

Annex D

Chair's Report of the Intersessional Meeting of the Commission on the Future of IWC

FAO Headquarters, Rome, 9-11 March 2009

1. INTRODUCTORY ITEMS

The meeting was held at the Headquarters of the Food and Agriculture Organisation of the United Nations (FAO) in Rome, Italy from 9-11 March 2009. A list of participants is given as Annex A. It was chaired by Bill Hogarth (USA), Chair of the Commission.

1.1 Introductory remarks

The Chair welcomed participants to the meeting which he considered to be very important in terms of the future of the IWC. He thanked the Government of Italy for hosting the meeting and FAO for making its facilities available.

The Chair was encouraged to see so many Contracting Governments in attendance and believed this illustrated how seriously members are taking the process to address the future of the IWC and the conservation and management of whales. He recalled that this process began in earnest at the Annual Meeting in 2007 when the Commission agreed to hold an intersessional meeting in March 2008. The Chair believed that considerable progress had been made since that meeting – progress that would not have been possible a few years ago.

The Chair noted that the March 2008 intersessional meeting in Heathrow, London had focused on procedural issues and on ways to improve negotiations within the IWC. By doing this, it was hoped that negotiations on substantive matters would have a greater chance of succeeding. The Chair believed that the Heathrow meeting was successful, both in recommending ways to improve procedures - quite a few of which were agreed by consensus at the 2008 Annual Meeting in Santiago, Chile - and in changing the atmosphere in which discussions are conducted.

Having tackled some of the most pressing procedural issues in Santiago, the Chair noted that the Commission then turned its attention to the substantive issues that have polarised the organisation. It identified 33 elements/issues of importance to the future of IWC and established the Small Working Group (SWG) to assist the Commission *'to arrive at a consensus solution to these issues to enable it to best fulfil its role with respect to the conservation of whale stocks and the management of whaling'*. He further noted that it has been recognised for some time that the solution to IWC's problems lay in the development of a package of measures involving compromises on all sides and that the SWG's primary task has been to make every effort to develop a package or packages for review by the Commission. The Chair was pleased that Ambassador Alvaro de Soto, one of the outside experts invited to the 2008 intersessional and annual meetings, had been prepared to chair the SWG and thanked him and the SWG members for their hard work and commitment over the past

months. Noting that tackling the procedural issues is easy compared with the substantive issues, given the strongly-held views held on both sides of the whaling debate, the Chair expressed his hope that even with these difficulties, the Commission's discussions would continue in a positive and cordial manner.

The Chair stressed the need to consider what is at stake if IWC failed to resolve its problems and drew attention to the Preamble to the 'suggestions' that he had put forward, together with Ambassador de Soto, in document IWC/M09/4 on the future of IWC, i.e. *'The future course of the IWC needs to be defined by broad agreement; failure to do so could compromise not only the conservation status of whale populations but also the continued relevance and credibility of the Commission as an effective global conservation and management body at a time when there is a growing need for enhanced international cooperation'*. He referred to the negative reactions reported in the press of some to these 'suggestions'. He had not been surprised by such reports given the strength of feeling on this issue and noted the importance of communicating clearly to the public about what the Commission is trying to do. He suggested that perhaps more attention should be given to this matter in future.

Finally, the Chair ended his introductory remarks by noting that the meeting's primary objective is to review the outcome of the SWG's work so far and the 'Chairs' suggestions on the future of IWC', and on the basis of discussions to direct the SWG's further work prior to the Annual Meeting in Madeira in June 2009.

1.2 Management and reporting

The Chair reported that Ambassador Alvaro de Soto, Chair of the SWG, would have speaking rights during the meeting in a similar manner to the Chair of the Scientific Committee. He noted that in the same way as was done at last year's Annual Meeting, there would be a NGO session on the second day during which up to six NGOs broadly representing the range of views could address the meeting for up to five minutes each. The Chair re-confirmed previous arrangements for the speaking rights of intergovernmental organisations (IGOs), i.e. that he would allow IGOs to make one intervention. He requested IGOs to let him know in advance if they wished to speak and under which item.

With respect to reporting, the Chair noted that he would prepare a Chair's report summarising the main discussions and outcomes of the meeting that would be circulated to all Contracting Governments and made publicly available as soon as possible after the meeting. He noted that a press release would be released immediately after the meeting

closed on Wednesday. Nicky Grandy and Greg Donovan of the Secretariat were appointed as rapporteurs.

With respect to confidentiality, the Chair initially gave instructions that discussions at the meeting should be treated as confidential by both delegates and observers until the report of the meeting had been sent to all members of the Commission. This was later modified to maintaining confidentiality until the end of the meeting.

1.3 Review of documents

The list of documents available to the meeting is given as Annex B.

2. ADOPTION OF AGENDA

The Chair drew attention to the draft agenda. Japan requested that it be allowed, under 'Other Matters' to give a short presentation regarding the harassment of its research vessels by the Sea Shepherd Conservation Society during its research activities this austral Summer. The Commission agreed.

The adopted agenda is given as Annex C.

3. REPORT OF THE SMALL WORKING GROUP ON THE FUTURE OF IWC

3.1 Presentation of the SWG Chair's Report

The SWG Chair presented his report on the SWG (Document IWC/M09/4) which included suggestions on the future of IWC that he had developed together with the IWC Chair, i.e. the 'Chairs' suggestions'. (These suggestions have been extracted from the report and are included in this document as Annex D).

The SWG Chair reported that the group had met twice, once in Florida, USA in September 2008 and again in Cambridge, UK in December 2008. He reported that at its first meeting, the SWG recognised that the size of the group (26 countries) and the number of elements/issues that the Commission had identified as important for its future (i.e. 33 elements/issues) could hamper its ability to efficiently discharge its primary task of developing 'a package or packages for review by the Commission' in order to assist it 'to arrive at a consensus solution to the main issues it faces,' particularly having regard to the limited time available for the SWG to complete its work. To rationalise its work, the SWG had therefore agreed, on the understanding that 'nothing is agreed until everything is agreed', to allocate the 33 elements/issues into the following two categories:

- (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 exists or can be established to address them. These are primarily but not exclusively scientific and administrative issues.

The SWG Chair stressed that the breakdown into Category (a) and (b) issues (see Table 1) does not imply that the

SWG believed that some elements/issues are more important than others, nor that the breakdown be so rigidly interpreted as to mean that issues under one category could be raised when considering the other. Rather that the division should be understood primarily as a methodological step without which the SWG's work might have proved quite unwieldy.

On the basis of the categorisation agreed and the identification of the main issues that should be addressed, views were put forward at the Florida meeting on the elements that could be included (and how they might be combined) in a hypothetical core package or packages concerning the future of the IWC. This was discussed further during the SWG's second meeting in Cambridge, when a first attempt was made to reflect in writing the outlines of a package for consideration by the Commission as a whole. The SWG Chair reported that as a result of subsequent consultations and comments from the group's members, the 'Chairs' Suggestions on the Future of the International Whaling Commission' had been developed (see Annex D). He stressed that the suggestions are the sole responsibility of himself and the Chair of the Commission. He also stressed that they are not a final proposal for action by IWC but rather a snapshot of a work in progress, for consideration by the intersessional meeting, which he and Bill Hogarth believe pointed in the direction of what might be an overall solution to the core issues. The SWG Chair indicated that both he and the Chair of the Commission were aware of the many concerns that had arisen following the release of their 'suggestions' and that they recognised the need to provide more clarity prior to the Annual Meeting in Madeira. Of the issues allocated to Category (a), the SWG Chair reported that it has proven particularly difficult to identify a single way forward regarding three issues (i.e. Japanese small-type coastal whaling¹, special permit whaling and sanctuaries), that it is recognised that agreement on these issues is inter-related and that it will not be possible to reach agreement on coastal whaling without agreement on research whaling under special permit and *vice versa*. He further noted that the question of where regulations would apply – i.e. sanctuaries – cuts across both. He therefore believed that the only possibility is to consider these three issues as a 'core' or 'micro' package.

The SWG Chair believed that the SWG agreed that realistic solutions to IWC's problems, given the complexity of the numerous political, administrative and scientific issues to be addressed, cannot be achieved overnight. For this reason a two-stage approach to their resolution was being proposed. The first stage consists of short-term solutions which, it is hoped, the Commission could agree on no later than June 2009, which would last for a 5-year 'interim' period. The SWG Chair explained that during the interim period, long-term solutions relating to the governance and future functioning of the IWC are to be developed to be put in place at the end of the interim period, when the second stage begins. These would

¹The SWG clarified that in the Chairs' suggestions, Japanese Small Type Coastal Whaling refers to whaling activities that would be carried out within Japan's EEZ (this is implied by the fact that only day-trips would be allowed) and is consistent with how the phrase 'small-type coastal whaling' has been used in Commission discussions in recent years. It is not intended to be confused with the term 'small type whaling' introduced into the Schedule some time ago (where it refers to catching operations of small cetaceans, i.e. minke, bottlenose, beaked, pilot or killer whales).

Table 1
Allocation of the 33 elements/issues into Category (a) and (b).

Element	Category (a) issues	Element	Category (b) issues
2.	Animal welfare	1.	Advisory/Standing Committee or Bureau – need for
3.	Bycatch and infractions	2.	Animal welfare
6.	Coastal whaling (i.e. within EEZ)	3.	Bycatch and infractions
7.	Commercial whaling moratorium	4.	Climate change
8. and 26	Compliance and monitoring + sanctions (element 26)	5.	Civil society (involvement of)
11.	Convention (purpose of)	9.	Conservation Committee
21.	Objections and reservations	10.	Conservation management plans
23.	Research under special permit	12.	Co-operative non-lethal research programmes
24.	Revised Management Procedure (RMP)	13.	Data provision
25.	Revised Management Scheme (RMS)	14.	Developments in ocean governance
27.	Sanctuaries	15.	Ecosystem-based approach to management
30.	Small cetaceans	16.	Environmental threats to cetaceans
33.	Whalewatching/non-lethal use	17.	Ethics
		18.	Financial contribution scheme
		19.	Frequency of meetings
		20.	Marine Protected Areas (MPAs)
		22.	Procedural issues – improvements to
		28.	Science – role of science and functioning of Scientific Committee
		29.	Secretariat – implications for role of/expertise
		31.	Socio-economic implications
		32.	Trade restrictions

incorporate well-developed policies as well as full testing of management protocols using computer simulations following approaches pioneered by the Scientific Committee.

3.2 Discussion

3.2.1 The Chairs' Suggestions on the Future of the IWC

The Chair indicated that he intended to structure the discussions by first taking questions for clarification, then taking comments regarding whether the 'Chairs' suggestions' are 'on the right track' and then allowing discussion on the elements/issues themselves within the 'suggestions'.

POINTS OF CLARIFICATION

Spain drew attention to the suggestions under element 23 on Research Under Special Permit. It noted that two options were proposed and that while Japan's research programme in the North Pacific (JARPN II) is mentioned in Option 2, there is no mention of it in Option 1. It sought clarification on whether this was intended. The Chair confirmed that this was the case.

WHETHER THE SUGGESTIONS ARE 'ON THE RIGHT TRACK'

Australia welcomed the constructive spirit of discussions on IWC's future in both the SWG and the Commission. While noting the long-held positions of principle, experience and practice among members, it wanted to work with others to find a way forward. Australia thanked the IWC and SWG Chairs' for their suggestions, commenting that for the first time in many years, it appeared that progress might be possible. It saw this as a very welcome development. It identified four elements that it believed were key to underpinning progress.

Firstly, Australia believed that the principle in the Chairs' Suggestions for the Commission to first agree an initial package of measures, while launching further discussions to resolve other issues in that period was a good one, but called for flexibility on the length of the initial period. In particular, it saw no clarity regarding how special permit whaling would be treated in such an arrangement and that as yet, there had not been any discussion on the specific mechanism that would be

established in an interim period or the commitments that members would need to make. Australia believed that these matters needed to be elaborated in detail as a basis for discussions at the 2009 Annual Meeting.

Secondly, Australia re-iterated the need for any package to set the direction for modernisation of the Commission's work to bring it into the 21st century. It believed that the Category (b) issues and the role of science in the Commission are fundamental in this respect. It noted that many important conservation issues were included in Category (b) because they could conceivably be addressed in the Commission's normal work. However, Australia stressed its view that any package must contain a genuine commitment to resolve Category (b) matters and an agreement to reform the role of science in the Commission.

Thirdly, Australia believed that a package could only be achieved when a solution is found to unilateral special permit whaling. It was disappointed that the Chairs' Suggestions indicate that a reduction might be sufficient in an interim package and that discussions on real solutions could be left to an interim period. While Australia would welcome any reduction in the scale of special permit whaling, it considered that such measures do nothing to resolve the fundamental difference in views about the legitimacy of such activities under the banner of Article VIII of the Convention. For Australia to join any package, it stressed that such a package would need to contain hard commitments for unilateral special permit programmes to be brought to an end. It noted that while several proposals on how the Commission might better regulate the use of Article VIII, including by Australia, had been made, the SWG had yet to explore them.

Fourthly Australia indicated that it had sought to understand the Chairs' Suggestions regarding Japanese Small-Type Whaling in a spirit of trying to find a way forward and in recognition of its importance to other parties. It noted that important questions, still to be addressed, had been raised in the SWG regarding the justification for the proposed activity, its potential commerciality, its relationship to the moratorium, its potential to set a precedent and the rules under which it would be conducted.

Finally Australia noted that considerable further work remains over the following two months if there is to be a final report that contains a concrete package or packages that the Commission might be able to endorse in Madeira at IWC/61. However, it re-iterated its commitment to making progress and hoped that it would be possible to achieve consensus in Madeira.

Brazil acknowledged the strenuous efforts of the IWC and SWG Chairs in trying to develop a suite of options that could move IWC forward, offering actual gains for conservation and recognising specific needs of coastal communities without compromising basic principles of Contracting Governments in relation to the Convention or to the rights of individual States. It therefore welcomed the Chairs' Suggestions as a timely attempt to begin to codify and resolve some of the basic issues with which the Commission has struggled over the last few years. Brazil noted that like other participants in the process, it has strived to be flexible towards achieving an outcome that would be acceptable to most members. It therefore welcomed the possibility of fully accepting whalewatching as a legitimate management option and to be treated as regular business of the Commission. Brazil was also willing to accept, pending the opinion of other co-sponsors, the establishment of the South Atlantic Whale Sanctuary for an initial five-year period. Although it recognised that the need for a re-authorisation of the Sanctuary after that period is unusual and charged with political risk, it was willing to accept this in the spirit of compromise.

Brazil expressed concern regarding how an agreeable solution to whaling under Special Permit, perhaps the most contentious issue, could be found. It understood that Japan, and possibly other Contracting Governments, intends to retain its treaty rights regarding Article VIII but expressed a willingness to continue to work with Japan and others to find a solution that, while retaining such rights, at least in the short-term, would have enough negotiated elements to compel them to refrain from the use of such rights at their own will. Recognising that this would entail a great deal of mutual trust, but a potentially viable avenue to explore, Brazil indicated that for it to agree to such an arrangement, ways must be found to phase-out pelagic whaling in international waters, or at the very least in the Southern Ocean, under any name or category of whaling.

