (e.g. the RMP and AWMP).

*Procedure B* is the process for obtaining access to data for analyses the Committee believes would be valuable in providing other advice to the Commission.<sup>1</sup>

Note that the data themselves may in some cases be the same for both Procedure A and B. The difference lies in the objectives of the analyses. For Procedure A, it is therefore essential that any requests for data are accompanied by a statement of the objectives of the study and the methods likely to be used (different timelines apply for novel methods rather than standard methods). Any application for data under Procedure A restricts use of the data to producing papers for the Scientific Committee that are directly relevant to providing management advice on catch limits.

Use of the word 'meeting' below includes Annual Meetings, Special Meetings and workshops. Applications can only be made by accredited persons in accordance with the Committee's Rules of Procedure.

#### Data Availability Group

The Scientific Committee shall be represented by a small group comprising the Chair, the Vice-Chair and the Head of Science, hereafter called the Data Availability Group.

#### Conditions for data recipients

Applications deemed suitable under Procedure A or Procedure B below are granted under the following conditions:

- (1) Data shall not be transmitted to third parties.
- (2) Papers may only be submitted to a Committee meeting in accordance with the time restrictions given below. Such papers must not include the raw data or the data in a form in more detail than is necessary to understand the analysis.
- (3) Papers must carry a restriction on citation except in the context of IWC meetings.
- (4) Data owners are offered co-authorship.
- (5) Publication rights remain strictly with the data owner.
- (6) Data shall be returned, to the Secretariat or the data owner as appropriate, immediately after the meeting at which the paper is submitted and any copies destroyed, unless an extension is granted.

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<sup>1</sup> E.g. the request for data for VPA analyses considered last year

- (7) Data requesters sign a form agreeing to the above conditions. Such forms will be held by the data owner and the Secretariat. In the case of Procedure B, the Data Availability Group will sign the agreement on the Committee's behalf and ensure that the conditions of any agreement are met by any individual scientists involved in the analysis.
- (8) In the event of a breach of the conditions in (6), serious sanctions [to be determined] will apply.

#### Procedure A

The following shall apply with respect to data required for the process outlined in IWC (2003, pp.11-12) for the RMP, the AWMP (see IWC, 2003) and other information used to provide advice on aboriginal subsistence catch limits before the relevant SLAs have been completed. The rules apply to all data owners who wish their analyses to be considered as part of the process to provide advice on catch limits.

Data owners may submit data to be treated under this procedure, even if they do not intend to analyse the data themselves.

When an application for data under this procedure is submitted, the Data Availability Group shall (a) decide whether an application fulfils the criteria with respect to the objectives of the study and (b) determine whether the methods proposed are considered standard or novel. The small group may take advice from the data owner, applicant or other relevant scientists in this process.

- (1) If they wish analyses to be considered by the Committee, data owners must make data used for the analysis available in an agreed form and specified resolution (if desired, to the Secretariat) no later than 6 months before the meeting at which they are to be used. Examples are given in Appendix 1. These data shall be made available to accredited persons only under the conditions listed above. Data owners shall be notified of any such requests, including a description of the objectives of the study and the methods to be used.
- (2) The Secretariat or data owners shall respond (i.e. send the data) to requests for data approved by the small group promptly, normally within two weeks of receiving the request.
- (3) If novel methods are to be used, Scientific Committee papers documenting data analysis and results shall be circulated no less than 3 months before the meeting at which they are to be considered. Any such papers should include sufficient documentation of the analysis for it to be fully reviewed and any associated analytical software shall be lodged with the Secretariat.
- (4) If standard methods are used, Scientific Committee papers documenting data analysis and results shall be circulated no less than 2 months before the meeting at which they are to be used.
- (5) Alternative analyses carried out in response to papers submitted under (3) or (4) shall be circulated no less than 7 months before the meeting at which they are to be used.

#### Procedure B

This applies to data required for analyses deemed important in providing advice to the Committee other than catch limits (e.g. on the status of stocks not subject to whaling). For data not subject to Procedure A, the data owners shall produce, in collaboration with the Committee, a published protocol for data access that applies to requests generated by the Committee, to ensure clarity and a mutual understanding of the process.

- (1) The Committee shall specify the nature of the work and the data required during the meeting at which the recommendation is made, to the fullest extent possible in the time available at the meeting and in accord with the published protocol. It should also name the appropriate scientists to undertake the work and designate an appropriate timeline.
- (2) Applications to the data owners following the published protocol referred to above, should be submitted by the Data Availability Group assisted by a nominated member of the relevant delegation or institute. The Data Availability Group will consult with relevant members of the Committee if further explanation or clarification is required.
- (3) If the above process is followed, then the data owners will normally approve the applications within a specified time period in accordance with the published protocol.
- (4) Applications shall only be granted under conditions given above.

#### Appendix 1

##### EXAMPLES OF DATA THAT COULD BE LODGED IN ACCORD WITH PROCEDURE A

- (A) If genetic analyses are tabled, then by animal one would expect:
  - (a) Date sampled
  - (b) Position sampled
  - (c) Nuclear DNA microsatellites
  - (d) mtDNA sequences
  - (e) length, sex
- (B) If movement data analyses are tabled, then by animal one would expect:
  - (a) Day of first marking
  - (b) Position of first marking
  - (c) Day/position of 'recapture(s)' (harvest, photo-id, telemetry)
  - (d) Known additional data (e.g. length, sex)

**A WORKED HYPOTHETICAL EXAMPLE OF HOW 'PROCEDURE A' MIGHT FUNCTION**

Years 0-2	Country A collects genetic samples from 200 animals
November Year 2	The data are almost all processed and the country's scientists decide that they wish an mtDNA analysis of their data to be considered by the Scientific Committee at its Annual Meeting beginning 1 June Year 3. They consult with the small group and are informed that one of the analyses they propose is considered 'standard and the other 'novel'.
December Year 2	The mtDNA data are submitted to the Secretariat at the resolution given in Appendix 1 (sequences by animal, date position, sex, length). They are now available to accredited persons following Procedure A. This is notified to the Committee by the Secretariat.
January Year 3	An accredited person (Murphy) sends in a brief standard form proposal explaining (1) the objectives of his research, (2) the methods (3) the data required and (4) agreement to abide by the conditions for data use. This is reviewed by the small group, deemed acceptable and a copy of the proposal and the agreement is sent to the data owners. They and Murphy are informed that the proposed method is considered novel and the implications of this are explained. The data are sent to the applicant by the Secretariat within 2 weeks of notification.
February Year 3	Another accredited person (Gonzalez) sends in a brief standard form proposal explaining (1) the objectives of her research, (2) the methods (3) the data required and (4) agreement to abide by the conditions for data use. This is reviewed by the small group, deemed acceptable and a copy of the proposal and the agreement is sent to the data owners. They and Gonzalez are informed that the proposed method is considered standard and the implications of this are explained. The data are sent to the applicant by the Secretariat within 2 weeks of notification.
1 March	Papers by both the data owner and Murphy using novel methods are submitted to the Committee. The data owners' paper also includes the results of the standard analysis.
1 April	Gonzalez' paper is submitted to the Committee.
1 May	Papers by the data owner, and Murphy are presented
1 June Year 3	The Scientific Committee meeting