Noting that the process underway is based on mutual trust, Brazil believed that for the process to work, there must be certainty that Contracting Governments will strive to find solutions that are of great interest to their own people while not infringing upon, or being seen to infringe upon, other nations' management systems or resource uses, either realised or potential. It considered that the Southern Hemisphere holds the greatest potential for the non-lethal management of cetaceans that directly benefit, in a much-needed way, coastal communities in developing countries. Brazil considered that the continuation of large-scale whaling by countries far detached from its region sends the wrong message regarding the accommodation of interests and the respect for its different views and means of appropriating whale resources sustainably. It therefore looked forward to working with Japan and others to find a way to end whaling in the Southern Hemisphere and to bring all other remaining whaling under the control of IWC.

Finally Brazil suggested that for the process underway to succeed, IWC must address and remove the current

reasons for tension and distrust. It believed that the escalation of unregulated whaling and the recent resumption of international trade in whale products badly damage the process. Brazil urged those governments concerned to rethink their options and to work with all members towards achieving common ground.

The Czech Republic reported that a new Council Decision had been adopted on 2 March 2009 establishing the position to be adopted on behalf of the European Community at the next three annual meetings and related intersessional meetings of IWC with regard to proposals for amendments to the International Convention on the Regulation of Whaling and its Schedule. It informed the meeting that, as current holder of the Presidency to the Council of the European Union (EU), it would be speaking on behalf of EU countries according to the common position given below.

- (1) The overarching objective of the European Community in relation to the IWC is to ensure an effective international regulatory framework for the conservation and management of whales guaranteeing a significant improvement in the conservation status of whales in the long term and bringing all whaling operations under IWC control.
- (2) The Member States acting jointly in the interest of the Community shall take the following position on proposals for decisions by the IWC at its next three annual meetings and the related inter-sessional meetings:
 - (a) support the maintenance of the moratorium on commercial whaling in the Schedule;
 - (b) oppose any proposals regarding new types of whaling, currently not envisaged in the Convention, unless such proposals involve only local consumption and foresee a role for scientific advice by the IWC, while at the same time guaranteeing a significant improvement in the conservation status of whales in the long term and bringing all whaling operations by IWC members under IWC control;
 - (c) support proposals for the creation of whale sanctuaries according to the IWC rules;
 - (d) support proposals for the management of aboriginal subsistence whaling, on the condition that the conservation of the relevant stocks is not compromised, having due regard to the precautionary principle and the advice of the Scientific Committee, and that whaling operations are properly regulated and all whaling catches remain sustainable within the scope of subsistence needs for local use; and
 - (e) support proposals aimed to end the conduct of 'scientific whaling' outside IWC control.

Noting the remarks of the Czech Republic, Denmark clarified its situation in relation to that common position. It indicated that while as an EU Member State Denmark is bound by the EU common position, because Denmark has overseas territories that are not part of the EU (Greenland and the Faroe Islands) it may, in specific cases where the interests of Greenland and the Faroe Islands diverge from those of the EU, need to deviate from the common EU position. It therefore informed the meeting that when Denmark made an intervention, it would be to pursue the interests of its overseas territories.

New Zealand noted that its position on whaling is well known and has not changed. Regarding the process to resolve IWC's future, New Zealand celebrated the progress made under the IWC and SWG Chairs, noting like others that these meetings now have a better tone and better atmosphere than in the past. It considered that IWC had embarked on settling disputes by diplomacy, but suggested that while negotiations are being conducted openly, in good faith, and without rancour, it should be borne in mind that failure is a possibility. New Zealand reported that the Chairs' Suggestions do not reflect its position. It further reported that its Government had not yet taken a position on individual elements of the paper and would not do so until negotiations are complete and until there is clarity on the proposals. It was not committed to the view that the issues highlighted in Chairs' Suggestions are the only ones deserving of attention. New Zealand believed that the salvation of IWC will lie in finding solutions to the longer-term issues, and in particular to a successful conclusion to a process that will address and resolve issues around: the long term purpose of the IWC; Special Permit whaling (i.e. preferably the removal of Article VIII from the Convention or at the very least being brought under international control); whaling under reservation or objection (which it considers to be inconsistent with sound resource management objectives); and methods of dispute settlement. New Zealand recognised that these issues are difficult and that they may require some years of negotiation to resolve. However it believed that a start must be made at Madeira or soon thereafter.

New Zealand went on to comment on the four issues identified in the Chairs' Suggestions for immediate attention. It noted that it is not persuaded that there is a case for recognition by the Commission of Small Type Coastal Whaling and it remained concerned about the sustainability of such an activity in the coastal waters of Japan given the uncertainties surrounding stock structures in those waters, the state of 'J' stock minke whales and the degree of mixing with 'O' stock animals off the coast of Japan, and the levels of bycatch. However, it was aware that many of the whales that would be caught by small type coastal whaling are already being caught under Japan's North Pacific Research programme (JARPN II) and it was prepared to continue to explore this option as part of the continuation of the SWG's work, although it called for greater clarity around the science that relates to this form of whaling. New Zealand indicated that Special Permit whaling is the key issue and that without progress on this issue, there could be no successful outcome to the SWG process. It sought an end to all Special Permit whaling as soon as possible, especially in the Southern Ocean but accepted that a phased approach may be needed to achieve this end. However, it could not accept a capping of numbers with no commitment to a process for further reductions.

New Zealand strongly supported the establishment of the South Atlantic Whale Sanctuary and applauded the Latin American countries for the forbearance they have shown in being willing to see this established for an initial period of five years. It noted that it has long been a supporter of the non-lethal uses of whales and in particular of whalewatching and was pleased that part of the initial package proposed by the Chairs includes recognition of these important activities. Finally New Zealand noted that while the SWG has made good progress to date, it was

clear that it has more to do if a successful outcome is to be achieved at Madeira.

Mexico noted its commitment to developing a package of measures that would modernise IWC and indicated that in its view, whaling under Special Permit is the most important issue around which the others revolve. It believed strongly that research whaling should be under IWC control and only done in exceptional cases. Mexico expressed concern over the proposals on Japanese Small-Type Coastal Whaling, particularly with respect to potential risks to 'J' stock minke whales and noted that for this issue and whaling under Special Permit, more clarity is needed on what is being requested of the Scientific Committee in terms of the provision of advice. It questioned whether five years will be sufficient time to develop long-term solutions relating to the governance and future functioning of the IWC.

Like Mexico, Costa Rica also called for modernisation of the IWC and supported the creation of the South Atlantic Sanctuary and formal recognition of IWC's role in whalewatching/non-lethal use. It did not support the lethal use of whales, including whaling under Special Permit or trade in whale products but did agree that any package(s) must: provide for the long-term sustainability of stocks based on best available science; provide for the recovery of depleted or endangered stocks based on the best available science; be balanced; and provide procedures for reviewing and where necessary improving governance practices within the IWC. Costa Rica believed that more detail needed to be developed on the proposals and noted its willingness to continue as an SWG member.

The UK believed that the Commission's discussions had moved some distance since the 2007 and 2008 meetings and expressed satisfaction that discussions are moving in a not un-sensible direction. However, it felt that the package of measures proposed by the Chairs' raised fundamental questions and that considerably more work is required on them. The UK noted its commitment to finding a way forward while recognising the inherent pain in making compromise. It expressed a number of concerns regarding the proposal on Japanese Small Type Coastal Whaling, including that it represented a potential breach of Schedule paragraph 10(e), that it was potentially commercial in nature and that it may have potential adverse effects on 'J' stock minke whales. It was also concerned as to how and when appropriate catch limits could be determined and sought clarification from either the Chair of the Scientific Committee and/or the IWC Head of Science on this matter. With respect to whaling under Special Permit, the UK believed that the control and ending of such activities, although it was not clear how this could be achieved, is vital in guaranteeing the future of IWC. The UK also recognised the large number of both category (a) and (b) issues on which resolution needed to be found within the five-year interim period. Nevertheless it reiterated its commitment to trying to find a solution to IWC's problems.

Responding to the UK's question on catch limits, the Head of Science noted that the Scientific Committee's work on 'O' and 'J' stock animals is in progress and that the Committee has not begun its *Implementation Review* of western North Pacific minke whales. In terms of progress he reported that the Committee expected to receive further genetic information at the Annual Meeting in Madeira with respect to 'O' and 'J' stock animals and to have agreed new

abundance estimates. He noted that the Committee may be able to provide interim advice regarding catch limits within a simulation framework given sufficient guidance from the Commission on *inter alia* management and conservation objectives; an *Implementation Review* will take at least two years. The Chair of the Scientific Committee endorsed these remarks and further noted that for the Committee to be able to provide advice it requires additional information, e.g. whether it is to be provided on an annual basis or in a block, for example, of five years.

Iceland believed that substantial progress had been made, that members of the SWG had shown a willingness to work together and that this had been a generally positive experience. It appreciated the Chairs' Suggestions as an attempt to move forward. It indicated that it was prepared to move forward in a phased way but stressed the need to look at the issues themselves. Iceland noted that it would have preferred a more general outlook on whaling in the Chairs' Suggestions, rather than simply limiting them to whaling in Japan's coastal waters. For Iceland, the issue is not a question of whether whaling will continue but whether it will continue under IWC control. Iceland therefore believed that it would be important to identify which lines could not be crossed and where common ground among members did and did not exist so as to identify any basis for compromise. For example, it felt it important to know whether, for some members, a commercial element to whaling is out of the question, although it suggested that such a position may not be useful for the future of IWC itself. Iceland stressed its own view that trade in whale products is not an IWC issue.

Noting that its position is well known, Argentina stressed the importance of determining a clear way of dealing with the issues it considered of most importance, i.e. whaling under Special Permit and whaling under objection/reservation. It also believed that trust among members must not be undermined by unilateral actions that may endanger the process addressing IWC's future.

Monaco, clarifying that although geographically part of Europe it is not part of the EU, believed that discussions and decisions should be based on sound science and that emotional positions should be avoided. It viewed the elimination of whaling under Special Permit as a fundamental part of any package while recognising that compromises must be made. Monaco believed that solutions to IWC's problems do exist but that finding them requires imagination and courage.

Portugal considered the Chairs' Suggestions to be a reasonable matrix. It urged members to keep an open mind and stressed the importance of finding stable solutions rather than quick fixes.

The USA reported that its new Administration is fully committed to furthering discussions of critical issues within the IWC, including the organisation's future. It believed that the IWC is and must continue to be the premiere international forum to resolve current conservation issues, co-ordinate critical research, and develop international agreement on whale conservation. The USA noted that it continues to view the commercial whaling moratorium as a necessary conservation measure and that lethal scientific whaling is unnecessary in modern whale conservation management. It thanked the IWC and SWG Chairs for their efforts in developing a proposal for review by the Commission at its intersessional meeting. It noted that the USA has participated actively in the SWG and that it has

been encouraged by the frank and collegial dialogue that has prevailed during the meetings. The USA recognised that much work remains to be done and indicated that it will continue to reserve judgment on any package until the SWG completes its task. It was the view of the USA that any package, to be acceptable, must result in a significant improvement in the conservation status of whales. It recognised that some issues may require a longer view toward resolution than others, but that failure to resolve these issues is not an acceptable outcome. It looked forward to open discussion of the SWG report, including hearing the views of the NGOs, and to future opportunities for open and transparent discussions.

Japan noted that while the Chairs' Suggestions include issues which it finds difficult, it believed that they provided a reasonable basis for further discussions. It did, however, express disappointment at the tone of some responses reported in the media to the 'suggestions' (e.g. that whaling is criminal and evil) which are not conducive to finding a compromise. Japan accepted that different countries have different views on whaling, but believed that the only way forward for IWC is to agree a package of measures based on the spirit of give and take while respecting IWC's original mandate. With respect to the two options on whaling under Special Permit described in the Chairs' Suggestions, Japan considered that Option 1 is against the spirit of IWC and that under Option 2, the number of whales taken should be at a level required for meaningful scientific research. As it has done in the past, Japan highlighted the problems created for its coastal whaling communities by the imposition of the commercial whaling moratorium and the rejection of its past requests for a relief allocation of whales. It believed these communities had suffered enough. It recalled that in response to the IWC Chair's initiative at the 2007 Annual Meeting to establish a process to resolve IWC's problems, it had co-operated by suspending its planned takes of humpback whales as part of the JARPA II programme. It stressed that it would continue to co-operate as long as it perceived the process to be fair and that realistic goals are set. Finally, Japan believed the Chairs' suggestions regarding interim arrangements is wise and noted that it will participate in discussions in good faith.

The Republic of Guinea urged that members recognise each others' views. It hoped that consensus could be reached and noted the importance it places on science.

The Republic of Korea applauded the work in progress of the SWG of which it has been a member. It supported the ongoing process to resolve IWC's problems and stressed the need to accommodate and harmonise the polarised positions within the Commission as a matter of urgency. It believed it important in this reform process, to pursue a balanced approach to the objective of conservation and sustainable utilisation of cetacean resources. With respect to the three key issues outstanding and identified in the SWG report, the Republic of Korea noted that it shares the SWG recommendations that immediate action is required to help secure the relevance and credibility of the IWC as the global organisation mandated to effectively manage whale resources. From this perspective, it supported, in principle, Japanese coastal whaling suggested by the IWC and SWG Chairs, because it is consistent with the sustainable use of whale resources based on best scientific advice and with the long cultural, economic and dietary tradition of its coastal communities.

The Republic of Korea believed that this sustainable use is also compatible with the idea of maintaining cultural diversity. However, it noted that its own coastal communities in and around Ulsan have faced similar socio-economic problems since the imposition of the moratorium. It reported that during this critical period of reform and change within the IWC, its Government is under mounting pressure from local communities and politicians to address these problems. The Republic of Korea indicated that it is well-known that whale resources had been an indispensable part of people's in the Ulsan region prior to the implementation of the moratorium and that whale meat from bycaught animals is still consumed. It reported that its government is therefore taking great interest in the lawful use of cetacean resources. With respect to whaling under Special Permit, the Republic of Korea considered that the provisions of the Convention under Article VIII should be honoured but that research should be conducted under a code of conduct developed by the Scientific Committee, a Committee recognised as the world's foremost authority on cetacean management science. Regarding the proposal for a South Atlantic Sanctuary, the Republic of Korea reminded the Commission that it maintains that such a sanctuary should have a sound scientific basis and reserved its position on this issue. However, it was prepared to accept its creation as part of a package of measures in recognition of regional interests and in the spirit of compromise. The Republic of Korea hoped that the outcome of discussions will enable IWC to function as a global body for the conservation and management of whales.

The representative of IUCN² welcomed the efforts by the IWC and SWG Chairs to achieve a resolution of the issues which have divided the Commission for many years, but expressed concern about the direction the negotiations appeared to be taking. IUCN emphasised its commitment to finding scientifically-based solutions to conservation problems with the involvement of stakeholders, and expressed its high regard for the scientific progress made by the IWC's Scientific Committee on the difficult issue of determining sustainable catch levels. It warned against a return to the practise of horse-trading in catch allowances, that characterised the Commission's past. The Committee's work over the years has shown that it is not safe simply to set an arbitrary catch level, but that a procedure is required for regularly adjusting catch limits in the light of new data, such as the RMP and its variants. Rather than try to reinvent such approaches from scratch, the Commission should use the machinery already developed and extensively tested by the Scientific Committee.

DISCUSSION OF THE ELEMENTS/ISSUES

Mexico suggested that going through the Chairs' Suggestions element by element may be too complicated and stressed again the need for clarity regarding the advice that will be requested from the Scientific Committee. The meeting agreed. On Mexico's latter point, the Chair of the Commission indicated that it may be useful to establish a small group to develop this clarity for discussion under item 6 (Directions for further work of the SWG).

3.2.2 Handling of category (b) elements/issues

CATEGORY (B) ITEMS REFERRED TO THE SCIENTIFIC COMMITTEE

IWC's Head of Science introduced document IWC/M09/6 'Further elaboration on the work of the Scientific Committee with respect to Category (b) items'. He explained that the document had been developed in co-operation with the Chair of the Scientific Committee in response to a request from the Chair of the Commission for *inter alia* a report on progress made to date and any future plans to address the issues assigned to the Scientific Committee developed from the 33 items identified by the Commission. The Commission Chair had also indicated that information on the expected time for completion of work on a given issue would also be helpful. The document is attached as Annex E.

The Head of Science indicated that the paper shows that the scientific Category (b) issues are already included in the work plan of the Scientific Committee and in some cases have been so for many years. Other more recent ideas, for example the conservation plan concept, are expected to become an increasingly important mechanism to integrate the work of the sub-committees and working groups into effective conservation and management advice. He noted that the complexity of many of the topics (especially those with an ecosystem component) makes it difficult for the Committee to provide precise timelines and that the changing nature of the environment and anthropogenic activities mean that many topics will require the Committee's continued attention. However, he reported that the Committee will, to the extent possible, assign timelines for specific individual actions (be they research or mitigation and management). The Head of Science further noted that the development of detailed guidelines for the *Implementation* process for the Revised Management Procedure with an associated timeline has proved very effective and that a proposal for similar guidelines (with a timetable) for in-depth assessments (an important component of and basis for conservation plans) is expected to be forthcoming at the Madeira meeting.

Australia thanked the authors for their report and highlighted the importance, for Australia of the following Category (b) elements: 9 (Conservation Committee); 10 (Conservation Management Plans); 14 (Developments in ocean governance); 15 (Ecosystem-based approach to management); and 16 (Environmental threats to cetaceans). It stressed the need to continue to focus on these elements, noting that this will involve other sub-groups of the Commission, not just the Scientific Committee, and to develop plans (e.g. in the SWG) for discussion and decision at IWC/61.

OTHER CATEGORY (B) ISSUES

The Chair noted that the non-scientific Category (b) issues were mainly of an administrative or financial nature and that he intended to develop some proposals for consideration by the meeting under agenda item 6. There were no further comments.

4. REPORT OF THE INTERSESSIONAL CORRESPONDENCE GROUP (ICG) ON ISSUES RELATED TO THE SCIENTIFIC COMMITTEE

4.1 Presentation of the Discussion Document

The Head of Science introduced Document IWC/M09/5, the Report of the Intersessional Correspondence Group

²International Union for the Conservation of Nature.

(ICG) on issues related to the Scientific Committee. The main body of the report (i.e. excluding its Annexes) is provided in Annex F.

In introducing the document, the Head of Science noted that the Commission's discussions last year on the future of IWC led to consensus documents on both improved practices and a path towards resolution of substantive issues. With respect to the role of science and the Scientific Committee, the Commission agreed that there are aspects of the Committee's work and functioning that would benefit from careful review. It had therefore decided to establish an ICG to address the following issues (see IWC/M09/5 for full Terms of Reference):

- (1) consideration of the advantages and disadvantages of separating the annual meeting of the Scientific Committee from that of the Commission;
- (2) consideration of ways to increase participation in the Scientific Committee of scientists from developing countries in the work of the Scientific Committee;
- (3) consideration of ways in which the Scientific Committee can assist in improving the knowledge and technical capability of scientists from countries where cetacean research is in its infancy so that they can better contribute to the work of the Scientific Committee and to conservation and management issues within their region; and
- (4) review of the process for inviting participants to the Scientific Committee. Given that the ICG's output would form part of the overall discussions future of the IWC, its Terms of Reference included that the discussion document to be produced by the ICG was *'to be forwarded to the Small Working Group on the Future of IWC at a time to be determined'*.

The Head of Science reported that 16 countries replied to the Secretariat's call for comments (i.e. Argentina, Australia, Brazil, Denmark, France, Germany, Italy, Ireland, Japan, Mexico, The Netherlands, New Zealand, Peru, Spain, UK, and USA). He summarised the comments received (see Annex F) and drew attention to the need for the intersessional meeting of the Commission to decide on how to take this work forward. In this respect he reported that from the responses received, there was general agreement that the Scientific Committee worked effectively and that its processes were sound, but that ways should be investigated to:

- (a) further identify the advantages and disadvantages of separating the annual meeting of the Scientific Committee and make recommendations;
- (b) further identify ways to improve communication between the Scientific Committee and the Commission and make recommendations;
- (c) facilitate the participation of suitably qualified scientists from developing countries in the priority work of the Scientific Committee and to ensure that the priority work included issues relevant to a broad range of countries and make recommendations; and
- (d) facilitate capacity building for scientists in developing countries with respect to cetacean conservation and science and make recommendations.

The Head of Science noted that the primary components of this work are scientific and financial and that possible

ways forward to further address these issues and consolidate the work of the ISG include:

- (1) asking the Scientific Committee and the Finance and Administration Committee to work on their relative aspects of issues (a) – (d) taking into account the ideas expressed in this ISG document; and
- (2) forming a small working group comprising members of the Scientific Committee and the Commission to develop a draft proposal for consideration by the Commission.

With respect to (1) he noted that: the Scientific Committee is already working on some aspects of these issues including that of communication with the Commission; the F&A Committee is already looking at the issue of biennial meetings which is of particular relevance to (a) above. If option (1) was chosen this would require the Commission to: (a) instruct the Scientific Committee, in the light of this document, to examine the scientific and procedural matters related to (a) - (d) above and make recommendations to the F&A Committee and the Commission; and (b) instruct the Finance and Administration Committee to consider the financial aspects of this issue taking into account any recommendations made by the Scientific Committee and make recommendations to the Commission.

Finally the Head of Science noted that if option (2) was chosen, the topics and instructions would be the same but the Commission would need to determine the membership of the group.

4.2 Discussion

Belgium commended the work of the ICG. It believed that the meetings of the Scientific Committee and Commission should be separated in time as this would greatly facilitate the review of the Committee's report and help to create synergies among national science groups. It also believed that the development of a handbook to help scientists new to IWC become accustomed to the Committee's work would be very useful. However, with respect to regional training workshops, it was not sure whether this type of activity is an IWC responsibility given that other bodies already have this function. Rather it recommended that a list of courses and appropriate links to information be provided via IWC's website. It made a similar recommendation with respect to training materials.

New Zealand strongly supported the concept of regional workshops, noting the success of those provided by SPREP and CMS. However, it stressed that such activities need to incorporate a system of mentoring and follow-up to ensure their success.

Brazil believed that there is a need to ensure that more priority items are included on the Scientific Committee's agenda and that this, in turn, would lead to a greater diversity of Invited Participants. With respect to a way forward, Brazil recommended a combination of options (1) and (2), i.e. that the Scientific and Finance and Administration Committees should look separately at the issues and make recommendations to the Commission at IWC/61 who would then establish a small group to further refine the recommendations.

Australia thanked the ICG for its report which is a positive contribution toward improving the delivery of quality science within the Commission. It considered the provision of sound and robust scientific advice to the

Commission as being essential to the effective functioning of the organisation. Australia found it indisputable that one of the most positive features of IWC is the excellent work undertaken by the Scientific Committee, which is internationally recognised as providing the best available knowledge on conservation and management of cetaceans. However, it noted that a number of issues have been identified that need to be addressed to improve its functioning and enhance science within the IWC. Australia believed that discussion on IWC's future could not proceed meaningfully without broadening the issues, taking stock of the current status of science within the IWC and examining how it might be enhanced to meet future demands. It considered that the future conduct of science within the Commission adhere to a number of key principles that would provide for a modern, best-practice approach. It gave the following examples of what it believed such principles might be:

- (1) if good and robust research is to be done in the name of the Commission and under the ICRW, key scientific priorities that require resolution to ensure the effective conservation and management of whales should be determined and agreed collaboratively and explicitly directed by the Commission;
- (2) all scientific activities and particularly those which use IWC resources, should respond to these agreed priorities and be subject to a formalised process of periodic review and performance appraisal;
- (3) the Commission should define and agree the scientific objectives, nature and scope of research;
- (4) a sound governance framework and a collaborative, IWC endorsed decision-making process should oversee the conduct of the science and ensure clear dialogue between the Commission and the Scientific Committee;
- (5) the results of the research should be public and the data made available to promote additional research and analysis;
- (6) processes to ensure the communication of complicated technical science issues to non-science audience should be developed and maintained;
- (7) all analytical tools and documents developed by the Scientific Committee should be lodged with the Secretariat along with explanatory text, and be freely available; and
- (8) the approval and review of the research should not be conducted by the proponents of the research.

With respect to a way forward, Australia favoured Option 2 and proposed that an appropriate group be formed with agreed terms of reference for discussion and decision at IWC/61.

Mexico stressed its view that the Scientific Committee is the aspect of IWC that works the best and that the problems of the organisation lay elsewhere. It believed that the Scientific Committee should continue to meet on an annual basis and in different countries as this facilitates attendance by local/regional scientists. It also believed that the meetings of the Committee and Commission should be separated in time. France was also in favour of separating the meetings. It reminded the Commission of its initiative to strengthen communication between the Scientific Committee and the Commission and that this work continues in co-operation with the Committee itself and with the Secretariat.

In concluding the discussions, the Chair observed that there was support for the separation of the Scientific Committee and Commission meetings. With respect to a way forward, he proposed that the Scientific Committee and Finance and Administration Committee be requested separately to review the issues in Madeira and to forward their recommendations to the Commission. The Commission would then establish a small group in Madeira to continue the work.

DISCUSSIONS RELATED TO THE SCIENTIFIC COMMITTEE'S NEW PROCESS FOR REVIEWING SPECIAL PERMIT PROPOSALS

Australia indicated that it wished to raise a matter with respect to the *'Process for the Review of Special Permit Proposals and Research Results from Existing and Completed Permits'* agreed by the Scientific Committee at IWC/60 last year, i.e. Annex P.

Australia viewed agreement on Annex P as a significant step forward in the review of Special Permit proposals and results. It noted that its understanding was that this new process would, importantly, remove the proponents from the review deliberations and make the process more consistent with acceptable, independent science review practice. Australia had viewed the January 2009 review of Japan's Special Permit whaling in the North Pacific as an important test case. However, it raised some concerns about how it believed the process had been applied with respect to: (1) the balance of the scientists involved in the review; and (2) the exclusion of observers from member governments. It urged that what it believed to be appropriate standards of transparency and independence are applied in future. It believed that only by doing so can greater confidence be created among the membership – and in civil society - for a better future for the IWC. Australia considered it important that a discussion at IWC/61 take place on how Annex P might be improved. In responding to a question from the USA, Australia clarified that it did not believe Annex P needed to be revised fundamentally and added that it believed what it perceived to be problems with the process in the case of the JARPN II workshop had not been intentional.

Brazil and Monaco associated themselves with the remarks of Australia.

In responding to Australia, the Chair of the Scientific Committee prefaced his remarks by noting that the new procedure contained in Annex P had been agreed by consensus at last year's Annual Meeting. He also noted that the report of the Workshop was not yet available. With respect to the selection of scientists to participate in the review, he explained that this was done in accordance with the procedure described in Annex P. A Standing Committee of nominated scientists (ex Scientific Committee Chairs) proposed candidates. This resulted in a long list which was reduced to 15 scientists due to the budget available, the availability of the experts themselves and to the agreed need for the Panel to be reasonably small, balanced and fair. Further selection was performed by the Chair and Vice-Chair of the Scientific Committee and the Head of Science, who, in the process, tried to maintain a balance between external experts (i.e. those not attending IWC meetings) and those with some insight into the history and work of the Scientific Committee. However, the Chair of the Scientific Committee stressed that he took the final decision on the composition of the reviewers and that he had followed the agreed procedure. He also noted that

Annex P is silent on the question of the presence of observers and it was his view that they had not been anticipated; an essential component of the new process is that the expert panel is able to discuss freely the proposal or results in the absence of the proponents or others. This aspect had formed the basis for his decision to recommend to the Chair of the Commission that observers from Contracting Governments should not attend the review meeting. He also informed the Commission that a review of the new process is already on the Committee's draft agenda for the 2009 Annual Meeting. It is his intention that this matter will be discussed fully in the light of the experience of the first Workshop.

5. NGO SESSION

The following NGOs addressed the meeting:

- IWMC World Conservation Trust;
- Antarctic and Southern Ocean Coalition speaking on behalf of a number of NGOs³;
- All Japan Seamen's Union;
- Dolphin and Whale Action Network;
- Species Management Specialists Inc;
- Norwegian Society for Protection of Animals.

Their addresses are available from the Secretariat.

6. DIRECTIONS FOR FURTHER WORK OF THE SWG

The meeting agreed to the following directions for the further work of the SWG:

'The Commission had before it a full report regarding the Small Working Group (SWG) on the Future of the International Whaling Commission (IWC/M09/4) to which were attached, notably, the Chairs' Suggestions on the Future of the International Whaling Commission (Appendix 1) put forward following the meetings held at St. Petersburg, Florida, and Cambridge, United Kingdom. The Commission also heard an oral presentation by the Chairman of the SWG. Some clarifications were requested and given and various delegations made comments about the progress achieved so far.

The Chairman of the IWC noted that since the start of the process regarding the future and in the course of the work of the SWG and in the Commission itself, there had been a significant improvement in the atmosphere.

Both Chairs emphasised that the Suggestions paper does not purport to reflect agreement nor should it be seen as a final proposal for action by the IWC.

Accordingly, the Commission asked the Small Working Group to resume its work building on progress achieved so far and taking into account views expressed during the intersessional meeting. The SWG is also hereby authorised to request advice on issues, as

required, from the Scientific Committee. The Scientific Committee is requested to make provision for urgent consideration of any such request from the SWG and to report to IWC/61.

The SWG should specifically strive to complete a package/packages of proposals including, as appropriate, draft Schedule changes and other decisions where required as well as guidance on category (b) issues including elaboration of how these issues will be advanced beyond IWC/61.

The Commission looks forward to receiving a further report on the SWG by 18 May, to include the Report of the Intersessional Correspondence Group on Scientific Committee Issues (IWC/M09/5).⁷

7. OTHER MATTERS

Japan gave a presentation, including video footage, of the harassment of its research vessels by the Sea Shepherd Conservation Society vessel the *Steve Irwin* during its research activities for JARPA II this austral Summer. It reported that its vessels had been subject to numerous violent attacks including the launching of bottles of liquid and rocket signals, the laying of ropes in the water to damage propellers and intentional ramming that had caused serious damage to the stern of one vessel and minor damage to another. Japan believed it fortunate that death and/or serious injury had been avoided. It reminded the Commission that such activities have been carried out against its vessels for a number of years in spite of consensus Resolutions adopted by the Commission in the past⁴ and the consensus statement issued at the March 2008 intersessional meeting of the Commission⁵. Japan reported that it has raised this matter at the International Maritime Organisation and that it is also pursuing domestic action against several activists. It also reported that it had contacted the relevant Flag and Port States before and after the latest JARPA II cruise requesting that they take measures to prevent such violent protests. Japan noted with appreciation that Australia had searched the *Steve Irwin* when it docked in Tasmania and hoped that such co-operation could continue. It believed that unlawful activities such as those conducted by the Sea Shepherd Conservation Society can never be condoned and considered that if IWC member countries are unable to stop such acts it may reflect badly on Japan's view of the IWC and the ongoing discussions on its future. Japan requested those countries concerned to impose more resolute measures in future.

Australia noted that it fully understood Japan's concerns and that while it respects the right of peaceful protest such protests must be exercised with over-riding regard for safety and in full compliance with relevant international and domestic laws. It reported that on numerous occasions this past Summer, it had urged all vessels and crew operating in the Southern Ocean to exercise the utmost restraint and that it had condemned actions that may jeopardise safety at sea or could lead to injury or loss of

³Antarctic and Southern Ocean Coalition, Animal Welfare Institute, Centro de Conservacion Cetacea, Cetacean Society International, The Cousteau Society, Dolphin and Whale Action Network, Eastern Caribbean Coalition for Environmental Awareness, Environmental Investigation Agency, Greenpeace, Humane Society International, Instituto de Conservacion de Ballenas – Argentina, International Fund for Animal Welfare, LegaSeas International, Norwegian Society for the Protection of Animals, Pew Environment Group, Society for the Conservation of Marine Mammals – Denmark, Whale and Dolphin Conservation Society, World Society for the Protection of Animals and WWF.

⁴Resolution 2006-2 on the Safety of Vessels engaged in Whaling and Whale Research-related Activities (*Ann. Rep. Int. Whaling Comm.* 2006:69) and Resolution 2007-2 on Safety at Sea and Protection of the Environment (*Ann. Rep. Int. Whaling Comm.* 2007: 91).

⁵IWC/60/7 Chair's Report on the Intersessional Meeting on the Future of the IWC, Renaissance London Heathrow Hotel, UK, 6-8 March 2008 (*Ann. Rep. Int. Whaling Comm.* 2008: 56-78).

life. Australia noted that its calls were not always heeded and it understood that several incidents took place that may not have been consistent with responsible conduct at sea. While the primary responsibility for investigating any incidents rests with the flag states of the vessel involved, Australia reported that the Australian Federal Police (AFP) is undertaking preliminary inquiries in relation to alleged incidents in the Southern Ocean this whaling season on the basis of Australia's limited jurisdiction over the incidents. The boarding of the *Steve Irwin* by the AFP upon its arrival into port in Australia on 20 February 2009 formed part of these enquiries. Australia noted that the AFP's preliminary inquiries are in accordance with Australian legislation and consistent with Australia's obligations under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. It is committed to continue implementing these obligations in good faith and welcomed ongoing co-operation between Australian, Japanese, Dutch and other law enforcement agencies with jurisdiction over these matters.

The Netherlands shared the concerns of other IWC member states concerning safety at sea. It deplored the incidents that occurred between the Japanese vessels and the *Steve Irwin* in December 2008 and February 2009. Noting that it takes seriously its obligations regarding ensuring safety at sea, and in line with the responsibilities of the flag state of the *Steve Irwin*, the Netherlands reported that its competent maritime authorities have emphasised to the Sea Shepherd Conservation Society the obligation for all ships flying the flag of the Kingdom of the Netherlands to uphold safety at sea and that on the high seas, the right to free speech and demonstration should be exercised within the limits of the law. The Netherlands reported that it has received formal complaints from both Japan and the Sea Shepherd Conservation Society about the recent incidents. Its authorities are currently studying these

complaints and will take appropriate steps, possibly legal. It further reported that the implication of the recent incidents on ship registration procedures in the Netherlands is under serious consideration. The Netherlands hoped that all concerned will assume their responsibilities to avoid any future incidents. Finally, it emphasised that it considers the IMO to be the most appropriate forum to discuss the issue of safety at sea and looked forward to doing so.

Many other delegations voiced their concern about the protest activities which they could not condone and expressed sympathy for Japan and the crew of its research vessels. The Commission deplored acts of violence against ships and once again unanimously called for action to be taken by the relevant authorities. Japan appreciated the comments made and was encouraged by the response.

8. CONCLUSIONS AND PRESS RELEASE

The meeting agreed that a statement from the Chair of the Commission on the outcome of the meeting should be released to the media and made available on IWC's website. The statement is provided in Annex G.

The Chair thanked delegates for their participation. He noted that despite the complexity of the issues and the strength of feelings held on all sides, he was again pleased with the spirit in which discussions had been held and that directions for the SWG had been developed. He emphasised that this process is vital for the future of whale conservation and the management of human activities, not just whaling, that can affect their status and that it is clear that all IWC members want healthy whale stocks, whatever disagreements exist on how they might be used.

The Chair again thanked the Italian Government for hosting the meeting and the FAO for the use of their facilities.

Annex A

LIST OF DELEGATES AND OBSERVERS

(C) Commissioner; (AC) Alternate Commissioner; (I) Interpreter; (S) Support staff

Argentina

Javier Figueroa (AC)
Miguel Iñíguez (AC)

Australia

Donna Petrachenko (C)
Clare Derrington
David Dutton
Pam Eiser
Nick Gales
Andrew McNee
Stephanie Oberscheider

Austria

Andrea Nouak (C)

Belgium

Alexandre de Lichtervelde (C)

Benin

Joseph Ouake (C)

Brazil

José Truda Palazzo (AC)
André Tenório Mourão

Cambodia

Nao Thuok (AC)

Cameroon

Malloum Ousman Baba (C)

Chile

José Fernández

Costa Rica

Jorge Revollo
Luis Paris

Cyprus

Myroula Hadjichristophorou (C)
Christina Pitta

Czech Republic

Pavla Hýčková (C)
Jan Kučera
Lukáš Pokorný

Denmark

Ole Samsing (C)
Christen Krogh
Kate Sanderson

Ecuador

Francisco Salgado
Monica Martinez

Finland

Esko Jaakkola (C)

France

Stéphane Louhaur (C)
Martine Bigan

Gabon

Guy Anicet Rerambyath (C)

Germany

Thomas Schmidt (AC)
Monika Roemerscheidt
Andreas Von Gadow

Greece

Emmanuel Manoussakis

Grenada

Justin Rennie (C)

Guinea, Republic of

Ibrahima Sory Toure (C)

Iceland

Stefan Asmundsson (C)
Jon Egill Egilsson (AC)
Kristjan Loftsson

Ireland

John Fitzgerald (C)

Israel

Esther Efrat-Smilg (C)

Italy

Patrizia De Angelis (AC)
Caterina Fortuna (AC)
Plinio Conte
Michele Alessi
Angelo Ciasca
Sabrina Di Nicola (S)
Forlini Jessiama (S)
Rosa Caggiano (S)

Japan

Akira Nakamae (C)
Yutaka Aoki (AC)
Joji Morishita (AC)
Yoshihiro Fujise
Dan Goodman
Yasuo Iino
Hiromi Isa
Daisuke Kiryu
Konomu Kubo

Yoshihiro Takagi
Jun Yamashita
Midori Ota (I)
Emiko Kodama (I)

Republic of Korea

Young-Hyo Ha (C)
Hyun-Chul Kim (AC)
Zang-Geun Kim (AC)
Hyun-Jin Park

Luxembourg

Pierre Gallego

Mexico

Lorenzo Rojas-Bracho (C)
Damaso Luna

Monaco

Frederic Briand (C)
Frederic Platini (AC)

Morocco

Benmoussa Abderraouf

Netherlands

Marie-Josée Jenniskens (C)
Mirko de Ponti (AC)
Maaïke Moolhuijsen (AC)
Meike Scheidat (AC)

New Zealand

Geoffrey Palmer (C)
Mike Donoghue
Jan Henderson
Gerard van Bohemen

Norway

Halvard Johansen (AC)
Ole-David Stenseth
Lars Walløe
Hild Ynnesdal

Republic of Palau

Victorio Uherbelau (C)

Panama

Déborah Siraze (C)
Orlando Bernal

Peru

Doris Sotomayor (C)

Portugal

Jorge Palmerin (C)
Edgar Afonso (AC)
Branca Martins da Cruz
Marina Sequeira

St. Kitts and Nevis

Joseph Simmonds

St. Lucia

Jeannine Compton-Rambally (C)

St. Vincent and The Grenadines

Edwin Snagg (C)

Slovenia

Andrej Bibič (AC)

South Africa

Herman Oosthuizen (C)
Mongezi Nqoro (AC)

Spain

Carmen Asencio (AC)

Sweden

Bo Fernholm (C)
Stellan Hamrin (AC)
Ingela Sundelin (AC)

UK

Richard Cowan (C)
Trevor Perfect (AC)
Jim Gray
Douglas Kerr

USA

Bill Hogarth (C)
Doug DeMaster (AC)
Bob Brownell, Jr.
Roger Eckert
Cheri McCarty
Lisa Phelps
Allison Reed
Rollie Schmitten
Mike Tillman
Heather Rockwell
Michael Weiss
Ryan Wulff
Adam Issenberg (S)

Uruguay

Alberto Raul Breccia

SWG Chair

Alvaro de Soto

Scientific Committee Chair

Arne Bjørge

INTERPRETERS

Schéhérazade Matallah-Salah
Mohammed Bennis
Letitia Saenz
Cynthia Diaz Menk

IWC SECRETARIAT

Nicky Grandy
Greg Donovan

NON-MEMBER COUNTRY OBSERVERS**Canada**

Susan Waters

**INTERGOVERNMENTAL
ORGANISATION OBSERVERS****European Community**

Julius Langendorff
Irene Plank

**Food and Agriculture
Organization of the United Nations**

Ndiaga Gueye
Rebecca Metzner

IUCN

Justin Cooke

NAMMCO

Ole David Stenseth

**NON-GOVERNMENTAL
ORGANISATION OBSERVERS****All Japan's Seamen's Union**

Hideo Kon

Animal Welfare Institute

Susan Millward
D.J. Schubert

**Antarctic and Southern Ocean
Coalition**

Sidney Holt

Campaign Whale

Andy Ottoway

Centro de Conservacion Cetacea

Elsa Cabrera

Cetacean Society International

Heather Rockwell
Kate O'Connell

Concepesca

Miguel Marengo

Cousteau Society

Clark Lee Merriam

**Dolphin and Whale Action
Network**

Nanami Kurasawa

Dolphin Connection

Deborah Adams

**East Caribbean Coalition for
Environmental Awareness
(ECCEA)**

Lesley Suttly

**Environmental Investigation
Agency**

Allan Thorton
Sam Labudde

**European Bureau for
Conservation & Development**

Despina Symons

Greenpeace International

John Frizell
Sara Holden
Wakao Hanaoka

Humane Society International

Kitty Block

**Instituto de Conservacion de
Ballenas**

Roxana Schteinbarg

**International Fund for Animal
Welfare**

Patrick Ramage,
Francisco Gonçaves
Vassili Papastavrou

**International Transport Worker's
Federation (ITF)**

Noriyuki Oshima

IWMC World Conservation Trust

Eugene Lapointe
Marco Pani (I)

Japan Whaling Association

Glenn Inwood
Konomu Kubo

LegaSeas International

Michael Iliff

**Norwegian Society for the
Protection of Animals**

Tanya Schumacher

**Society for the Conservation of
Marine Mammals, Denmark**

Birgith Sloth
Iwona Kuklik

Species Management Specialists

Hank Jenkins

The Pew Charitable Trusts

Leslie Busby
Suzanne Miller Taei
Mamadou Diallo

The Varda Group

Rémi Parmentier
Duncan Currie

**Whale and Dolphin Conservation
Society**

Sue Fisher

Windstar Foundation

Nancy Azzam

**World Society for the Protection of
Animals**

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Annex B

LIST OF DOCUMENTS

IWC/M09/

- 1 Draft agenda
- 2 List of participants
- 3rev List of documents
- 4 Report on the Small Working Group (SWG) on the Future of the International Whaling Commission, presented by Alvaro de Soto, SWG Chair (includes the 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 (Item 5)

OPENING STATEMENTS

IWC/M09/OS Member governments

- Australia
- Republic of Korea
- New Zealand
- USA

IWC/M09/OS NGOs

- AWI (Animal Welfare Institute)
- CW (Campaign Whale)
- DWAN (Dolphin and Whale Action Network)
- ICB (Instituto de Conservacion de Ballenas)
- ISS (Irish Seal Sanctuary)
- SMS (Species Management Specialists)
- WWF (WWF International)

FOR INFORMATION DOCUMENTS

IWC/M09/Info

- 1 Chair's Report of the Pew Whales Commission, Lisbon, 9-10 February 2009 (submitted by Portugal) [also available in French]

BACKGROUND DOCUMENTS

IWC/S08/SWG

- 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)

IWC/60 DOCUMENTS SUBMITTED IN RELATION TO AGENDA ITEM 18 ON THE FUTURE OF IWC

IWC/60/

- 7 Chair's Report of the Intersessional Meeting on the Future of IWC, Renaissance London Heathrow Hotel, UK 6-8 March 2008 [also available in French and Spanish]
- 8rev The IWC in the 21st century (submitted by Norway)
- 9 Background paper for Japan's small-type coastal whaling (submitted by Japan)
- 10 Chair's recommendations for follow-up to the March 2008 Intersessional Meeting on the Future of IWC
- 11 Declaration of the Buenos Aires Group: The Conservation of Cetaceans in the 21st century and the International Whaling Commission [also available in Spanish]
- 12rev The Future of the International Whaling Commission: Strengthening Ocean Diplomacy (submitted by Professor Juma)
- 14rev Future IWC work on cetacean conservation issues, including budgetary implications (submitted by Belgium and France)
- 15 Conservation Management Plans for improved cetacean management (submitted by Australia)
- 16 Regional Non-Lethal Research Partnerships: a proposal for the Southern Ocean (submitted by Australia)
- 18 Possible improvements to procedural issues identified at the March 2008 Intersessional Meeting on the Future of IWC (prepared by the Secretariat)
- 24 Chair's summary of the outcome of discussions on the future of the International Whaling Commission
- 26 Funding of work on discussions on the future of IWC up to and including IWC/61

IWC/M08/Info

- 11 Whale conservation and management: a future for the IWC (submitted by Australia) [also available in French and Spanish]

Annex C

AGENDA

- | | |
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| <ol style="list-style-type: none"> 1. Introductory items <ol style="list-style-type: none"> 1.1 Introductory remarks and objectives of the meeting 1.2 Management and reporting 1.3 Review of documents 2. Adoption of the Agenda 3. Report of the Small Working Group on the Future of IWC <ol style="list-style-type: none"> 3.1 Presentation of the SWG Chair's Report 3.2 Discussion | <ol style="list-style-type: none"> 3.2.1 The Chairs' suggestions on the future of the IWC (Appendix 1 of IWC/M09/4) 3.2.2 Handling of category (b) elements/ issues 4. Report of the intersessional correspondence group (ICG) on issues related to the Scientific Committee <ol style="list-style-type: none"> 4.1 Presentation of the Discussion Document 4.2 Discussion 5. Directions for further work of the SWG 6. Other matters 7. Conclusions and press release |
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Annex D

EXTRACT FROM THE REPORT ON THE SMALL WORKING GROUP (SWG) ON THE FUTURE OF THE INTERNATIONAL WHALING COMMISSION (IWC/M09/4)

Appendix 1

CHAIRS' SUGGESTIONS ON THE FUTURE OF THE INTERNATIONAL WHALING COMMISSION

Preamble

WHAT IS AT STAKE

The international whaling régime as embodied in the International Convention for the Regulation of Whaling (ICRW) is at a crossroads, beset by seemingly fundamental disagreements between Contracting Governments as to its nature and purpose. The future course of the IWC needs to be defined by broad agreement; failure to do so could compromise not only the conservation status of whale populations but also the continued relevance and credibility of the Commission as an effective global conservation and management body at a time when there is a growing need for enhanced international cooperation.

These considerations have led the IWC to embark on an intensive process directed toward determining the future of the IWC starting in 2007. It became clear that, despite important differences, there are several commonly held views, including:

- (1) the recognition of the IWC as a primary international body with responsibility for the global conservation and management of whales;
- (2) a strong belief in maintaining healthy populations of whales and especially in the restoration of severely reduced populations; and
- (3) acknowledgement of the IWC's Scientific Committee as the world's foremost authority on cetacean biology, ecology and management science.

This common ground and the improved climate in the work carried out so far provides a basis for overcoming potential gridlock.

THE FUTURE OF THE IWC PROCESS

At IWC/60, the Commission identified 33 issues which need to be considered in developing a package or packages regarding the future of the IWC. It also created a Small

Working Group with the mandate of developing 'a package or packages for review by the Commission' in order to assist it 'to arrive at a consensus solution to the main issues it faces.' At an early stage, the Small Working Group divided the 33 issues into two categories: (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 exists or can be established to address them. These are primarily but not exclusively scientific and administrative issues.

THE APPROACH

The Small Working Group has been working on the principle that nothing is agreed until everything is agreed. It has further agreed that in developing packages for consideration, they must:

- provide for the long-term sustainability of stocks based on best available science;
- provide for the recovery of depleted or endangered stocks based on the best available science;
- be perceived as balanced by all parties; and
- provide procedures for reviewing and where necessary improving governance practices within the IWC.

Of the 13 issues allocated to category (a), i.e. those that must be addressed immediately, it has proven particularly difficult to identify a single way forward regarding three issues. These are: (1) Japanese Small-Type Coastal whaling; (2) Special Permit whaling; and (3) sanctuaries. It is recognised that agreement on these issues is inter-related; e.g. it will not be possible to reach agreement on

coastal whaling without agreement on research whaling under Special Permit and *vice versa*. The question of where regulations would apply – i.e. sanctuaries – cuts across both. It is anticipated that under any result, the total number of whales killed will be reduced during the next five years.

Given the complexity of the numerous political, administrative and scientific issues to be addressed, the paper proposes a two-stage approach to their resolution. The first stage consists of short-term solutions which, it is hoped, the Commission could agree on no later than June 2009, which would last for a five-year period – referred to hereafter as the ‘interim period.’ It should be noted that, although several of the proposed resolutions to identified issues will be *ad hoc* and short term in nature, they have been developed in a precautionary manner and are consistent with the management objectives of the ICRW. During the interim period, long-term solutions relating to the governance and future functioning of the IWC are to be developed to be put in place at the end of the interim period, when the second stage begins. These would incorporate well-developed policies as well as full testing of management protocols using computer simulations following approaches pioneered by the Scientific Committee.

No agreement should be construed as signifying agreement by any party with each of its details. Rather the impact of the conservation and management measures proposed for the interim period - in addition to reducing the number of whales killed - has the overarching purpose of strengthening the conservation and management mandates of the IWC.

Based on the above, and contingent on an agreement regarding the set of issues on which immediate action is required and a process to address long-term governance in the IWC over the next five years, it is proposed by the Chairs that Contracting Governments should agree to the following.

Stage 1: Items requiring immediate action

ELEMENT 6: JAPANESE SMALL TYPE COASTAL WHALING

An interim quota for ‘O’ stock common minke whales in Japanese coastal waters for a five-year period would be implemented, having regard to the unique circumstances that exist for four Japanese coastal communities. This whaling would be managed, consistent with the advice of the Scientific Committee, under a Schedule amendment that would last for five years. The Scientific Committee would provide interim advice concerning the total removals of ‘O’ and ‘J’ stock common minke whales. The advice would be provided under the following two scenarios: (a) constant catches for five years and zero thereafter; (b) constant catches for five years with the same level of catches thereafter.

Any direct take of ‘J’ stock animals must be identified and included with ‘J’ stock animals taken as bycatch in commercial fisheries, and managed according to the recommendations of the Scientific Committee. No more than a total of five vessels from Taiji, Abashiri, Ayukawa and Wada would be used, all trips must be day trips, and monitoring, control and enforcement methods must be identified and implemented. All meat would be locally consumed. In accordance with the Schedule, annual reports would be submitted to the IWC for each year’s hunt identifying the number of whales taken, the position of capture, the species taken and locations where whales are

landed. Arrangements would be made for the Secretariat to verify the composition of total removals regarding ‘J’ and ‘O’ stock animals.

ELEMENT 23: RESEARCH UNDER SPECIAL PERMIT

This issue was one of the most contentious discussed by the Small Working Group. Many countries remained opposed to whaling under Special Permit. Various approaches have been suggested, including elimination, bringing it under the control of IWC and using a Code of Conduct. However, in the spirit of trying to reach a consensus on measures to improve the performance of the IWC, a significant reduction in the number of whales taken under Special Permit during the interim period is proposed; during that period the issue will be addressed further with a view to seeking a long-term arrangement. Such a proposal should in no way be interpreted as meaning that countries who are opposed to Special Permit whaling are thereby endorsing it; they might prefer to view it as a step in the process of reducing the number of whales taken while negotiations continue on the future of the IWC.

Based on discussions, the following options are proposed.

Option 1

- (1) For the next five years, a phase-out of Special Permit whaling of Antarctic minke whales in the Southern Ocean would occur, where takes of minke whales in the Southern Ocean would be reduced by 20% in the first year and each year thereafter to reach zero by year five.
- (2) No takes of humpback or fin whales in the Southern Ocean.
- (3) All removal levels would be reviewed by the Scientific Committee and consistent with its recommendations.

Or,

Option 2

- (1) For the next five years, an annual limit of x Antarctic common minke whales and y fin whales is established in the Southern Ocean associated with JARPA II research, pending interim advice from the Scientific Committee regarding the sustainability of these removal levels.
- (2) It is anticipated, pending advice from the Scientific Committee on sustainability, that in the western North Pacific as part of JARPN II research, ww ‘O’ stock common minke whales, xx sei whales, yy Brydes and zz sperm whales will be harvested annually.

Concerning the conduct of research under Special Permit, the Commission adopted a new approach (Annex P) at the Santiago meeting. The Scientific Committee will continue to use this approach for the review of existing and new research programmes. Member nations will take account of recommendations from the Scientific Committee regarding the experimental design.

During the 5-year interim period the Commission will address all issues pertaining to Article VIII. Of special importance are the issues of where Special Permit whaling would be allowed (i.e. whether Special Permit whaling should be allowed in designated sanctuaries), the long term purpose or need for Special Permit whaling, and monitoring and compliance protocols.

ELEMENT 27: SANCTUARIES

A South Atlantic Sanctuary should be established for an initial period of five years. The boundary for this sanctuary would take into account the interests of coastal range states. A three-quarters majority vote of the IWC would be required to extend this designation beyond the interim period.

ELEMENT 33: WHALEWATCHING/NON-LETHAL USE

The IWC recognises non-lethal use of whales as a management option for coastal States. The IWC will address its scientific, conservation and management aspects through its appropriate bodies.

Stage 2: items requiring action during the five-year interim period

ELEMENT 2: ANIMAL WELFARE

There is agreement among IWC members that animal welfare is an important issue for the IWC.

During the meeting of the Small Working Group in Florida in September 2008, a number of issues on this Element requiring resolution were identified (see Annex) but there had been insufficient time to refine them or discuss them thoroughly. These issues should be clarified and resolved during the interim period.

ELEMENT 3: BYCATCH

During the meeting of the Small Working Group in Florida in September 2008, a number of issues on this Element requiring resolution were identified (see Annex) but there had been insufficient time to refine them or discuss them thoroughly. These issues should be clarified and resolved during the interim period.

ELEMENT 7: COMMERCIAL WHALING MORATORIUM

For the interim period, the moratorium will remain in effect without prejudice to the positions of Contracting Governments.

ELEMENT 8: COMPLIANCE AND MONITORING

During the meeting of the Small Working Group in Florida in September 2008, three specific issues pertaining to Element 8 were identified (see Annex). These should be

addressed during the interim period together with the relationship between Element 8 and the RMS element (Element 25). Monitoring must include a Vessel Monitoring System, a transparent DNA registry and a catch documentation scheme. Some other long-term compliance and monitoring issues will be addressed under governance discussions during the interim period.

ELEMENT 11: CONVENTION (PURPOSE OF)

This is a complex issue to be addressed during the interim period. The primary issue is to address whether the Convention requires amendment to reflect the changes in concerns and priorities, dispute mechanisms and approaches to ocean governance relevant to the IWC that have occurred since the Convention came into force.

ELEMENT 21: OBJECTIONS AND RESERVATIONS

This Element has particular significance in relation to Element 25 (RMS). It will be addressed during the interim period. One possible way forward is the approach used by the North West Atlantic Fisheries Organization where a revised objection procedure was agreed in the context of a revision of the agreement establishing the organisation. Annual harvest levels associated with whaling under an objection will be consistent with advice from the Scientific Committee.

ELEMENT 31: SMALL CETACEANS

This is a longer-term issue that should be addressed during the interim period.

During the meeting of the Small Working Group in Florida in September 2008, a number of issues on this Element requiring resolution were identified (see Annex) but there had been insufficient time to refine them or discuss them thoroughly. These issues should be clarified and resolved during the interim period.

During the interim period, the IWC will continue its current practice of the Scientific Committee providing advice to coastal states regarding the status of small cetaceans in their waters.

Annex E

FURTHER ELABORATION ON THE WORK OF THE SCIENTIFIC COMMITTEE WITH RESPECT TO CATEGORY (B) ITEMS

Greg Donovan and Arne Bjørge

INTRODUCTION

We received a request from the Chair of the Commission on 5 February with the following key paragraphs:

As a result of the discussions of the Small Working Group on the Future of the IWC established at last year's Annual Meeting, the Commission requests that the Head of Science and the Chair of the Scientific Committee provide a report at the upcoming Intersessional Meeting in March 2009 on progress made to date and any future plans to address the issues assigned to the Scientific Committee from the 33 items developed by the Commission as part of the 'Future of the IWC' process (see Tables 1 and 2 attached).

We realise that many of these items are already being addressed in the annual Work Plan of the Scientific Committee, which the Commission has endorsed. We further realise that it is very difficult for the Scientific Committee to predict when a given issue will be completed.

Finally, we recognise that this request is neither trivial nor simple, and will require considerable time between now and the intersessional meeting to complete. Nonetheless, some of the Contracting Governments to the IWC believe that one or more of these 19 issues are sufficiently important that the current priorities of the Scientific Committee may need to be changed. To provide for such a discussion, a summary of whether a given issue has been included in the most recent Work Plan of the Scientific Committee, and, if so, the expected time period for completion, would be very helpful.

This document is our response to this request. The short period of time between receiving this request and the present meeting (during which there have been four scientific workshops that one or both of us have had to attend), means that the comments in this document represent our best attempt to answer this request on behalf

of the Scientific Committee – we have not been able to consult with the full Committee as we would have preferred.

DISCUSSION

Appendix 1 provides the summary of the information by element related to the work of the Scientific Committee – it is largely based on the text developed for the Small Working Group, with, as appropriate our comments about ‘timelines’. It will be recalled that when the list of elements was developed it was recognised that there would be overlap amongst them; that is particularly true for the scientific elements. Therefore this document, whilst retaining all of the elements in the Appendix, focuses on some of the broader overlapping issues in the text here that will affect our ability to estimate ‘completion dates’ for a number of the elements, many of which refer to broad issues rather than specific tasks.

The work of the Scientific Committee is primarily carried out by sub-committees and working groups (either topic or species/area-based) that meet in parallel sessions during the first 8-9 days of the Annual Scientific Committee meeting or at specialised intersessional workshops. All of these activities are in response to priority work requested by the Commission and are included in the draft workplan presented to the Commission for approval at each annual meeting. It should be noted that removing or giving lower priority to a particular group or groups may not result in a ‘speeding’ up of the other groups – whether it does or not will depend on the personnel involved and the nature of the particular topics being considered and, in some cases (particularly with respect to ecosystem-related topics), work carried out by other organisations and research groups.

Table 1 summarises the sub-groups of the Scientific Committee that the Commission agreed should work in Madeira and our attempt to identify those which will deal with at least some aspects of the various elements. It is clear from this Table that almost all of the groups are already considering, to a greater or lesser extent, the majority of the elements and that all of the elements are covered by at least one and usually several groups. Newer elements such as conservation management plans and co-operative non-lethal research programmes are or could be relevant to all groups to a greater or lesser extent. Some groups (e.g. stock definition and increasingly environmental concerns) are fundamental to the working of all of the other sub-groups (and thus are also relevant to all elements).

In the sections below we elaborate on some of the issues that overlap several elements. You are also referred to the earlier Secretariat paper that provided background to all 33 elements (IWC/S08/SWG3).

Conservation plans

Coincidentally, the Scientific Committee received two documents on this topic at last year’s Scientific Committee meeting. One was the document produced by the Government of Australia that has already been considered by the Commission (IWC/60/15) and the other was a longer document presented to the Scientific Committee that dealt with the process for developing effective conservation

plans (Donovan *et al.*, 2008)⁶; a summary of the process required and the links between them is given in Fig. 1. The Committee received the document and agreed that all of the Scientific Committee’s groups would take this process into account in their work, either in working towards full conservation plans for particular species/areas where there is an urgent conservation need (e.g. western North Pacific gray whales) or in using the framework as a guide when making research or management recommendations such that they are in a form that can ultimately contribute to a conservation management plan.

It can be seen from the figure that fully developed conservation plans integrate the work of all sub-committees. They should include consideration and prioritisation of all potential anthropogenic threats, both direct (e.g. hunting, bycatches and ship strikes) and indirect (e.g. habitat degradation including chemical and noise pollution, environmental change, etc.) and associated mitigation measures. The last will often include matters that are not related to whaling. These will require collaborative approaches amongst the relevant national and international authorities (e.g. related to fisheries, marine protected areas, pollution, etc.) and monitoring not only of cetaceans themselves but of anthropogenic and environmental factors.

The evaluation of potential threats may require modelling exercises similar to those used for the RMP/AWMP as well as information from in-depth assessments. Work on conservation plans is envisioned to be an ongoing process and thus it is not possible to set a single time limit for completion. A conservation plan itself should be seen as a living document. However, as Donovan *et al.* point out, incorporation of timelines, priorities, responsible players and the legal framework is fundamental to individual conservation plans and incorporated ‘actions’. Actions can relate to research, management and legislative, compliance, monitoring, capacity building/public awareness and co-ordination.

Finally, they stress that effective conservation plans require the participation of all stakeholders (including relevant authorities) – they must have a sound scientific basis but are not the province of scientists alone. How to achieve this broad involvement is something that the Commission will need to consider; the authors had noted that one possibility is that the Scientific and Conservation Committees might work together on determining appropriate broader mechanisms.

Ecosystem related issues including ecosystem approach to management, environmental and climate change

The Scientific Committee has been and continues to address these issues in a variety of ways including the establishment of an ecosystem modelling working group. The importance attached to this work is witnessed by the fact that since Santiago, the Committee has held a joint workshop with CCAMLR on ecosystem modelling and a specialist workshop on climate change and cetaceans.

However, as these and previous meetings of both the IWC Scientific Committee and other relevant bodies (e.g.

⁶Donovan, G., Cañadas, A. and Hammond, P. 2008. Towards the development of effective conservation plans for cetaceans. Paper SC/60/O17 presented to the IWC Scientific Committee, June 2008, Santiago, Chile (unpublished). 15pp. [Paper available from the Office of this Journal].

Table 1

Scientific Committee sub-committees, working groups and standing working groups scheduled for the 2009 Annual Meeting and elements that are relevant to those groups.

Revised Management Procedure

Bycatches; Climate change; Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management; Environmental threats to cetaceans

Aboriginal Subsistence Management Procedure

Bycatches; Climate change; Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management; Environmental threats to cetaceans

Bowhead; right and gray whales

Bycatches; Climate change; Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management; Environmental threats to cetaceans; Marine protected areas

In-depth assessment

Climate change; Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management; Environmental threats to cetaceans;

Working group on North Pacific common minke whales

Bycatches; Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management; Environmental threats to cetaceans

Southern Hemisphere whale stocks other than minke and right whales

Bycatches; Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management; Environmental threats to cetaceans; Marine protected areas

Stock definition

Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management;

Estimation of bycatch and other human-induced mortality

Bycatches; Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management; Environmental threats to cetaceans; Marine protected areas

Environmental concerns

Climate change; Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management; Environmental threats to cetaceans; Marine protected areas

Ecosystem modelling

Climate change; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management; Environmental threats to cetaceans;

Small cetaceans

Bycatches; Climate change; Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Environmental threats to cetaceans; Marine protected areas

Whalewatching

Conservation Management Plans; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management

DNA

Bycatches; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management

Special Permits

Climate change; Co-operative non-lethal research programmes; Data provision; Ecosystem-based approach to management; Environmental threats to cetaceans.

FAO, CCAMLR) have emphasised, predictive ecosystem modelling is an extremely complex and difficult issue from the perspectives of the available data and analysis and modelling. It is clear that obtaining results sufficiently reliable to directly inform management advice should not be expected within at least the next few years and could require considerable time, even for what some term 'simple' systems such as the Southern Ocean. It also requires considerable collaboration with other bodies – in many cases the data on cetaceans are considerably stronger than those for other components of the ecosystem (e.g. lower trophic levels such as krill, fish and squid species) which may be intrinsically more difficult to measure/model as well as oceanography. In addition, even the IPCC models related to climate change are extremely variable and not always at the appropriate temporal and geographical scale to allow inferences about cetaceans. Given this, it is extremely difficult to produce a 'timeline' for the completion of such work. The Committee is working to ensure more direct collaboration with other groups and in particular to ensure that cetaceans are seen as an important component of ecosystem models.

However, in addition to direct ecosystem modelling the Scientific Committee also incorporates the concept of environmental change into its work on both the RMP and the AWMP. *Inter alia*, the scenarios considered include

time varying trends in carrying capacity, natural mortality and productivity, and the occurrence of 'catastrophes' which were intended to reflect in an integrative manner environmental impacts including climate change; the results of preliminary ecosystem modelling can in some circumstances inform the choice of scenarios to consider even when the results are not sufficiently robust to be used directly in management. In addition, both the RMP and AWMP incorporate regular (5-year) *Implementation Reviews* during which new information on cetaceans and their environment is evaluated to ensure that the parameter space tested by the simulation trials is adequate; if it not new trials are determined. The Scientific Committee is at present reviewing the need to consider additional trial scenarios with respect to environmental change as detailed in last year's report; it is expected that that work will be completed by the 2010 annual meeting.

Co-operative non-lethal research programmes

This issue was raised as an important initiative by Australia in document IWC/60/16. It is clear that the results of such initiatives are intended to be reviewed by the Scientific Committee and can make an important contribution to its work, particularly as the intention is to take into account Scientific Committee needs and recommendations. The importance of international collaboration is clear for

migratory species that are found in the waters of more than one nation and in the high seas. In many ways this expands on previous collaborative research work undertaken in co-operation with or by the Scientific Committee including the IDCR/SOWER cruises, the NASS cruises, POLLUTION 2000+ and the SOWER/CCAMLR 2000 cruises. Such programmes have been shown to be of major benefit to the work of the Scientific Committee. Again, it is difficult to apply a general timeline – it is expected that individual programmes will have their own timelines and that such programmes in general will contribute in the long-term to the work of the Scientific Committee. The results of a workshop on southern ocean partnerships will be available for consideration at the Madeira meeting.

Collaboration with other groups

It is clear from the text above that the broad issues of cetacean conservation and management requires collaboration with other bodies at a number of levels, not merely scientific. At the scientific level close co-operation already occurs with a number of bodies; members of the Scientific Committee (including the Secretariat) participate fully in the work of, for example, CCAMLR, SO-GLOBEC, IUCN (especially the western gray whale panel), CMS cetacean agreements, FAO (with respect to

bycatch) and it is looking to strengthen and broaden this collaboration.

CONCLUSION

This document, although completed in a rather short time and without the opportunity to consult with our colleagues, does, we believe, show that the scientific category (b) issues are included into the workplan of the Scientific Committee and, for example in the case of the conservation plan concept, have become an increasingly important mechanism to integrate the work of the sub-committees and working groups into effective conservation and management advice. The complexity of many of the topics (especially those with an ecosystem component) makes it difficult for us to provide precise timelines – indeed the changing nature of the environment and anthropogenic activities mean that many topics will require the continued attention of the Committee. However, specific individual actions (be they research or mitigation and management) will be assigned timelines. As an aside, the development of detailed guidelines for the *Implementation* process for the RMP with an associated timeline has proved very effective. A proposal for similar guidelines (with a timetable) for in-depth assessments (an important component of and basis for conservation plans) is expected to be forthcoming at the Madeira meeting.

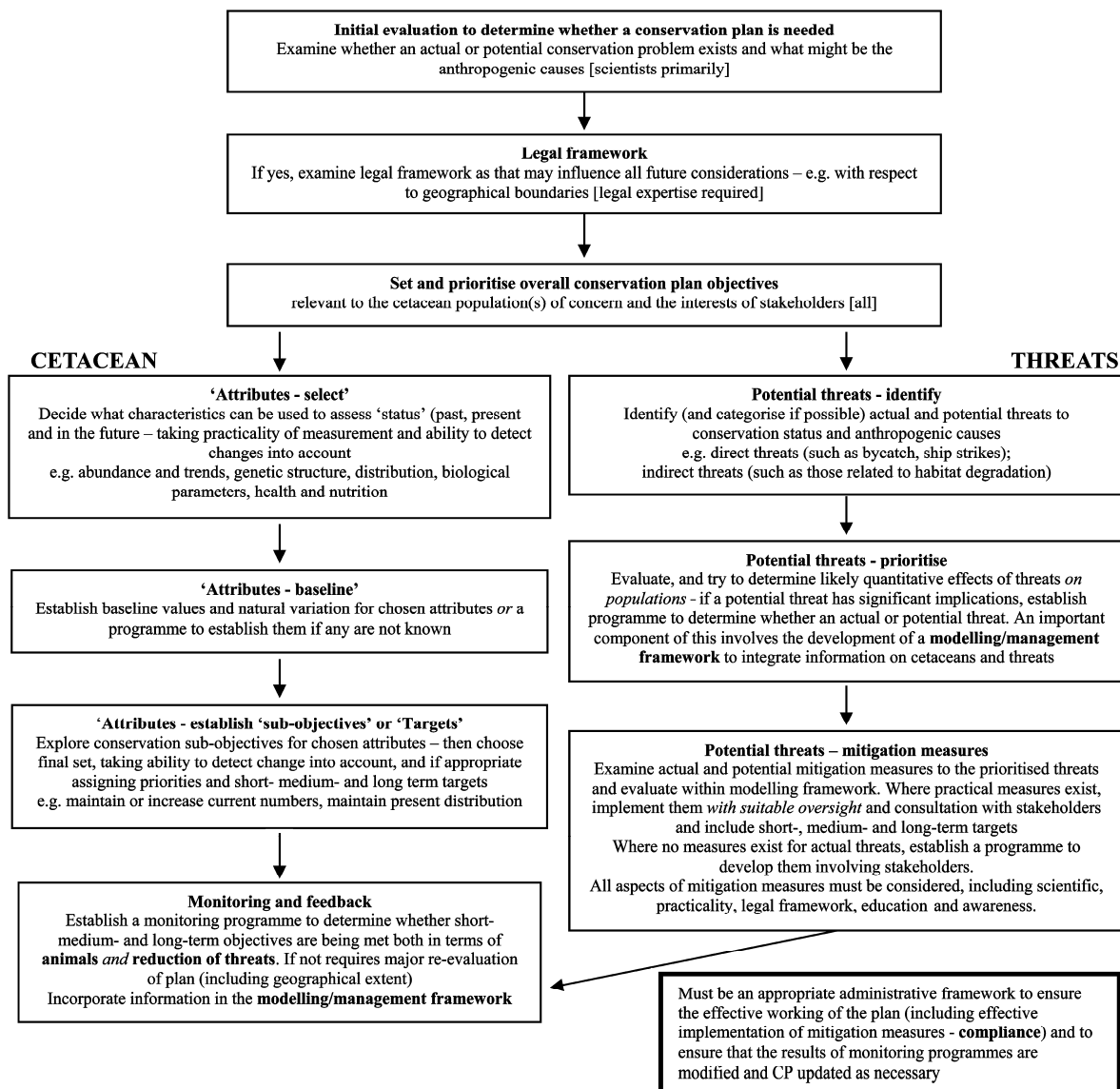


Fig. 1. Steps towards effective conservation plans (from Donovan *et al.*, 2008).

Appendix 1

**OUTLINE OF ISSUES AND MECHANISMS FOR PROGRESSING WORK ON CATEGORY (B)⁷
ELEMENTS/ISSUES WITH A SCIENTIFIC COMPONENT**

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
ELEMENT 3: BYCATCH AND INFRACTIONS (SWG 3: P. 8; SWG 4REV: PP. 65-66)	
Continued work on bycatch issues despite disagreements in some areas (e.g. with respect to small cetaceans)	<p>The Scientific Committee continues to examine scientific aspects of bycatch of large whales and small cetaceans in terms of assessing effects at the population level, reviewing mitigation measures and incorporating it into work on the RMP and AWMP and presenting this work to the Commission. It will be assisted in this process by work associated within the conservation management plan framework (see Element 10 below). Several aspects of this work are undertaken in co-operation with other international bodies including, ASCOBANS, ACCOBAMS and FAO.</p> <p><i>This is ongoing work. The problem of incidental catches in fishing gear is worldwide and applicable to a wide variety of fishery types, species of cetaceans and geographical areas. Mitigation measures will be similarly varied and will need to be developed in conjunction with the relevant national and international authorities. Consideration of bycatches is an important component of conservation plans. In particular cases it is important that timelines are set.</i></p>
ELEMENT 4: CLIMATE CHANGE (SWG 3: P. 3; SWG 4REV: PP. 67-68)	
(a) Further efforts to estimate effects on cetaceans at the scientific level	<p>The Scientific Committee has this item on its agenda and is examining this issue from a number of perspectives – in particular it has recently held a joint workshop with CCAMLR with respect to the Southern Ocean and it will be holding a 2nd full workshop on the topic in Spring 2009 (the first was in 1996). The Scientific Committee has recognised that this is a complex issue from both a data and modelling perspective that will require medium- to long-term efforts. Its work with respect to incorporating such effects under whaling management procedures is considered under (b) below.</p> <p><i>This is ongoing complex work. The Scientific Committee is continuing to give this matter priority as witnessed by its recent intersessional workshops and the establishment of an ecosystem modelling working group and report to the Commission on its findings. Given the need for collaboration with other bodies and the focus on non-cetacean as well as cetacean datasets, it is not possible to set a 'completion' date but realistically it will not be for several years for any of the current systems under consideration. The recommendations of the two workshops will be presented to the Scientific Committee in Madeira and the Committee will report to the Commission on the findings.</i></p>
(b) Allowance for effects: management of whaling	<p>Both the RMP and the AWMP are tested with scenarios that use proxies (e.g. changing carrying capacity, catastrophes and changes in reproductive/survivorship) for environmental changes including climate change. The Committee regularly reviews these scenarios and is doing so at present for RMP trials. In addition, both the RMP and AWMP have mandatory reviews every 5 years to ensure that the tested scenarios are adequate in the light of new knowledge.</p> <p><i>The Scientific Committee has identified that this should be accorded priority and work is underway to evaluate the need for additional trials. It is expected that from the perspective of the generic RMP evaluation, this will be completed within two years; as noted above for individual AWMP and RMP Implementations, the process involves re-evaluation at least every five years in the light of new information.</i></p>
(c) Allowing for effects: species not subject to whaling (especially heavily depleted populations)	<p>The Scientific Committee has stressed that the effects of environmental change may affect all species/populations including those for which catches would not be allowed if the RMP was implemented – indeed highly depleted populations are probably the most vulnerable to such changes. The Committee continues to investigate this and will be assisted in this process by work associated within the conservation management plan framework (see element 10 below).</p> <p><i>The generic difficulties have been highlighted already but the Scientific Committee will need to incorporate this in the context of the modelling required in the context of conservation plans. Recommendations made by the Climate Change workshop will be presented to the Scientific Committee in Madeira, incorporated into its workplan and the Committee will report to the Commission.</i></p>
(d) General small cetacean issue	<p>The question as to the level to which this issue should be examined for small cetaceans falls under the category (a) element 30. At present the Scientific Committee is examining the issue for all cetaceans.</p> <p><i>Recommendations made by the Climate Change workshop will be presented to the Scientific Committee in Madeira, incorporated into its workplan and the Committee will report to the Commission.</i></p>
(e) Mitigation actions	<p>At its previous workshop, the Scientific Committee noted that mitigation measures related to the general issue of climate change are well known and it asked the Commission to urge member countries to take such action. These relate to matters outside the regulation of whaling. Mitigation measures related to 'tertiary effects' of climate change (e.g. possible increased shipping) will be considered by the Scientific Committee in terms of the way it reviews such anthropogenic threats now. It is relevant in terms of the development of conservation plans as discussed above.</p> <p><i>It is primarily Commission (and in many cases it would need to be in conjunction with other intergovernmental bodies) responsibility to incorporate advice from the Scientific Committee in terms of mitigation measures. As before this is ongoing work.</i></p>

Cont.

⁷These are 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 exists or can be established to address them. These are primarily but not exclusively scientific and administrative issues. (There may be issues which, while controversial, may not need to be tackled immediately as part of the package in (a) above).

⁸For each element, the issues are listed in no particular order and may overlap.

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
ELEMENT 4: CLIMATE CHANGE cont.	
(f) Need for co-operation with other bodies	The Scientific Committee is already working in collaboration with other scientific bodies e.g. those within CCAMLR, CMS as well as Southern GLOBEC. The need for further collaboration (e.g. with respect to possible mitigation measures) will need to be identified as work progresses. <i>The need for collaboration with other bodies is recognised. Co-operation with some bodies (e.g. the CMS cetacean agreements, CCAMLR, SO-GLOBEC are well developed. Co-operation with other relevant bodies needs to be developed when identified.</i>
(g) Level of priority to be given to this work	The Scientific Committee is addressing this as one of its priority issues both in a general context and in the context of the RMP/AWMP; it is necessarily an iterative ongoing subject and future work will <i>inter alia</i> depend on the recommendations from the forthcoming workshop and the level of priority allocated by the other scientific bodies. <i>The Scientific Committee is giving, and should continue to give this matter priority and report to the Commission on its findings.</i>
ELEMENT 10: CONSERVATION MANAGEMENT PLANS (SWG 3: P. 21; SWG 4REV: PP. 85-86)	
(a) The value of conservation management plans as a framework for conservation actions related to recovering species/populations with respect to non-whaling related threats. The development of conservation management plans is a complex and iterative process that even with the appropriate framework will normally take several years.	The Scientific Committee has agreed the value of such a framework and will be taking this into account in its agenda for the forthcoming meeting (and beyond). This is discussed much more thoroughly in the main text of this document. <i>The Scientific Committee has decided to incorporate this concept within all of its work and to give this matter priority. It is of its essence ongoing work but timelines will be incorporated into individual plans and actions.</i>
(b) The appropriate way to link the work of the Commission and its subsidiary bodies on the scientific and mitigation measure/ management actions (including involvement of stakeholders – see (c) below).	This is a matter for the Commission to decide – one suggestion has been that the Conservation Committee (and see Element 9) may be an appropriate technical body to work with the Scientific Committee towards translating scientific advice into appropriate mitigation measures for consideration by the Commission. This would need to be undertaken in conjunction with stakeholders including relevant national and intergovernmental bodies. This is discussed much more thoroughly in the main text of this document and in Donovan <i>et al.</i> , 2008. <i>Determining the appropriate forum and strategy could be placed on the Commission's Agenda.</i>
(c) The need to involve/co-operate with other appropriate national/inter-governmental regulatory bodies that are responsible for non-whaling-related threats	See the comments under (b) above.
ELEMENT 12: COOPERATIVE NON-LETHAL RESEARCH PROGRAMMES (SWG 3: P. 24; SWG 4REV: PP. 90-91)	
(a) Organised regionally outside IWC to develop priorities and research needs	It is intended that the resultant programmes will be submitted to the Scientific Committee for review. This is discussed much more thoroughly in the main text of this document. <i>This will contribute to the ongoing work of the Scientific Committee.</i>
(b) General issues with respect to non-lethal and lethal research	This is covered under element 23 (Research under special permit) and in particular in the new process to review scientific permit work.
ELEMENT 13: DATA PROVISION (SWG 3: P. 25; SWG 4REV: P. 92)	
(a) Ensure that scientific and operational data essential for management are available for review and analysis	The Scientific Committee has developed an approach to this issue (including the Data Availability Agreement and the Requirements and Guidelines related to the RMP) that it believes is working well. <i>The Commission has already endorsed this approach.</i>
ELEMENT 14: DEVELOPMENTS IN OCEAN GOVERNANCE (SWG 3: P. 26; SWG 4REV: PP. 93-94)	
The need to move away from a sector-based single species approach to the conservation and management of marine living resources to an ecosystem-based approach, co-operating with and taking account of the work and outcome of other relevant treaties (e.g. UNCLOS, CBD)	The Scientific Committee has already begun to address aspects of this issue and co-operates with CCAMLR in particular (see Element 15). The general issue is discussed much more thoroughly in the main text of this document. <i>This is an important yet complex issue that will require several years more work.</i>
ELEMENT 15: ECOSYSTEM-BASED APPROACH TO MANAGEMENT (SWG 3: P. 27; SWG 4REV: PP. 95-96)	
(a) No specific definition agreed	The Scientific Committee is working on this issue on two fronts: (1) using ecosystem information to inform single-species management (e.g. under the scenarios used to test the RMP and AWMP); (2) working towards developing ecosystem models (see (b) below) that may ultimately be used in a predictive manner. This is discussed much more thoroughly in the main text of this document. <i>The Scientific Committee is giving this matter priority but recognises that it is a complex issue that will require several years more work.</i>
(b) Level of priority to be given to this work	The Scientific Committee is addressing this as one of its priority issues both in a general context and in the context of the RMP/AWMP; it is necessarily an iterative ongoing subject and future work will <i>inter alia</i> depend on the recommendations from relevant workshops and the level of priority allocated by other scientific bodies. <i>The Scientific Committee is giving this matter priority but recognises that it is a complex issue that will require several years more work. In terms of the RMP/AWMP scenarios it is anticipated that this will be completed within two years in the generic sense as well as at least every five years for specific Implementations.</i>

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
ELEMENT 15: ECOSYSTEM-BASED APPROACH TO MANAGEMENT cont.	
(c) As with Element 4 (Climate change), complex scientific issue from data and modelling perspective, need for co-operation with other bodies	As noted under Element 4, the Scientific Committee is embarking upon the long-term work needed to begin to develop ecosystem models that may eventually lead to some predictive modelling that can be used to inform management; this work can only be effectively undertaken in collaboration with CCAMLR, SO-GLOBEC and others – and the Scientific Committee is pursuing this. <i>This is ongoing complex work. The Scientific Committee is continuing to give this matter priority as witnessed by its recent intersessional workshops and the establishment of an ecosystem modelling working group and report to the Commission on its findings. Given the need for collaboration with other bodies and the focus on non-cetacean as well as cetacean datasets, it is not possible to set a 'completion' date but realistically it will not be for several years for any of the current systems under consideration.</i>
ELEMENT 16: ENVIRONMENTAL THREATS TO CETACEANS (SWG 3: P. 28; SWG 4REV: PP. 97-98)	
(a) Level of priority to be given to this work and incorporation into the conservation and management of cetaceans.	The Scientific Committee has recognised the importance of addressing threats other than whaling and has established a standing working group on this subject as well as holding specialists workshops and important research programmes (POLLUTION 2000+ and SOWER 2000). It is working towards greater incorporation of the work of this group with the other sub-committees, noting the value of a conservation management plan framework in this context. The RMP and AWMP at present address these issues in their simulation testing frameworks that are regularly reviewed (and see Element 4: Climate Change and 15: Ecosystem-based approach to management). <i>The Scientific Committee is giving these matters increasing priority – again this is ongoing work and it is not possible to set generic completion dates – individual situations will be given specific timelines.</i>
(b) Need for co-operation with other bodies that have some regulatory capacity on factors outside whaling.	The co-operation with other bodies at a scientific level is underway. <i>Where mitigation measures may be proposed on matters other than whaling, there is a need to consider a broader co-ordination with other bodies at a Commission level.</i>
ELEMENT 20: MARINE PROTECTED AREAS (SWG 3: P. 40; SWG 4REV: PP. 103-104)	
(a) This issue is integrally related to the discussion of Element 27 (Sanctuaries) part of which is being considered as category (a)	See the discussion under Element 27.
(b) No general definition of MPAs	The flexibility in the definition of MPAs is valuable and the Scientific Committee may consider a variety of possible targeted MPAs as potential mitigation tools within the context of conservation management plans (see Element 10). <i>The Scientific Committee has agreed to integrate the concept of conservation management plans into its work and where appropriate this will include MPAs. Again this is ongoing work and it is not possible to set generic completion dates – individual situations will be given specific timelines.</i>
(c) Incorporation of Marine Protected Area concepts into IWC Sanctuaries	The Scientific Committee is attempting to incorporate such concepts (e.g. measurable goals) in its review of existing and proposed Sanctuaries – this will need to be done in co-operation with the Commission who has the responsibility to set such goals at least in a qualitative manner. <i>The Scientific Committee will give this matter priority when it is reviewing specific proposals or undergoing periodic reviews of existing Sanctuaries.</i>
(d) Need for co-operation with other bodies with respect to addressing threats other than whaling	The co-operation with other bodies at a scientific level is underway. <i>Where mitigation measures may be proposed on matters other than whaling, there is a need to consider a broader co-ordination with other bodies at a Commission level.</i>
ELEMENT 28: SCIENCE – ROLE OF SCIENCE AND FUNCTIONING OF THE SCIENTIFIC COMMITTEE (SWG 3: P. 62; SWG 4REV: PP. 116-117)	
	<i>The report of the intersessional correspondence group established by the Commission (IWC/M09/5) deals with this matter.</i>

Annex F

EXTRACT FROM DOCUMENT IWC/M09/5 REPORT OF THE INTERSESSIONAL CORRESPONDENCE GROUP ON SCIENTIFIC COMMITTEE ISSUES

(Note: for Annexes on Terms of Reference and country responses, please see full document)

BACKGROUND

At the March 2008 Intersessional Meeting on the Future of IWC a large part of the meeting focused on ways to improve approaches to discussions and negotiations within the organisation (see IWC/60/7). The role of science was one of seven broad areas addressed⁹.

There was agreement that the provision of sound scientific advice is essential to the functioning of the IWC and that one of the more positive features of the organisation is its strong scientific element. It was noted that the work of the IWC Scientific Committee is internationally recognised as providing the best available knowledge on conservation and management for cetaceans and that the Committee has a good record in achieving consensus on nearly all of its recommendations to the Commission. Nevertheless, comments were made by some participants that the current workload of the Scientific Committee is too high, difficult to prioritise and, mainly because of its timing in conjunction with the Commission, not adequately integrated into the policy work of the Commission. The need to review the composition and function of the Scientific Committee was also suggested (e.g. improving the involvement of scientists from developing countries and the procedures for inviting scientists to the Committee).

In his report to the 60th Annual Meeting in Chile last year (i.e. IWC/60/12), Professor Juma¹⁰ also recognised the critical role that the Scientific Committee plays in the functioning of IWC and stressed that the current difficulties facing the Commission do not result from an inability to provide scientific advice. However, he suggested that there are ways in which its effectiveness could be strengthened by:

- (1) separating meetings of the Scientific Committee from those of the Commission so as to allow more time to consider its report;
- (2) facilitating participation of scientists from developing countries to better-reflect the membership of the Commission; and
- (3) improving co-ordination and co-operation with other relevant scientific organisations in addition to those for which extensive co-operation exists.

The Commission's discussions on the future of IWC at last year's Annual Meeting led to consensus documents on both improved practices and a path towards resolution of substantive issues (see IWC/60/24). With respect to the role of science and the Scientific Committee, the Commission agreed that there are aspects of the Committee's work and functioning that would benefit from

careful review. It therefore decided to establish an Intersessional Correspondence Group on Issues Related to the Scientific Committee (ICG) to address the following issues (see Annex A for full Terms of Reference):

- (1) consideration of the advantages and disadvantages of separating the annual meeting of the Scientific Committee from that of the Commission;
- (2) consideration of ways to increase participation in the Scientific Committee of scientists from developing countries in the work of the Scientific Committee;
- (3) consideration of ways in which the Scientific Committee can assist in improving the knowledge and technical capability of scientists from countries where cetacean research is in its infancy so that they can better contribute to the work of the Scientific Committee and to conservation and management issues within their region; and
- (4) review of the process for inviting participants to the Scientific Committee.

Given that the ICG's output would form part of the overall discussions on the future of the IWC, its Terms of Reference include that the discussion document to be produced by the ICG was 'to be forwarded to the Small Working Group on the Future of IWC at a time to be determined'.

METHOD OF WORKING

At its organisational meeting in Santiago immediately after the close of IWC/60, the Small Working Group (SWG) agreed that the ICG's Terms of Reference should be circulated to all Contracting Governments with a request for comments/suggestions on any or all of the four areas identified in the Terms of Reference to be received by the Secretariat by 15 August 2008 (see Circular Communication IWC.CCG.712 of 16 July 2008). As foreseen when developing the Terms of Reference, the SWG agreed that only those governments responding to the request for comments would continue to be included in subsequent correspondence (and would therefore comprise the intersessional correspondence group). A number of SWG members offered to be on a 'core group' to assist the Chair of the Scientific Committee and the IWC's Head of Science to compile an initial draft of the discussion document. Those offering to be on the 'core group' were Argentina, Australia, Brazil, Italy, Korea, Mexico, Netherlands, New Zealand, Norway, Mexico and the USA.

It had been hoped that a draft discussion document could have been circulated to Contracting Governments and SWG and ICG members in advance of the SWG meeting in Florida from 15-18 September 2008. This had not been possible, although a progress report was submitted to the SWG that included the comments submitted. A draft discussion document was submitted by the Intersessional Core Group to the December 2008 meeting of the SWG in Cambridge, UK.

⁹The others were: the role/purpose/future of the organisation and ripeness to discuss; improving practices and procedures; improving the negotiation process; improving participation; the role of the media; and improving relationships with intergovernmental organisations.

¹⁰Professor Caletous Juma, Belfer Center for Science and International Affairs, Harvard Kennedy School, was engaged by the Commission as a Special Advisor to facilitate discussions on the future of the IWC.

THIS DOCUMENT

This discussion document collates the responses of 16 countries who replied to the Secretariat's call for comments circulated on 15 August 2008 (i.e. Argentina, Australia, Brazil, Denmark, France, Germany, Italy, Ireland, Japan, Mexico, The Netherlands, New Zealand, Peru, Spain, UK, and USA). It follows the structure of the Terms of Reference. For each of the four issues listed above, a summary of the responses is provided. The full responses of each country are given in Annexes B and C. The last section of the document provides options for a way to take this work forward for consideration by the Commission at its March 2008 intersessional meeting.

SUMMARY OF RESPONSES

Term of Reference

(1) *Consideration of the advantages and disadvantages of separating the annual meeting of the Scientific Committee from that of the Commission; this will include inter alia:*

- (a) *logistical and financial aspects;*
- (b) *scientific aspects;*
- (c) *communication with the Commission;*
- (d) *confidentiality aspects; and*
- (e) *consideration of the applicability of other 'models' such as that of the IPCC.*

Overall summary

All of the responses received recognised that there were some positive aspects about separating the annual meeting of the Scientific Committee from that of the Commission – several also commented on the need to link discussions of this to the question of biennial meetings of the Commission. Even with biennial Commission meetings however, most countries that commented stated their preference for annual meetings of the Scientific Committee given its workload and the iterative nature of its work.

(a) Logistical and financial aspects

Timing

In terms of the timing of any separation, only two countries made suggestions for timing. (Australia) suggested a period of 2-3 months prior to the Commission meeting (and linked this with timing of field seasons assuming that the SC meeting could be in March and the Commission meeting in June/July). The (USA) suggested that if full consultation was required for actions (e.g. Schedule amendments, Resolutions) as discussed *inter alia* in Santiago, then a period of up to 5 months might be required – this includes a period of 2 months for Commissioners to consult after circulation of the Scientific Committee report and allowing for 60 days in advance circulation of proposed decisions; if Commission meetings were held in June/July this would imply that the Scientific Committee meeting would be held in December/January.

It is clear that further consideration needs to be given to the question of the appropriate timing – for example, the December/January period is the peak field season in the Southern Hemisphere whilst the 2-3 month period might be considered too short to allow full consultation amongst governments over proposed decisions. However, the need

for formal resolutions on agreed recommendations from the Scientific Committee is not the only possible approach – for example, the Commission could simply adopt such recommendations (lessening the need for the 60-day period apart from perhaps Schedule amendments). The five-month period could exacerbate the potential problem of 'additional' analyses being submitted directly to the Commission although the UK has suggested that one way to avoid this would be to develop a new rule of procedure to prevent this.

Venue

The question of venue was raised by four countries, three of whom linked this to the question of costs (see below). Australia commented on the value of continuing to hold the Scientific Committee meetings in different countries, noting that a major advantage of this approach is to facilitate attendance by local/regional scientists (also relevant to questions 2-4).

Costs

This will require a more detailed consideration as discussions within the SWG and the Commission itself progress on a number of issues but it is inevitably somewhat complex. For example, costs can be separated into two categories: (a) costs applicable to the IWC central budget; and (b) costs applicable to individual countries. It is possible that actions to reduce (a) may increase costs in (b) and *vice versa* and that the same actions will affect different countries in quite different ways (e.g. countries who always send scientists to Commission meetings will face increased costs by separating the two meetings whereas this will not be the case for those countries who do not send scientists to the Commission meeting).

Several countries noted the possibility of offsetting increased costs incurred with separating the two meetings (e.g. increased Secretariat costs) by having biennial meetings of the Commission, making it difficult to discuss the two issues separately. As noted above, three countries suggested that always holding Scientific Committee meetings in Cambridge would reduce Secretariat travel costs (i.e. relevant to category (a) costs). This of course will be dependant on being able to find a suitable regular venue within Cambridge and the cost of that venue. In addition, holding the venue in the same place each year (a) will see losers and winners with respect to travel costs for country scientists and (b) negates the advantage of facilitating different local/regional scientists participation noted by Australia above.

(b) Scientific aspects

Many countries noted that the work of the Scientific Committee is important and effectively carried out and that this should continue whatever decision is taken with respect to separation of meetings from the Commission and most (but not all) agreed that the Scientific Committee should continue to meet annually, irrespective of any decision on biennial meetings of the Commission, given its workload and the iterative nature of its work and the need for periodic review of progress by the full Committee.

(c) Communication with the Commission

Most delegations commented that the primary advantage of separating the Scientific Committee and Commission meetings would be to allow the Commission longer to review the complex report of the Scientific Committee. As

part of that process some also noted that it would: (a) allow more time for editorial work to finalise the report; and (b) the opportunity could be taken to allow e.g. the Chair of the Committee and the Head of Science to develop an Executive Summary and to explain further the background to discussions as well as the most recent discussions themselves. In addition, reference was made to the initiatives (including the French initiative) already being undertaken by *inter alia* the Committee itself to improve communications between the Scientific Committee and the Commission. It was also suggested that individual countries might consider drafting 'review working papers' on topics of particular interest to themselves, recognising that any final documents would need to be agreed by the full Scientific Committee.

(d) Confidentiality aspects

The present Rules of Procedure mean that the Scientific Committee report remains confidential until the opening Plenary session of the Commission, although the Report is made available to Commissioners as soon as it is ready and usually at least 2 days before and relevant extracts are made available to relevant Commission sub-committees and Committees (e.g. the aboriginal/subsistence whaling sub-committee, the conservation committee, the budgetary sub-committee) prior to the Plenary session.

Most commented that the Rule would need changing if there was greater separation (the present rule for intersessional meetings allows for reports to be confidential until circulated to the Commission, and this may be appropriate should confidentiality be desired) and many questioned the need for confidentiality. It appears that this could be a general issue for discussion by the Commission. Reasons in the past have included: the need for Commissioners to receive the report first as they are the responsible body; the need to avoid manipulation or misrepresentation of the Committee's work.

(e) Consideration of the applicability of the models such as that of the IPCC

Many commented on the value they placed on the work of the Scientific Committee and its international reputation. It was noted that its objectives are different from that of the IPCC, and that the Scientific Committee is much more proactive, undertakes original work and addresses the specific needs of the Commission. However, New Zealand believed that there may be aspects of the IPCC work that may be relevant to the Scientific Committee and Italy commented that the IPCC model might be more relevant to the Commission's Conservation Committee and Aboriginal/Subsistence Whaling Sub-committee.

Term of Reference

(2) *Consideration of ways to increase participation in the Scientific Committee of scientists from developing countries in the work of the Scientific Committee; this will include inter alia:*

- (a) *selection process and preparation for meeting;*
- (b) *financial aspects; and*
- (c) *relationship with the overall invited participant process (see 4 below).*

Overall summary

It is clear that there is general support for increasing the participation of qualified scientists from developing countries in the work of the Scientific Committee. Some suggested that the responsibility for sending at least one scientist to the Scientific Committee lay with each member nations, whilst recognising the financial implications. The role of the Scientific Committee as primarily an advisory body not an educational body was noted and in several cases discussion of this issue was linked to questions (3) and (4) – improving scientific capacity with respect to cetacean conservation throughout the world and examination of the Invited Participant process.

(a) Selection process and preparation for meeting

A number of countries stressed that it was important that only suitably qualified scientists who can contribute to the priority work items attend the Scientific Committee. Some commented that the geographical representation should be achieved by national delegations, others that a selection process (and see (c) below) under the auspices of the Scientific Committee could be established that involved consideration of appropriate qualifications and CVs. It was also suggested that any selected scientists could/should attend a Scientific Committee seminar before attending meetings.

(b) Financial aspects

All countries recognised that this was a fundamental issue that requires future thought. Opinions ranged over the extent to which this should be IWC-funded.

(c) Relationships with the overall invited participant process

Some countries believed that the process should be independent of the current Invited Participant system whereas others believed that the present system was adequate (and see Item 4 below).

Term of Reference

(3) *Consideration of ways in which the Scientific Committee can assist in improving the knowledge and technical capability of scientists from countries where cetacean research is in its infancy so that they can better contribute to the work of the Scientific Committee and to conservation and management issues within their region; this will include inter alia:*

- (a) *possibility of regional training workshops (consider collaboration with other organisations, e.g. FAO, UNEP, IUCN);*
- (b) *provision of materials (e.g. documents); and*
- (c) *financial aspects.*

Overall summary

Although some countries reiterated their view that the primary responsibility of the Scientific Committee was to provide advice to the Commission not training, most respondents commented that there was value in the IWC assisting in the improvement of the scientific capability of cetacean researchers around the world, particularly in co-operation with other international bodies, where possible.

Regional training workshops

There was considerable support for the idea of members of the Scientific Committee holding short workshops on conservation science and a number of possible collaborative intergovernmental organisations were suggested (including FAO, UNEP, CBD, CMS) and professional bodies such as Society for Marine Mammalogy and the European Cetacean Society. Primary topics suggested included those pioneered and/or extensively used by the Scientific Committee including abundance/trend estimation (e.g. line-transect surveys, mark-recapture), population simulation modelling to assess conservation/management actions (e.g. RMP/AWMP, bycatch, ship strikes). One country suggested that the IWC should seek to provide input into existing training workshops held by FAO as a more cost-effective approach than separate IWC workshops.

Provision of materials (e.g. documents)

Countries noted that the IWC already has a number of materials that could be valuable in training workshops (and in general) including meeting documents, publications (*Journal of Cetacean Research and Management*), PowerPoint presentations etc. The IWC website would be a valuable portal in this regard and the possibility of making all historical meeting documents electronically available was suggested. Other ideas suggested included the provision of summary documents such as that suggested by France at the Santiago meeting.

Financial aspects

A number of views were expressed under this item ranging from the inclusion of a separate budget line, obtaining outside funds from aid agencies and NGOs to collaboration with other IGOs.

Term of Reference

(4) *Review of the process for inviting participants to the Scientific Committee; this will include inter alia:*

- (a) *objectives for inviting participants;*
- (b) *reasons for non-inclusion of IWC-funded participants on national delegations of developed countries;*
- (c) *selection process and advice; and*
- (d) *financial aspects.*

Overall summary

In general, countries agreed that the primary purpose of invited participants was to assist the Scientific Committee in providing advice to the Commission on key issues and that such scientists should be able to contribute to the priority work of the Committee. There were some comments that the Commission's review process for the Scientific Committee's work plan items could be modified. With respect to the process to invite participants, there was general agreement that the current process (decision taken by the Chair with advice from the convenors) was a good basis for any review and there were some suggestions as to how this might be improved.

Objectives for inviting participants

As noted in the responses to several questions, there is general agreement that the primary purpose of invited participants was to assist the Scientific Committee in providing advice to the Commission on key issues, particularly where there is expected to be a shortfall in expertise from scientists on member delegations. Several countries stressed the need for co-ordination to occur within the Scientific Committee.

Reasons for non-inclusion of IWC-funded participants on national delegations of developed countries

This matter had been noted by the Chair of the Scientific Committee who noted that there are scientists from developed countries who make a valuable contribution to the work of the Committee but who are not funded by/included on their national delegations. Some commented that the reasons may be varied and include the right of countries to choose their own delegations and the right of scientists who are not government employees not to be bound by any conditions set by a particular government.

Selection process and advice

There was general agreement that the current process provided a good basis for any review of the Invited Participants but that a mechanism to improve the participation of scientists from developing countries should be developed as discussed earlier in this document. One country commented on the need to separate out self invited (self funded) participants.

Financial aspects

This has been discussed extensively under other questions.

A WAY FORWARD

This document summarises the comments provided on those issues identified as being of relevance to the Intersessional Correspondence Group.

There was general agreement that in general, the Scientific Committee worked effectively and that its processes were sound but that ways should be investigated to:

- (a) further identify the advantages and disadvantages of separating the annual meeting of the Scientific Committee and make recommendations;
- (b) further identify ways to improve communication between the Scientific Committee and the Commission and make recommendations;
- (c) facilitate the participation of suitably qualified scientists from developing countries in the priority work of the Scientific Committee and to ensure that the priority work included issues relevant to a broad range of countries and make recommendations; and
- (d) facilitate capacity building for scientists in developing countries with respect to cetacean conservation and science and make recommendations.

The primary components of this work are scientific and financial. Possible ways forward to further address these issues and consolidate the work of the ISG include:

- (1) asking the Scientific Committee and the Finance and Administration Committee to work on their relative aspects of issues (a)-(d) taking into account the ideas expressed in this ISG document;
- (2) forming a small working group comprising members of the Scientific Committee and the Commission to develop a draft proposal for consideration by the Commission.

With respect to (1) it should be noted that: the Scientific Committee is already working on some aspects of these issues including that of communication with the Commission; the F&A Committee is already looking at the issue of biennial meetings which is of particular relevance to (a) above.

If option (1) was chosen this would require the Commission to:

- (a) instruct the Scientific Committee, in the light of this document, to examine the scientific and procedural matters related to (a) - (d) above and make recommendations to the F&A Committee and the Commission; and
- (b) instruct the Finance and Administration Committee to consider the financial aspects of this issue taking into account any recommendations made by the Scientific Committee and make recommendations to the Commission.

If option (2) was chosen, the topics and instructions would be the same but the Commission would need to determine the membership of the group.

Annex G

MEDIA RELEASE

Dr William Hogarth, Chair International Whaling Commission, Rome, 11 March 2009

The Intersessional Meeting of the International Whaling Commission concluded in Rome today on a note of cautious optimism.

‘These have been helpful discussions. There were clear expressions of view that efforts to arrive at a package of proposals must continue,’ the Chair of the Commission, Dr Bill Hogarth said. ‘Opinions differ amongst the members as to precisely how to accomplish our goal and a great deal of work remains to be done.’

‘As Chair of the IWC, I am heartened at the views that have been expressed over the last few days on our work so far, and the general commitment to continue to further develop a set of proposals that can command broad agreement.’

‘We are not there yet, but we’ll keep going, and see what we can come up with to be considered at the Commission’s Annual Meeting to be held in Madeira, 22-26 June.’

‘The Intersessional Meeting has agreed to give directions to the Small Working Group to continue its work,’ Dr Hogarth said.

The IWC meeting was held at the FAO Headquarters in Rome from 9-11 March, to consider the results of the initial

deliberations of the Small Working Group (SWG) on the Future of the IWC that was established at the IWC’s Annual Meeting last year.

The task of the SWG, which is chaired by Ambassador Alvaro de Soto, is to ‘assist the Commission to arrive at a consensus solution to the main issues it faces, to enable it to best fulfill its role with respect to the conservation of whale stocks and the management of whaling’.

The final report of the Small Working Group will be available by 18 May.

Over half of the Commission’s 84 members attended the Rome meeting. In addition, there were observers from 4 intergovernmental organisations.

Civil Society was also well represented at the meeting, with over 30 non-governmental organisations. Delegates of six NGOs addressed the meeting.

At close of business, the meeting received a presentation from Japan on events in the Southern Ocean involving the *Steve Irwin* and Japan’s research vessels. The Commission deplored acts of violence against ships and once again unanimously called for action to be taken by the relevant authorities.
